

**MISSION STATEMENT: TO CREATE A HEALTHY, SAFE, DIVERSE, AND PROSPEROUS CITY
BY ENGAGING COMMUNITY MEMBERS TO DEVELOP AN ENRICHED QUALITY OF LIFE.**



**COUNCIL MEETING AGENDA
CITY COUNCIL – CITY OF ONTARIO OREGON
TUESDAY, OCTOBER 26, 2021, 6:00 PM, MT
[Zoom Link](#)**

Pursuant to the Public Meetings Laws and Rules within the Oregon Revised Statutes, the City Council has the authority, ability, and standing to take action on any items on the Agenda, or add items to the Agenda, during the Study Session or Regular Meeting, as long as all public meeting notice requirements have been met.

1) CALL TO ORDER

Roll Call: Susann Mills ____ Sam Baker ____ John Kirby ____ Ken Hart ____
Michael Braden ____ Eddie Melendrez ____ Mayor Riley Hill ____

2) PLEDGE OF ALLEGIANCE

This Agenda was posted on October 22, 2021. Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) MOTION TO ADOPT THE AGENDA

4) PUBLIC COMMENTS Citizens may address the Council; however, Council may not be able to provide an immediate answer or response. Out of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

5) PUBLIC HEARING

- A) Resolution #2021-135: City Council to Declare Certain Real Property, Being Lots 14 & 15 and the North 12 feet of Lot 16, Block 21 Original Townsite of Ontario As Surplus Land and No Longer Needed for Public Use and Approving the Sale of Said Real Property

6) OLD BUSINESS

- A) Purchase and Land Swap with Looks Nu Car Wash, Inc.

7) PRESENTATIONS

- A) City Manager Update
B) Marijuana Funds Expenditures Update

8) NEW BUSINESS

- A) Bid Award: Closed Circuit TV Sewer Line Inspection Services
B) Contract Award: Janitorial Services for City Facilities

9) DEPARTMENT HEAD UPDATE

- A) Finance: Monthly Report

10) DISCUSSION ITEMS

- A) TOT Increase Approval Process

11) HAND-OUTS

- A) Check Register: September 2021
B) Minutes: County Court 10-06-2021

12) CORRESPONDENCE, COMMENTS AND EX-OFFICIO REPORTS

13) ADJOURN

The City Council may recess/adjourn to Executive Session under ORS 192.660(2) as follows: (a) Employment of Public Officers, Employees, or Agents; (b) Discipline of Public Officers, Employees, or Agents; (c) Labor Negotiations; (d) Real Property Transactions; (e) Exempt Public Records; (f) Trade Negotiations; (g) Litigation /Consult with Legal Counsel; (h) Performance Evaluation of Public Officers and Employees; (i) Trade Negotiations; and/or (j) Labor Negotiations.

The City of Ontario does not discriminate in providing access to its programs, services and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 889-7684 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made.

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**AGENDA REPORT
PUBLIC HEARING
October 26, 2021**

To: Mayor and City Council

FROM: Adam J. Brown, City Manager

THROUGH: Adam J. Brown, City Manager

SUBJECT: RESOLUTION #2021-135: CITY COUNCIL TO DECLARE CERTAIN REAL PROPERTY, BEING LOTS 14 & 15 AND THE NORTH 12 FEET OF LOT 16, BLOCK 21 ORIGINAL TOWNSITE OF ONTARIO AS SURPLUS LAND AND NO LONGER NEEDED FOR PUBLIC USE AND APPROVING THE SALE OF SAID REAL PROPERTY

DATE: October 21, 2021

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE RESOLUTION #2021-135: A RESOLUTION OF THE ONTARIO CITY COUNCIL DECLARING CERTAIN REAL PROPERTY, BEING LOTS 14 & 15 AND THE NORTH 12 FEET OF LOT 16 OF BLOCK 21 OF THE ORIGINAL TOWNSITE OF ONTARIO AS SURPLUS LAND AND NO LONGER NEEDED FOR PUBLIC USE AND APPROVING THE SALE OF SAID REAL PROPERTY.

I MOVE THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO SIGN ALL THE DOCUMENTS REQUIRED TO COMPLETE THIS SALE, INCLUDING THE DEED TO TRANSFER TITLE.

SUMMARY:

Under the direction of the City's City Council and their adopted strategic plan, staff have been working with designers on a plan for a downtown attraction. The Parks Committee and City Council believed the attraction would be enhanced by acquiring the property on the west side of the 100 block of SW 1st Street. Staff have been working with the property owners to acquire the property.

BACKGROUND:

Staff began negotiations with Looks Nu, Inc. owners in July to discuss acquiring their detailing shop at 118 SW 1st Avenue. An offer for the property was made, but was rejected. The owners had an interest in acquiring property adjacent to their car wash, so a trade of land was offered. The city owns the parking lot adjacent to their carwash.

An agreement was reached to subtract the value of the city's property from the value of

the land and improvements at 118 SW 1st Ave (the detailing center adjacent to Moore Park). A price was agreed upon with a close alignment with the County assessed values.

CURRENT SITUATION:

The proposal drafted in the attached agreement is to trade all of tax lot 4500 and 12 feet of tax lot 4400 all the way to the alley to Looks Nu, Inc. and the City would receive the entirety of tax lot 5900. The assessed value of the city's parking lot transfer is \$57,522.80. We negotiated a split of what Nu Looks Inc. had offered the property and the County Assessed Value. Subtracting the value of the property trade, the total price for the trade and difference is \$120,847.

The City has expressed a desire to be able to use the entire acquired piece and Moore Park to build the downtown attraction. As such, staff requested the owner of Looks Nu to demolish the building prior to closing. For that cost the purchase prices was increased by \$16,440 for a total acquisition cost of \$137,287.

Staff was able to use Brownfield Grant funds to conduct a Phase 1 Environmental Study. The study came back clean. A copy of it is available upon request. I have omitted it as an attachment because of its size (800+ pages).

A public hearing is required to be held prior to the Ontario City Council taking action on surplussing the land and the sales agreement. The public hearing was advertised and held previous to this action item.

ANALYSIS:

- A. **STRATEGIC PLAN** This fulfills a very specific strategic plan measure under the Desirability goal, "Create More Things to Do" strategy, and "Add a downtown attraction" activity.
- B. **FINANCIAL** The City Council budgeted \$200,000 for the acquisition of the property, so the purchase price is within budget. The remaining money can be used to complete the planning exercise for the property. Currently, designers are under a work order to do concept level design. We will need to engage landscape architects, architects, and maybe engineers for the final design.

The city agreed to waive city fees required for demolition and property line adjustments since it is within the city's interest.

- C. **TIMING** The concept level design is under way. Looks Nu Inc., is ready to close the agreement. The building would be demolished after the agreement is executed, but before closing.
- D. **POLICY/LEGAL** An agreement has been drafted by the City Attorney for Council approval. The agreement for disposing and purchasing land can only be

approved by the City Council.

ALTERNATIVES:

Take No Action: Without acquiring this project, the city only has the boundaries of Moore Park to work with for building a downtown attraction.

RECOMMENDATION:

Staff recommends approval of the agreement between the City of Ontario, Oregon and Looks Nu, Inc., an Oregon corporation and approve Resolution #2021-135 for the surplussing of the lands.

ATTACHMENTS:

1. Reso #2021-135 Surplus Property Looks Nu



RESOLUTION #2021-135

A RESOLUTION OF THE ONTARIO CITY COUNCIL DECLARING CERTAIN REAL PROPERTY BEING LOTS 14 & 15 AND THE NORTH 12 FEET OF LOT 16 OF BLOCK 21 OF THE ORIGINAL TOWN SITE OF ONTARIO PROPERTY AS SURPLUS LAND AND NO LONGER NEEDED FOR PUBLIC USE AND APPROVING THE SALE OF SAID REAL PROPERTY

- WHEREAS,** ORS 221.725, ORS 271.300 and 271.310 permits the City of Ontario, through a Public Hearing and action by the City Council, to declare land surplus and sell real property which is not needed for public use; and
- WHEREAS,** The City Council has reviewed and determined that the land currently owned by the City of Ontario being approximately 7,440 square feet as shown on attached Exhibit "A" made a part hereof is not needed for public use; and
- WHEREAS,** The proper notice of the proposed sale has been published and a public hearing concerning the proposed sale has been held in compliance with ORS 221.725; and
- WHEREAS,** The City has agreed to exchange this property in partial trade on other properties and
- WHEREAS,** The City Council has determined that the fair market value for the subject property is FIFTY-SEVEN THOUSAND FIVE HUNDRED TWENTY-TWO DOLLARS AND 80 CENTS (\$57,522.80); and
- WHEREAS,** LOOKS NU, INC has agreed exchange this property and this price of FIFTY-SEVEN THOUSAND FIVE HUNDRED TWENTY-TWO DOLLARS AND 80 CENTS (\$57,522.80.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council declares the real property owned by the City of Ontario as shown on attached Exhibit "A" is not needed for public use and is hereby declared surplus pursuant to ORS 271.310.

NOW THEREFORE, BE IT FURTHER RESOLVED by the Ontario City Council IN ACCORDANCE WITH ORS 221.725, ORS 271.300 AND ORS 271.310, approves the sale and exchange of the real property currently owned by the City of Ontario as shown on Exhibit "A" being approximately 7,440 square feet for the sum of FIFTY-SEVEN THOUSAND FIVE HUNDRED TWENTY-TWO DOLLARS AND 80 CENTS (\$57,522.80. Further, that the City Manager, Adam Brown, is hereby authorized to sign all documents necessary and appropriate to complete the sale and transfer of the property.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this 26th day of October 2021, by the following vote:

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this 26th day of October 2021.

Riley J. Hill, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

Exhibit "A"

Land in Section 3 of Township 18 Soth, Range 47 East, W.M. Malheur County, Oregon
according to the Original Townsite of Ontario as follows:

Block 21: Lots 14 & 15 and the North 12.00 feet of Lot 16.





**AGENDA REPORT
OLD BUSINESS
October 26, 2021**

To: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Adam J. Brown, City Manager

SUBJECT: PURCHASE AND LAND SWAP WITH LOOKS NU CAR WASH, INC.

DATE: October 22, 2021

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE THE AGREEMENT BETWEEN THE CITY OF ONTARIO, OREGON AND LOOKS NU, INC. FOR THE PURCHASE AND TRADE OF LAND AND PROPERTY.

SUMMARY:

Under the direction of the City's City Council and their adopted strategic plan, staff have been working with designers on a plan for a downtown attraction. The Parks Committee and City Council believed the attraction would be enhanced by acquiring the property on the west side of the 100 block of SW 1st Street. Staff have been working with the property owners to acquire the property.

BACKGROUND:

Staff began negotiations with Looks Nu, Inc. owners in July to discuss acquiring their detailing shop at 118 SW 1st Ave. An offer for the property was made first, but rejected. The owners had an interest in acquiring property adjacent to their car wash, so a trade of land was offered. The City owns the parking lot adjacent to their carwash.

An agreement was reached to subtract the value of the city's property from the value of the land and improvements at 118 SW 1st Ave (the detailing center adjacent to Moore Park. A price was agreed upon with a close alignment with the County assessed values.

CURRENT SITUATION:

The proposal drafted in the attached agreement is to trade all of tax lot 4500 and 12 feet of tax lot 4400 all the way to the alley to Looks Nu, Inc. and the City would receive the entirety of tax lot 5900. The assessed value of the city's parking lot transfer is \$57,522.80. We negotiated a split of what Nu Looks Inc. had offered the property and the County Assessed Value. Subtracting the value of the property trade, the total price for the trade and difference is

\$120,847.

The City has expressed a desire to be able to use the entire acquired piece and Moore Park to build the downtown attraction. As such we requested the owner of Looks Nu to demolish the building prior to closing. For that cost the purchase price is increased by \$16,440 for a total acquisition cost of \$137,287.

Staff was able to use Brownfield Grant funds to conduct a Phase 1 Environmental Study. The study came back clean. A copy of it is available upon request. I have omitted it as an attachment because of its size (800+ pages).

A public hearing is required to be held prior to the Ontario City Council taking action on the agreement. The public hearing was advertised and held previous to this action item.

ANALYSIS:

- A. **STRATEGIC PLAN** This fulfills a very specific strategic plan measure under the Desirability goal, "Create More Things to Do" strategy, and "Add a downtown attraction" activity.
- B. **FINANCIAL** The City Council budgeted \$200,000 for the acquisition of the property, So the purchase price is within budget. The remaining money can be used to complete the planning exercise for the property. Currently, designers are under a work order to do concept level design. We will need to engage landscape architects, architects, and maybe engineers for the final design.

The City agreed to waive city fees required for demolition and property line adjustments since it is within the city's interest.

- C. **TIMING** The concept level design is under way. Looks Nu Inc., is ready to close the agreement. The building would be demolished after the agreement is executed but before closing.
- D. **POLICY/LEGAL** An agreement has been drafted by the City Attorney for Council approval. The agreement for disposing and purchasing land can only be approved by the City Council

ALTERNATIVES:

Take No Action: Without acquiring this project we only have the boundaries of Moore Park to work with for building a downtown attraction.

RECOMMENDATION:

Staff recommends approval of the agreement between the City of Ontario, Oregon and Looks Nu, Inc., an Oregon corporation.

ATTACHMENTS:

1. Ontario-Looks Nu Property Exchange Agreement1 (1)
2. Ltr_NuLook_Cawash Purchase Counter Offer_9 2021

REAL PROPERTY
EXCHANGE AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2021, by and between the CITY OF OREGON, OREGON ("City") and LOOKS NU, INC., an Oregon corporation ("Looks Nu").

RECITALS:

A. City owns a parcel of real property on two tax lots in downtown Ontario, identified as Tax Lots 4400 and 4500 in Assessor Map No. 18S4703CC, located on SW 1st Street between West Idaho Avenue and SW 1st Avenue. Tax lot 4500 consists of 6,000 square feet. With respect to tax lot 4400, this Agreement concerns only the north 12 feet of that lot, consisting of approximately 62 x 120 square feet. The legal description of tax lot 4500 is in Exhibit "1" attached hereto. The north 12 feet of tax lot of 4400 will be surveyed and a lot line adjustment will be completed. The legal description of that portion of tax lot 4400 will be added to the legal description of tax lot 4500 in Exhibit "1". Current tax lot 4500 and the approximate 62 x 120 portion of tax lot 4400 subject to the lot line adjustment is referred to hereinafter as the "City Parcel".

B. Looks Nu owns a parcel of real property consisting of approximately 10,625 square feet located at 118 SW 1st Street, Ontario, Oregon, as more particularly described in Exhibit "2" attached hereto, and is referred to hereinafter as "the Looks Nu Parcel".

C. The City Parcel has a fair market value of \$57,522.80, based upon the real market value (RMV) from the Malheur County Assessor of tax lot 4500 and 48% of the RMV of tax lot 4400. The Looks Nu Parcel has an unappraised fair market value of \$200,00, which the City accepts as accurate for the purpose of this Agreement.

D.

E. The parties desire to exchange the parcels, subject to the terms and conditions of this Agreement.

AGREEMENT:

1. Truth of Recitals. The Recitals set forth above are true and are incorporated into the Agreement.

2. Looks Nu Parcel. City accepts the Looks Nu Parcel in "as-is" condition. At closing, Looks Nu will execute a statutory warranty deed to the Looks Nu Parcel, naming Looks Nu as grantor and City as grantee, subject only to the following exceptions:

a. Taxes assessed under Code No. 1 Account No. 472 Map No. 18S4703CC

5900. The 2021-2022 Taxes: \$2,225.87, plus interest, unpaid.

b. Right, title and interest of the public in and to those portions of the Land lying within roads, streets or highways.

3. City Parcel. Looks Nu accepts the City Parcel in “as-is” condition. Prior to the closing date, City will complete the property line adjustment on tax lot 4400 referred to above, and will obtain a legal description for the adjusted parcel from a licensed surveyor. At closing, City will execute a statutory warranty deed with the legal description of the adjusted parcel, plus the legal description of tax lot 4500 of the City Parcel described in Exhibit “1”, naming City as grantor and Looks Nu as grantee, subject only to the following exceptions:

a. Right, title and interest of the public in and to those portions of the Land lying within roads, streets or highways.

b. Taxes assessed under Code No. 1 Account No. 17929, 17928 Map No. 18S4703CC 4500, 4400, including the current fiscal year, not assessed because of City of Ontario Exemption. If the exempt status is terminated an additional tax may be levied.

4. Cash Payment by City at Closing. City acknowledges that the real market value of the City Parcel is less than the real market value of the Looks Nu Parcel, and that the City will pay to Looks Nu an equalizing cash payment at closing. At closing, City will pay to Looks Nu a cash payment of \$120,847, to equalize the exchange of property based upon the property values set forth herein.

5. City Reimbursement of Demolition Costs. The Looks Nu Parcel includes a closed gas station which will be demolished and razed prior to the closing of this transaction. In addition to the cash payment referred to in Section 4, City will reimburse Looks Nu’s cost for the gas station demolition, in an amount not to exceed \$16,440.

6. Closing Date. Upon the completion of the lot line adjustment required in Section 3, the parties will set a closing date to close for this transaction, which will occur within 30 days of Malheur County’s written approval of the lot line adjustment.

7. Closing. This transaction shall be closed through Amerititle in Ontario, Oregon, as the closing agent. At closing, City shall deliver to Amerititle the deed described in Section 3; the cash payment described in Section 4; and the reimbursement amount referred to Section 5. Looks Nu shall deliver to Amerititle the deed described in Section 2. City shall be responsible for all closing costs, with the exception of the 2021-2022 real property taxes, which shall be prorated between the parties as of the Closing date. If Looks Nu has paid those taxes prior to closing, City will reimburse Looks Nu for the City’s prorated share. If Looks Nu has not paid those taxes prior to

closing, the parties shall pay their prorated shares at closing.

8. Environmental Claims Barred. Each party has had an opportunity to inspect the parcels of real property subject to this Agreement with regard to environmental concerns, and this Agreement has been negotiated to eliminate all claims relating to environmental matters. Consequently, this clause bars all claims brought by the parties or their assigns concerning the condition of the either parcel pursuant to the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, the Federal Resource Conservation and Recovery Act (RCRA), as amended, and any applicable, similar federal and state legislation. Notwithstanding the parties' intent that this clause bar all such claims, should a court of competent jurisdiction deem otherwise, the presence of this clause shall serve as the overwhelming, primary factor in any equitable apportionment of liability or damages under CERCLA, RCRA, and other such Acts.

9. Attorney for City. This Property Exchange Agreement has been prepared by Larry A. Sullivan on behalf of the City of Ontario. Looks Nu has been advised and encouraged to have this Agreement reviewed by an attorney of its own choosing.

10. Attorney Fees. In the event the City or Looks Nu shall take any action, judicial or otherwise, to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports, surveyor's reports and reports and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with nonjudicial action.

11. Complete Agreement. This document is the entire, final, and complete agreement of the parties pertaining to the exchange of real property between the parties.

Dated on the day and year first above written.

CITY OF ONTARIO

By:

Attest:

Riley J. Hill, Mayor

Tori Barnett, MMC, City Recorder

LOOKS NU, INC.

By:

Arturo Rojas, President

STATE OF OREGON)
) ss.
County of Malheur)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Riley J. Hill, Mayor for the City of Ontario.

Notary Public for the State of Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Malheur)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Arturo Rojas, as President of Looks Nu, Inc.

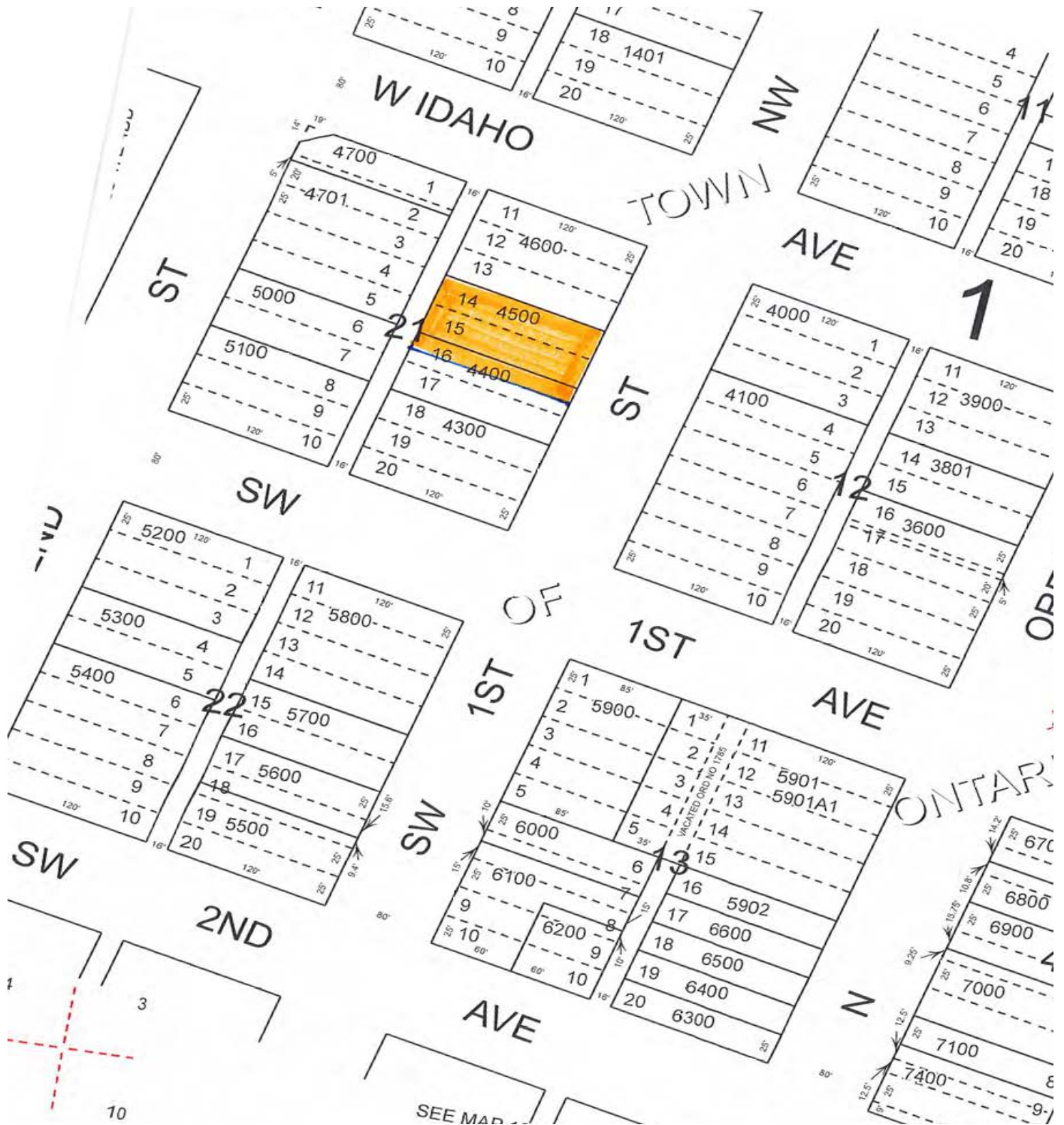
Notary Public for the State of Oregon
My Commission expires: _____

Attachment 1

Sales Agreement

Land in Section 3 of Township 18 South, Range 47 East, W.M. Malheur County, Oregon
according to the Original Townsite of Ontario as follows:

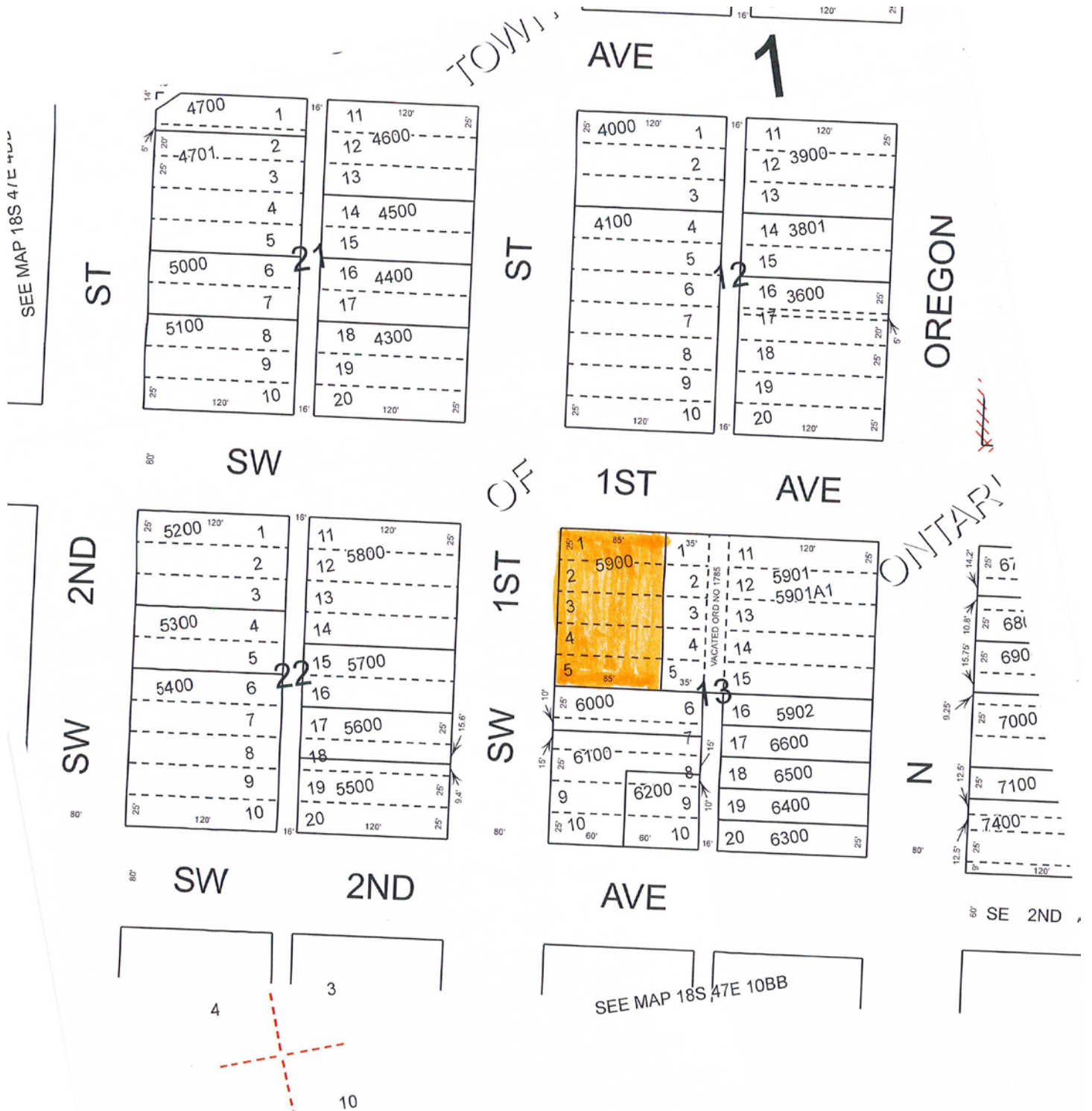
Block 21: Lots 14 & 15 and the North 12.00 feet of Lot 16.



Attachment 2

Sales Agreement

Land in Section 3 of Township 18 South, Range 47East, W.M. Malhuer County, Oregon according to the Original Townsite of Ontario as follows:
Block 13: The West 85 feet of Lots 1 thru 5.





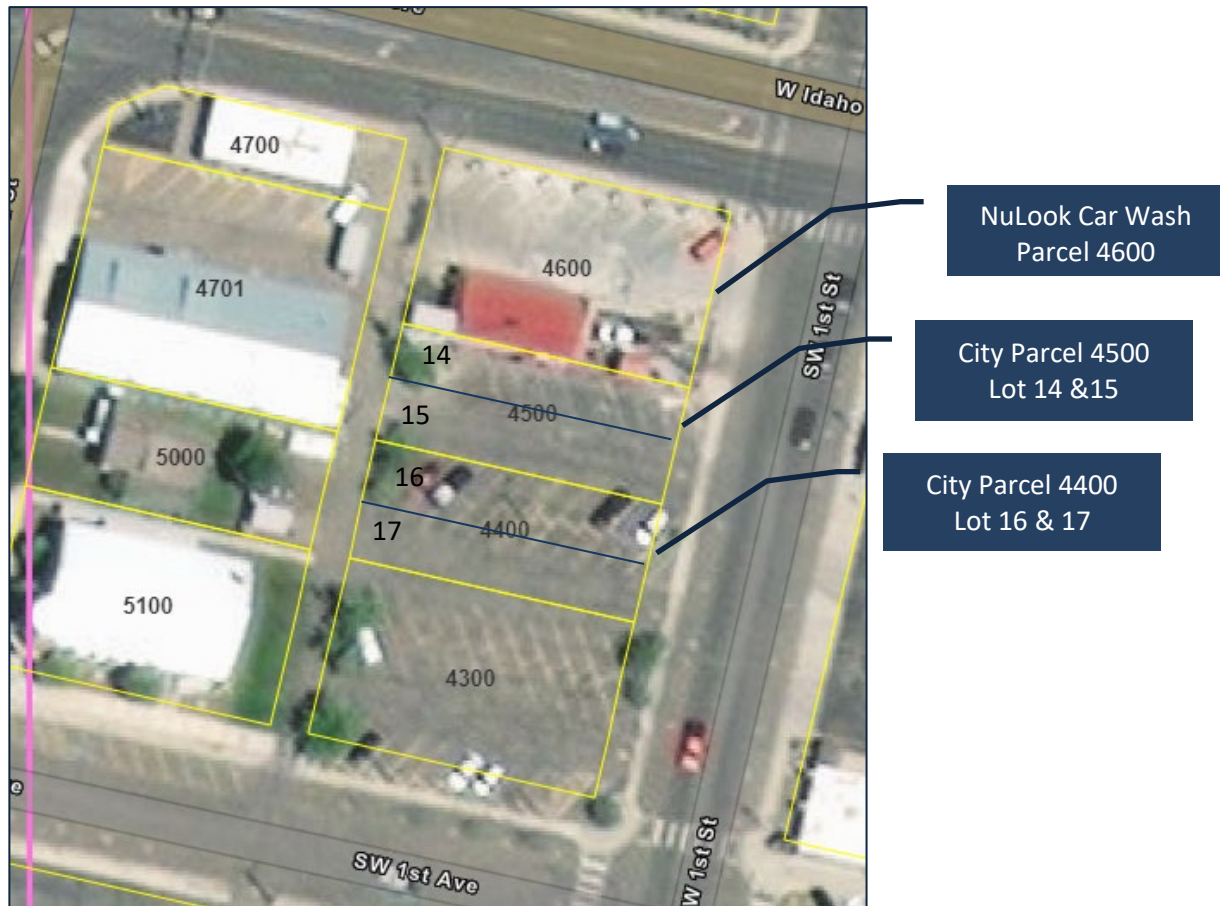
ONTARIO
OREGON

Office of the City Manager
Adam J. Brown, City Manager
444 SW 4th Street | Ontario, OR 97914
P: (541) 881-3223 | F: (541) 889-7121
adam.brown@ontariooregon.org

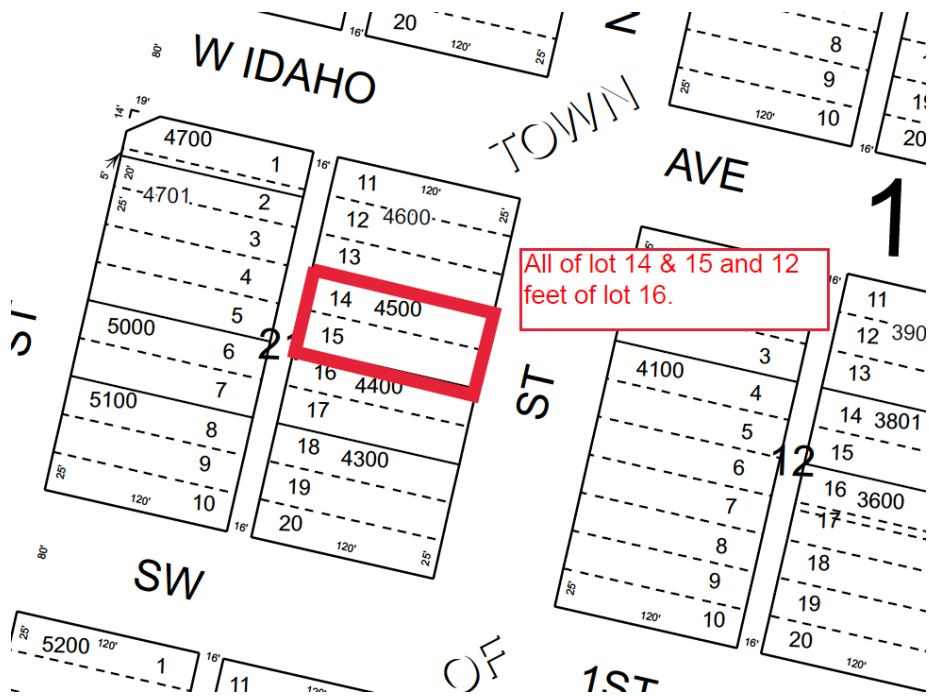
September 8, 2021

Larry,

As per our discussion with Mr. Art Rojas over the last few months, the City of Ontario agreed to a sale and trade of NuLook's property located at 118SW 1st St. and part of the city's parking lot adjacent to NuLook's other property on parcel 4600.



Agreed Upon Terms – The city will trade our parcel (4500) immediately south of NuLook's business in addition to 12 feet of (4500) as platted (partial lot 16) which would require a property line adjustment. This is two 25 x 120-foot sections south of Mr. Rojas' current property line plus another 12 x 120-foot section. This would be an addition of 62 x 120 feet immediately south of his facility.



The Assessed Valuation of the City's Property 4500 is \$45,770. Twelve feet of lot 16 is 48% of the whole tax lot which is appraised at \$48,970. So, 48% of lot 16 would be approximately \$11,752.80. Both tax lot 4500 and 12 feet of 4400 would be valued at approximately \$57,522.80. We agreed to split the difference in the assessed value and what NuLook proposed (\$200,000) minus the value of the city property for a total of \$120,847.

Additionally, it was in the interest of the city that NuLook raze the site prior to city acquisition and the city agreed to add that amount to the contract total. You acquired a bid of \$16,440. The total acquisition and trade will be \$137,287.

The City was able to use the Brownfield grant to clear the property environmentally. We will waive city fees required for demolition and property line adjustment since this is in the city's best interest.

Sincerely,

Adam J. Brown
City Manager

CC: Dan Cummings
Art Rojas

Attachments:
County Assessor Records for Tax Lot #5900
County Assessor Records for Tax Lot #4500
County Assessor Records for Tax Lot #4400
Demolition Estimate

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

0 50 100 150 200 Feet

S.W.1/4 S.W.1/4 SEC.3 T.18S. R.47E. W.M.
MALHEUR COUNTY
1" = 100'

Assessed Value of Whole Parcel \$48,970
Assessed Value of 1/2 \$24,485

18S47E03CC
ONTARIO

Cancelled
1200
1300
1500
1900
2000
2100
2200
2300A1
3100
3200
3300
3400
3500
3700
3800
3900A1
4200
4800
4900
7200
7300
7500A1
7500A2



Revised: MA
04/22/2015

ONTARIO
18S47E03CC

Notice: The information provided here is for convenience ONLY. The records located at Malheur County Assessor's office are the one and only legal instruments for assessment purposes. Although reasonable attempts are made to maintain this information as accurate as possible, these documents are being provided as an informational convenience ONLY. Malheur County is not, in any way, liable for any inaccuracies, inconsistencies, errors, omissions, or other deviations in these documents from the original copies maintained and filed at the Malheur County Assessor's Office, Vale, Oregon.

Date Web Site was last updated 6/29/2021

Value and tax information for tax year 2020

Ref#:17928 Type of Property : REAL PROPERTY

MAP#	TAX LOT#	A NUM	CODE	PROPERTY CLASS/DESC	ZONE
18S4703CC	4400	0	1	941 EXEMPT/CITY/IMPROVED	O-C2

OWNER:	ONTARIO, CITY OF
CONTRACT:	
ETAL(s):	
MAILING ADDRESS:	
	444 SW 4TH ST
CITY/ST:	ONTARIO, OR ,97914

PROPERTY ADDRESS: 0

NOTES:

none.

	REAL MKT VALUE	ASSESSED(TAXABLE) VALUE
LAND	\$32,690	
STRUCTURES	\$16,280	
SUBTOT	\$48,970	\$0
TOTAL	\$48,970	\$0

PROPERTY TAX INFORMATION

Do not pay this amount! For current balance owing, contact our office.
Contact information may be found at this web page [Tax Office](#)

BASE TAX	\$0.00
TOTAL BASE TAX & SPECIAL ASSESSMENTS	\$0.00

STRUCTURES

#	BLDG	DESCRIPTION	MAIN	UPPR	BSMT	YEAR	YEAR	MKT	RE-
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	CLASS		SQ FT	SQ FT	SQ FT	BLT	APPR	VALUE	MDL
1	624	COMM YARD IMPROVEMENTS	0	0	0	0	2017	\$16,280	0

LAND DESCRIPTIONS

LINE #	SQUARE FEET	LAND CODE	DESCRIPTION	DIMENSIONS	MARKET VALUE
1	6,000	COM1	HAND INPUT/REAPP	50.00x120.00	\$32,690
TOTAL	6,000				

[NEW SEARCH](#)

S.W.1/4 S.W.1/4 SEC.3 T.18S. R.47E. W.M.
MALHEUR COUNTY
1" = 100'

Assessed Value - \$45,770

18S47E03CC
ONTARIO

Cancelled
1200
1300
1500
1900
2000
2100
2200
2300A1
3100
3200
3300
3400
3500
3700
3800
3900A1
4200
4800
4900
7200
7300
7500A1
7500A2

Revised: MA
04/22/2015

ONTARIO
18S47E03CC

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Date Web Site was last updated 6/29/2021

Value and tax information for tax year 2020

Ref#:17929 Type of Property : REAL PROPERTY

MAP#	TAX LOT#	A NUM	CODE	PROPERTY CLASS/DESC	ZONE
18S4703CC	4500	0	1	941 EXEMPT/CITY/IMPROVED	O-C2

OWNER:	ONTARIO, CITY OF
CONTRACT:	
ETAL(s):	
MAILING ADDRESS:	
	444 SW 4TH ST
CITY/ST:	ONTARIO, OR ,97914

PROPERTY ADDRESS: 0

NOTES:

none.

	REAL MKT VALUE	ASSESSED(TAXABLE) VALUE
LAND	\$32,690	
STRUCTURES	\$13,080	
SUBTOT	\$45,770	\$0
TOTAL	\$45,770	\$0

PROPERTY TAX INFORMATION

Do not pay this amount! For current balance owing, contact our office.
Contact information may be found at this web page [Tax Office](#)

BASE TAX	\$0.00
TOTAL BASE TAX & SPECIAL ASSESSMENTS	\$0.00

STRUCTURES

#	BLDG	DESCRIPTION	MAIN	UPPR	BSMT	YEAR	YEAR	MKT	RE-
---	------	-------------	------	------	------	------	------	-----	-----

	CLASS		SQ FT	SQ FT	SQ FT	BLT	APPR	VALUE	MDL
1	624	COMM YARD IMPROVEMENTS	1	0	0	0	2017	\$13,080	0

LAND DESCRIPTIONS

LINE #	SQUARE FEET	LAND CODE	DESCRIPTION	DIMENSIONS	MARKET VALUE
1	6,000	COM1	HAND INPUT/REAPP	50.00x120.00	\$32,690
TOTAL	6,000				

[NEW SEARCH](#)

Notice: The information provided here is for convenience ONLY. The records located at Malheur County Assessor's office are the one and only legal instruments for assessment purposes. Although reasonable attempts are made to maintain this information as accurate as possible, these documents are being provided as an informational convenience ONLY. Malheur County is not, in any way, liable for any inaccuracies, inconsistencies, errors, omissions, or other deviations in these documents from the original copies maintained and filed at the Malheur County Assessor's Office, Vale, Oregon.

Date Web Site was last updated 6/29/2021

Value and tax information for tax year 2020

Ref#:472 Type of Property : REAL PROPERTY

MAP#	TAX LOT#	A NUM	CODE	PROPERTY CLASS/DESC	ZONE
18S4703CC	5900	0	1	201 COM/COM/IMPROVE	O-C3

OWNER:	LOOKS NU INC
CONTRACT:	
ETAL(s):	
MAILING ADDRESS:	
	15 SW 1ST ST
CITY/ST:	ONTARIO, OR ,97914

PROPERTY ADDRESS: 118 SW 1ST ST ONTARIO

NOTES:

DBA LOOKS NU DETAIL SHOP

	REAL MKT VALUE	ASSESSED(TAXABLE) VALUE
LAND	\$75,760	
STRUCTURES	\$80,980	
SUBTOT	\$156,740	\$139,727
TOTAL	\$156,740	\$139,727

PROPERTY TAX INFORMATION

Do not pay this amount! For current balance owing, contact our office.
Contact information may be found at this web page [Tax Office](#)

BASE TAX	\$2,149.82
SPECIAL ASSESSMENTS	
AMBULNCE FEE	\$16.00
TOTAL BASE TAX & SPECIAL ASSESSMENTS	\$2,165.82

STRUCTURES

#	BLDG CLASS	DESCRIPTION	MAIN SQ FT	UPPR SQ FT	BSMT SQ FT	YEAR BLT	YEAR APPR	MKT VALUE	RE-MDL
1	622	MECHANIC/LUBES	1,092	0	0	1954	2017	\$80,980	0

LAND DESCRIPTIONS

LINE #	SQUARE FEET	LAND CODE	DESCRIPTION	DIMENSIONS	MARKET VALUE
1	10,625	COM1	COMMERCIAL LAND	125.00x85.00	\$74,060
2	0	CSDO	COMMERCIAL SITE DEVELOPMENT	-	\$1,700
TOTAL	10,625				

SALES

SEQ #	SALES DATE	SALES AMOUNT	#PARCELS SOLD	DOC TYPE	DOCUMENT NUMBER
1	7/07/2005	\$80,000	1	WD	20055060

[NEW SEARCH](#)

ESTIMATE

Arturo Rojas
2619 S Indiana Ave
Caldwell, ID 83605
(208) 284-9274
art@looksnucarwash.com

Date: September 7, 2021

BILL TO:
City of Ontario

JOB ADDRESS:
118 SW 1st Street
Ontario, OR 97914

DESCRIPTION	QTY	RATE	AMOUNT
Demolition of awning and 10,000 square foot building	1		\$10,500.00
Removal of asphalt parking area	1		\$ 5,940.00
TOTAL			\$16,440.00



City Manager Update

October 26, 2021



Tater Tots Trail



- First part of land use action for Kraft Heinz property is at the first November meeting.



Downtown Attraction

Working with Trademark.

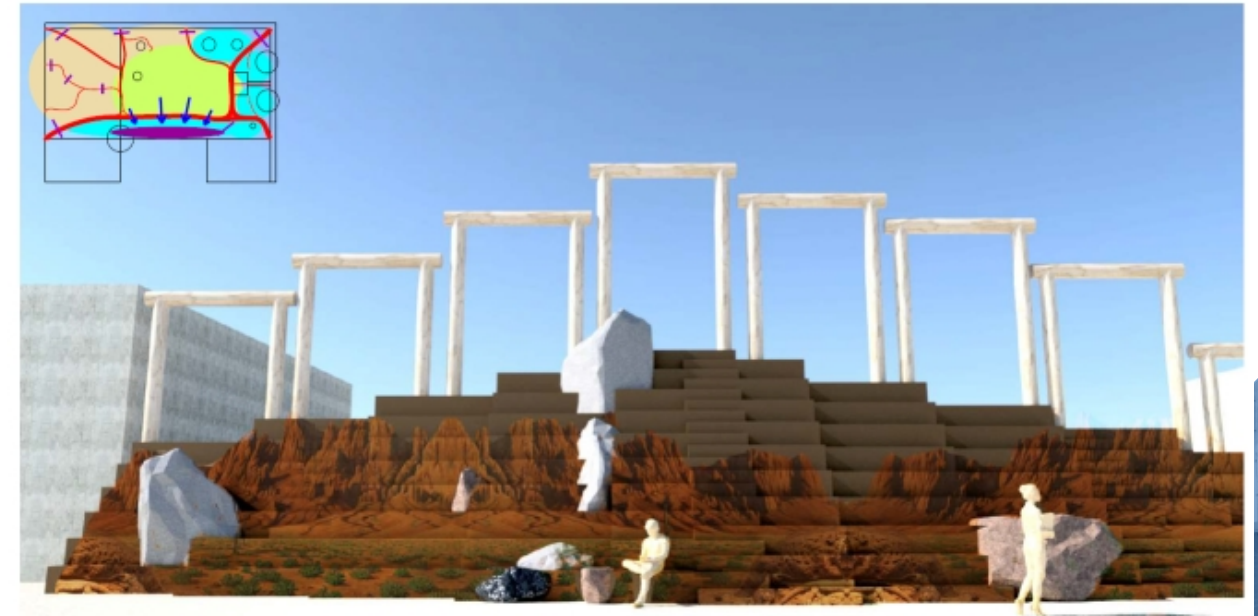
We will likely need to consider engaging an Architect to partner with Trademark.



CITY OF ONTARIO | DOWNTOWN ATTRACTION DESIGN

SEPTEMBER 29, 2021

Feature Concepts #2 & #3 : Seating Mural / Gateways
Loose Conceptual Render



Gateway elements / mountain seating / mural / integrated elements

CITY OF ONTARIO | DOWNTOWN ATTRACTION DESIGN

SEPTEMBER 29, 2021

Features & Extras

Arrangement 1



Recruitments

- Assistant to the City Manager/HR Manager – Offer accepted by May Swihart. Graduate of the College of Idaho and Portland State University.
- Airport Manager – Still open and searching
- Chief of Police – First interviews are concluded; second interviews are scheduled.



Tennis Courts!



Tennis Courts are finished!

October 27th Ribbon Cutting at noon.



TY HALL
POLICE DEPARTMENT
FIRE & RESCUE

Proactive Engineering

Essential Infrastructure: Water, Sewer, Fiber

- Navarrete Property
- Treasure Valley 200 – Late November to Mid December
- Airport -

Other Projects

- Water Plant Cassette Additional 2 MGD
- SE 5th Avenue Pedestrian Improvements



Lots of Construction!



CITY HALL
POLICE DEPARTMENT
FIRE & RESCUE

MARIJUANA TAX REVENUES

2020-2021	\$ 3,014,104.86
2019-2020	\$ 1,822,248.01
BUDGETED 2021-2022	\$ 3,000,000.00

Total tax received \$ 7,836,352.87

EXPENDITURES

ACTUAL AMOUNTS		
CITY BEAUTIFICATION	\$ 39,208.25 19-20	
FIBER LINES	\$ 7,756.03 19-20	
ALAMEDA SIDEWALK	\$ 6,800.00 19-20	
PERS DEBT	\$ 416,965.00 19-20	
POLICE CAR	\$ 39,085.25 19-20	
PLAYGROUND MATCH	\$ 20,000.00 19-20	
FAIRGROUNDS DONATION	\$ 5,000.00 19-20	
INFRASTRUCTURE FUND	\$ 93,733.00 19-20	SET ASIDE
ADA COMPLIANCE PROJECT	\$ 304,636.00 19-20	
1/2 CODE ENFORCEMENT	\$ 43,724.00 19-20	
	\$ 976,907.53	
	\$ 6,859,445.34	

ACTUAL AMOUNTS		
CITY BEAUTIFICATION	\$ 4,207.32 20-21	
CITY FLEET CAR	\$ 23,306.18 20-21	
FIBER LINES	\$ 640.34 20-21	
POLE BARN	\$ 4,341.55 20-21	
COLUMBARIUM	\$ 7,000.00 20-21	
PLAYGROUND MATCH	\$ 6,048.66 20-21	
PARKS TRASH CANS	\$ 20,375.92 20-21	
GAZEBO	\$ 17,875.00 20-21	
POLICE VEHICLES	\$ 46,107.00 20-21	
STORAGE UNIT	\$ 3,000.00 20-21	
SERVER	\$ 8,919.37 20-21	
STREET PROJECTS	\$ 127,366.00 20-21	
AIRPORT PICKUP	\$ 3,000.00 20-21	
AIRPORT SPRAYING	\$ 30,000.00 20-21	
AIRPORT IRRIGATION	\$ 9,500.00 20-21	
PERS	\$ 50,000.00 20-21	
FIRE APPARATUS	\$ 79,299.00 20-21	SET ASIDE FUNDS
1/2 CODE ENFORCEMENT	\$ 49,390.00 20-21	
1.7 POLICE	\$ 185,974.00 20-21	
FIRE EQUIPMENT TRANSFER	\$ 28,200.00 20-21	SET ASIDE FUNDS
TRANSIT CONTRIBUTION	\$ 10,000.00 20-21	
COMM DEV SCANNER	\$ 2,500.00 20-21	
	\$ 717,050.34	
	\$ 6,142,395.00	

BUDGETED AMOUNTS	
DOWNTOWN LIGHTING	\$ 236,000.00 21-22
DOWNTOWN LAND ACQUISITION	\$ 200,000.00 21-22
DOWNTOWN IRRIGATION	\$ 80,000.00 21-22
WAYFINDING SIGNS	\$ 117,425.00 21-22
MALHEUR RIVER TRAIL	\$ 40,000.00 21-22
PERS DEBT	\$ 2,000,000.00 21-22
FIRE APPARATUS	\$ 300,000.00 21-22
TRAILS	\$ 198,470.00 21-22
UNDERGROUND IRRIGATION	\$ 90,000.00 21-22
FIRE EQUIPMENT TRANSFER	\$ 28,200.00 21-22
MOWER	\$ 20,000.00 21-22
PLAYGROUND MATCH	\$ 50,000.00 21-22
BECK BATHROOM REHAB	\$ 144,000.00 21-22
POLICE CAR	\$ 43,000.00 21-22
BREAKROOM REMODEL	\$ 9,000.00 21-22
SERVER	\$ 9,000.00 21-22
POLICE CAR EQUIPMENT	\$ 10,000.00 21-22
STREET PROJECTS	\$ 1,037,573.00 21-22
AIRPORT MASTER PLAN	\$ 32,000.00 21-22
AIRPORT FENCING	\$ 47,320.00 21-22
FAA GRANT MATCH	\$ 5,000.00 21-22
ENTERPRISE CAMERA SYSTEM	\$ 20,000.00 21-22
POOL DONATION	\$ 250,000.00 21-22
DESERT SAGE EVENT CENTER	\$ 14,015.00 21-22
MARIJUANA YOUTH EDUCATION	\$ 5,000.00 21-22
SCHOOL GRANT	\$ 10,000.00 21-22
TATER TOT FESTIVAL	\$ 5,000.00 21-22
HOMELESS APPROPRIATION	\$ 15,000.00 21-22
TRANSIT PROGRAM	\$ 15,000.00 21-22
FAÇADE GRANT	\$ 50,000.00 21-22
GAZEBO RELOCATION	\$ 25,400.00 21-22
TENNIS COURT	\$ 200,000.00 21-22
POLE BARN	\$ 45,658.00 21-22
DUMPSTER ENCLOSURES	\$ 35,000.00 21-22
FIBER LINES	\$ 15,600.00 21-22
SECURITY GRANT PROGRAM	\$ 25,000.00 21-22
AIRPORT SECURITY	\$ 1,492.00 21-22
E IDAHO TRAFFIC STUDY	\$ 30,000.00 21-22

\$ 5,459,153.00

\$ 683,242.00 MJ TAX FUNDS REMAINING IN BEGINNING FUND BALANCE

BEGINNING FUND BALANCE 2019-2020	\$ 2,234,162.21
BEGINNING FUND BALANCE 2020-2021	\$ 3,084,708.39
BEGINNING FUND BALANCE 2021-2022	\$ 5,660,993.44



**AGENDA REPORT
NEW BUSINESS
October 26, 2021**

To: Mayor and City Council

FROM: Paul Woods, City Engineer

THROUGH: Adam J. Brown, City Manager

SUBJECT: BID AWARD: CLOSED CIRCUIT TV SEWER LINE INSPECTION SERVICES

DATE: October 12, 2021

PROPOSED MOTION:

I MOVE THE CITY COUNCIL AWARD THE BID FOR CLOSED CIRCUIT SEWER LINE INSPECTION SERVICES TO INTEGRITY INSPECTION SOLUTIONS IN THE AMOUNT OF \$370,087.60 AND AUTHORIZE THE MAYOR TO SIGN THE CONTRACT AND PURCHASE ORDER.

SUMMARY:

City staff developed a formal request for proposal for closed circuit sewer line inspection services. The RFP was advertised in the local paper as well as QuestCDN, a regional and national bid advertisement service. The city received the following bids:

Integrity Inspection Solutions - \$370,087.60

Pro Pipe - \$474,418.59

Red Zone Robotics - \$749,084.00

National Plant Services – Only provided price per foot, did not put it in the bid form requested.

The city last performed this work in 2013 and the cost to provide the service in 2013 was \$138,687. The FY 21/22 CIP budget for this item was \$175,000. There are sufficient funds within the sewer fund to cover the additional funds needed to complete the project.

BACKGROUND:

The city performs closed circuit sewer line inspection services by a third party every 5-7 years to verify cleaning effectiveness and to confirm sewer line integrity. The city last completed this work in FY 13/14.

Identifying any inflow and infiltration will be important for meeting arsenic levels and requirements under the NPDES permit. This will allow us to address underground issues that may be impacting the effluent coming into our wastewater system.

CURRENT SITUATION:

The city issued a formal RFP for CCTV services and received the following bid responses:

Integrity Inspection Solutions - \$370,087.60

Pro Pipe - \$474,418.59

Red Zone Robotics - \$749,084.00

National Plant Services – Only provided price per foot, did not put it in the bid form requested.

ANALYSIS:

- A. **STRATEGIC PLAN** No strategic impact.
- B. **FINANCIAL** The FY 21/22 Capital Improvement Program budget allocated \$175,000 to complete the work. This was based on the FY13/14 cost of \$138,000 to complete this work. The CIP estimate for escalation in price grossly underestimated the current situation. The sewer fund has a sufficient fund balance to allow the project to move forward. If this is awarded there will be a budget resolution at the next meeting to reduce Sewer Fund Contingency by \$195,088.
- C. **TIMING** The bid price is valid for 60 days.
- D. **POLICY/LEGAL** Only the council can approve the bid.

ALTERNATIVES:

The Council could elect to reduce the sections of the sewer system to be inspected or elect not to award a contract to any bidders.

RECOMMENDATION:

Staff recommends awarding the Closed Circuit Sewer Line TV Inspection to Integrity Inspection Solutions in the amount of \$370,087.60.

ATTACHMENTS:

1. RFP for City of Ontario CCTV Inspection for Sanitary Sewer Final



REQUEST FOR PROPOSALS

Closed Circuit TV (CCTV) Inspection Services

Address Proposals to:

City of Ontario/ Jacobs
Attn: Casey Mordhorst, Operations Manager
Public Works Department
1551 NW 9th St
Ontario, OR. 97914

Proposals due: October 1, 2021 at 2:00 PM, local time

Proposals must be sealed in an opaque envelope, plainly marked as follows:

**"Request for Proposals – Closed Circuit TV (CCTV) Inspection Services,
Attention of Casey Mordhorst, Operations Superintendent"**

Include the name and address of the Proposer. Proposers must submit four (4) hard copies of the Proposal. Electronically mailed or faxed Proposals will not be accepted. The City of Ontario reserves the right to reject any or all Proposals.

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PART 1 - Request for Proposals

The City of Ontario, Oregon is requesting Proposals to conduct Closed Circuit TV (CCTV) Inspection Services. “Proposer” are to furnish all labor, materials, equipment, and supervision for requested Closed Circuit Television (CCTV) Inspection services for the City of Ontario (“Project”). Proposers are invited to demonstrate their experience and qualifications in performing work directly related to the Project by responding to this **Request for Proposals (RFP)**.

I. Project Description-Scope of Work

Basic Services

The City of Ontario seeks an experienced and qualified CCTV Inspection contractor to provide the following CCTV Inspection services for the City of Ontario (collectively “Basic Services”):

- CCTV inspection of the City’s 78 miles of sanitary sewer collection mains by June 30, 2022.

The contractor is responsible for all aspects of the CCTV Inspection Services included in the Basic Services. For more detailed information on the scope of work, including general and special provisions and technical requirements, see **Appendix A –Public Works Contract for CCTV Inspection Services** (hereinafter referred to as “CCTV Inspection Services Contract” or “Contract”) and **Exhibit A** attached thereto.

II. Minimum Qualifications

To be considered for award of the Contract for this Project, each Proposer shall demonstrate the following minimum criteria as part of their Proposal.

1. The successful bidder must have an onsite field supervisor with a minimum three (3) years of experience specializing in the televising of sewers. A foreman for each crew performing television inspection with a minimum of five years of experience specializing in that type of work may be substituted for the onsite field supervisor requirement. The Contractor must have foreman or supervisors meeting all pre-qualifications for the duration of the contract. Resumes and certification records of proposed supervisor(s) or foreman(s) must be included with the submittal.
2. The Contractor shall provide the names, titles, phone numbers and addresses of a minimum of five (5) references that can be used to verify this experience. The references must be contract managers or persons of authority over cleaning and televising work performed by the Contractor.
3. The Contractor shall also provide documentation of five (5) similar projects with inspection equipment as proposed for this project.

- a. Contractor must provide copies of electronic reports provided for representative projects.
- 4. Additional Submittals Required with Bid Documents include:
 - a. Documentation of Certification of PACP Software
 - b. List of all proposed equipment to conduct the work including but not limited to:
 - i. Manufacturer name
 - ii. Software name and current version deployed
 - iii. Age of the equipment iv. Lineal distance of camera reel

For more detailed information on the minimum qualifications for Proposer's equipment and operators, see **Section 6 -Proposal Response Form**.

III. Request For Proposal Documents

Request for Proposal (RFP) documents may be obtained at Ontario Public Works Department, located at 1551 NW 9th St. Ontario, OR. 97914. Upon request, RFP documents may be obtained by standard mail. The City of Ontario shall not be held responsible for the delivery of the documents. Contact Alicia Cardozo at alicia.cardozo@jacobs.com to obtain RFP documents by mail.

IV. Project Manager

The City's Project Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Casey Mordhorst
Operations Manager
541-889-8572
Public Works Department
Casey.mordhorst@jacobs.com

PART 2 – Project Schedule

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

Advertise Request for Proposals	September 8, 2021
RFP Question Submission Deadline	September 15, 2021, 5:00 p.m.
Addenda Issuance Deadline	September 20, 2021
Proposals Due	October 1, 2021, 2:00 p.m.
Evaluation of Proposals Complete	October 15, 2021
Notice of Intent to Award	October 18, 2021
City Council Award Hearing	October 26, 2021
Notice of Award	October 28, 2021

RFP Questions

Proposers shall direct all questions regarding RFP documents in writing or by email to:

City of Ontario Jacobs
Attn: Casey Mordhorst
1551 NW 9th St.
Ontario, OR. 97914
OR

Casey.Mordhorst@jacobs.com

Any questions regarding the RFP **may only be submitted via email** to the city's Project Manager up to **5:00 p.m. local time on Wednesday, September 15, 2021**. During this time Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Questions submitted the deadline will not be addressed.

For the sake of fairness, Proposers are not to contact any City staff or official other than the Project Manager concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by written addendum may be relied upon.

Submitting Proposal

Proposers shall submit **four (4) hard copies** of their written Proposals in an opaque envelope plainly marked "Request for Proposals – CCTV Inspection Services," and include the name and address of the Proposer.

Proposals shall be addressed and submitted to the following location by **2:00 p.m.** local time on **Friday, October 1, 2021:**

City of Ontario - Jacobs
Attn: Casey Mordhorst
1551 NW 9th St.
Ontario, OR. 97914

Proposals must arrive at the issuing office on or before the listed time and date due. Late Proposals will be returned unopened and without review. Electronically mailed or faxed Proposals will not be accepted.

PART 3 - Proposal Requirements

Interested contractors shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

Proposal Format

Proposals shall be typewritten, with a standard body text font of at least 12-point or else legibly written in ink in the Proposal Response Form (**Part 6**). The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 ½" x 11" sheet. Proposals not meeting the specified text font size or illegible Proposals may be considered non-responsive and the Proposal may be rejected.

Contractor Experience

Proposals shall provide a brief work history of contractor's and any subcontractor's projects entailing the same type of work being requested. Emphasis should be placed on local projects for public agencies where possible. The Proposal should include the following:

1. The successful bidder must have an onsite field supervisor with a minimum three (3) years of experience specializing in the televising of sewers. A foreman for each crew performing television inspection with a minimum of five years of experience specializing in that type of work may be substituted for the onsite field supervisor requirement. The Contractor must have foreman or supervisors meeting all pre-qualifications for the duration of the contract. Resumes and certification records of proposed supervisor(s) or foreman(s) must be included with the submittal.
2. The Contractor shall provide the names, titles, phone numbers and addresses of a minimum of five (5) references that can be used to verify this experience. The references must be contract managers or persons of authority over cleaning and televising work performed by the Contractor.
3. The Contractor shall also provide documentation of five (5) similar projects with inspection equipment as proposed for this project.
 - a. Contractor must provide copies of electronic reports provided for representative projects that meet all CITY dictated standards.

Project Team Experience

Proposals shall identify the team to be assigned to the Project by name, years of experience and lines of authority within the project team. Emphasis should be placed on the qualifications and experience of the Bidders proposed project managers, supervisor or foreman's and their

respective experience with conducting similar Public Works experience and projects of similar nature.

Equipment Quality

Proposals shall identify all the equipment that to be used to perform the services by year, brand name, make/model, capacity, and vehicle identification number. The Proposal should also identify the following: the vehicles are road legal,

List of all proposed equipment to conduct the work including but not limited to:

1. Manufacturer name
2. Software name and current version deployed
3. Age of the equipment
4. Lineal distance of camera reel

Supporting Information

Supporting materials may include graphs, full resumes, other references, charts, sample documents, and photos. However, pertinent information should be covered in the body of the Proposal. Supporting Information will not count toward the page limit, but brevity is encouraged. If there is no additional information to present in the Supporting Information, then state: *"There is no additional information we wish to present."*

Contract Modification

The CCTV Inspection Services Contract is attached as **Appendix A**. Particular attention should be paid to Section 10 of the Contract, which contains the minimum insurance requirements for the Project. Any exceptions or proposed modifications to the Contract will be considered, but not necessarily agreed to. If Proposer wishes to modify any portion of the Contract, Proposer must include a specific reference to the section that Proposer would like to modify, providing reasons why and proposed alternative language. Any changes to the Contract not raised in the Proposal will not be considered, excepting mutually agreed upon additions, deletions, or revisions to the Scope of Work made at the time of Contract award.

Project Cost

Bidders are to provide lineal foot cost for each of the respective pipe size ranges. Based on the lineal foot price, Bidders are then to project total price for each of the respective pipe size ranges. The TOTAL BID Cost will be the sum of each of the respective pipe size range cost.

The City's asset management program calls for CCTV inspection of the sewer collection system every 5 years. The lineal quantities are estimated total quantities at the time of publication and could change by small amounts during the contract. Actual annual inspected lineal quantities and respective pipe sizes shall be the basis of payment.

Proposals shall identify the lineal unit price for CCTV Inspection for each of the various pipe sizes listed below:

SANITARY SEWER CCTV CONDITION SURVEY BID SHEET

WORK TYPE	PIPE SIZE	ESTIMATED FOOTAGE	PRICE PER FOOT	TOTAL PRICE
INSPECTION	6" TO 12"	267,000		
INSPECTION	13" TO 24"	35,873		
INSPECTION	miscellaneous	109,134		
INSPECTION	Over 30"			
Total Bid				

PART 4 - Proposal Evaluation and Selection

A Selection Review Committee of at least three members will be appointed to evaluate the Proposals received. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

The City may also seek expert advice to help review Proposals. Advisors to the Selection Review Committee may attend evaluation meetings and contractor presentations, evaluate the Proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP process is completed or otherwise brought to an end, have communications with any Proposers regarding their Proposals or the RFP process.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal.

Written Evaluation

Based on their evaluation, each member of the Selection Review Committee will score each Proposal according to scoring criteria. Each member will rank, in descending order, each Proposal by total score.

Below are the evaluation criteria and the maximum score allowed for each criterion:

WRITTEN PROPOSAL EVALUATION CRITERIA

Criteria	Maximum Score
Equipment Quality and Operator Experience	____[25]
Service Experience	____[20]
Company Information/Representation/References	____[10]
Public Works Contract Experience	____[10]
Project Cost	____[35]
Supporting Information	N/A
Total	100 Points

In addition to the above weighted scoring criteria, feedback from provided references will also be considered and may be determinative in the selection process. Poor references may result in disqualification regardless of scores in other areas.

Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Review Committee, shall be identified as the Successful Proposer.

The City reserves the right to perform additional investigations of any Proposer, including communication with licensing authorities, former clients and references, and other means as the City deems appropriate, and may reject any Proposal upon finding a record of Proposer's substandard workmanship.

The Selection Review Committee shall determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the Successful Proposer and performance of additional investigations, the City will issue a Notice of Intent to Award letter notifying all Proposers of the City's selection of a Successful Proposer and protest procedures.

The City reserves the right to negotiate a final contract that is in the best interest of the City. Except for Scope of Work, the City will only re-negotiate those provisions of the CCTV Inspection Services Contract that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Proposer, the Selection Review Committee will make a recommendation to the Ontario City Council. The Ontario City Council will then make the final contract award decision.

Award Protest

A Proposer believing to have been adversely affected or aggrieved by the selection of the Successful Proposer may submit a protest to the City in accordance with OAR 137-047-0700OAR 137-047-0745, as may be applicable. The protest must be in writing and submitted to:

City of Ontario
Attn: Paul Woods, City Engineer
1551 NW 9th St.
Ontario, OR. 97914
OR

paul.woods@jacobs.com

Award protests shall include "Award Protest – CCTV Inspection Services" in the subject line or written on the front of the envelope. The written protest must be received by the City no later than **5:00 pm** local time on **Friday, October 22, 2021**. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a

reasonable time following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City's written decision on the protest results in a change to the RFP, the City shall cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City's decision regarding the protest is final and concludes the administrative appeals process.

PART 5 - General RFP Information

Changes to the RFP Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued by email format only to all those who have obtained the RFP documents by pick-up or standard mail.

All addenda shall have the same binding effect as though contained in the main body of the RFP.

No addenda will be issued later than **September 20, 2021** except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

Public Records and Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

"This data constitutes a trade secret and shall not be disclosed unless mandated by Oregon Public Records Law, ORS Chapter 192."

Identifying the Proposal in whole as a trade secret is not acceptable and will make the entire Proposal subject to public records disclosure. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer's sole expense, if the Proposer wishes to deny or withhold the information.

Cancellation or Change of Scope of Work

The City may cancel the procurement or reject any or all bids in accordance with ORS 279B.100. The City reserves the right to cancel this RFP or the Contract award at any time before execution of the Contract by both parties if cancellation is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a Contract award. The City also reserves the right to change the Scope of Work or Contract award amount if in the best interest of the City.

Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered and will be returned unopened to the Proposer. Electronically mailed or faxed Proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

Proposer Certifications

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. Proposer has carefully examined all RFP documents, including the CCTV Inspection Services Contract (**Appendix A**), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Project Description of this RFP, and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached CCTV Inspection Services Contract.
2. Proposer is familiar with the local conditions under which the services will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. Proposer accepts all of the terms of the City 's CCTV Inspection Services Contract and warrants that Proposer will fully meet all of the insurance requirements contained therein. If Proposer wishes to amend or modify any terms of the CCTV Inspection Services Contract, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft CCTV Inspection Services Contract not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award the contract to the next highest ranked Proposer.

5. Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable in whole or part by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Proposer.
7. Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. Proposer has quality experience providing the types of services and duties as described within the Project Description of this RFP.
9. Proposer shall also certify Proposer's state of residence and shall identified whether the Proposer is a "resident bidder," as defined in ORS 279A.120(1).

Nondiscrimination

A Proposer who competes for or is awarded a public contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, a woman, or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined by ORS 408.225.

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated against any minority, woman, or emerging business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining a required subcontract.***

Competition

Prospective Proposers are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP which the Proposer believes will inordinately limit competition.

Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

Rejection of Proposals

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements and may reject any or all Proposals upon a finding by the City that it is in the City's public interest to do so.

Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed

by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be so worded as not to reveal the contents of the original Proposal.

Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

Local and Federal Requirements

The City of Ontario intends to select a contractor in accordance with OAR 137-047-0270 and the City's municipal code. Selection of a contractor under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Project a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Ontario.

The selected contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

Proposer is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under this contract. The City of Ontario's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

PART 6 - Proposal Response Form

General Information

Statement of: _____
(Company's Registered Name)

Address to Which All Correspondence Should Be Mailed:

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact Representative: _____

Title: _____

Telephone number: _____ E-mail: _____ Fax: _____

Does this person have binding authority to enter into contracts? YES ☐ NO ☐

Date Application Prepared: _____

The undersigned, through the formal submittal of this Proposal, declares that he/she has examined all related Proposal documents and read the instruction and conditions, and hereby proposes to furnish **CCTV INSPECTION SERVICES FOR THE CITY OF ONTARIO** specified, in accordance with the RFP, for the price set forth in the Proposal submittal attached hereto, and forming a part of this Proposal.

The Proposer, by his/her signature below, hereby represents as follows:

(a) That no Council Member, officer, agency, or employee of the City is personally interested, directly or indirectly, in the business of the Proposer or the compensation to be paid under any Contract awarded, and that no representation, statement or statements, oral or in writing, outside the notice of and RFP documents and attachments hereto, of the City, its Council Members, officers, agents, or employees had induced the Proposer to respond to this RFP or to complete the documents made a part hereof by its terms;

(b) The Proposer and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
2. Unless otherwise required by law, the prices that have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal Deadline, either directly or indirectly, to any other Proposer or competitor;
3. No attempt has been made, nor will any attempt be made, by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a Proposal for the purpose of restraining trade.
4. The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in his/her Proposal.

The proposing company is:

☐ Resident Bidder, as defined in ORS 279A.120

☐ Non-Resident Bidder, Resident State _____

The names of the principal officers of the entity submitting this Proposal, or of the partnership or of all persons interested in this Proposal as principals, are as follows:

_____	_____
Name	Title

_____	_____
Name	Title

_____	_____
Name	Title

Proposing Entity

☐ Sole Proprietor ☐ Partnership ☐ LLC ☐ Corporation ☐ Other

In witness hereto, the undersigned Proposing Entity, and through its duly authorized representative, set his/her/its hand this __day of __, 2016. _____

Name of Proposing Entity (Print)

As Its Duly Authorized Representative (Sign)

(Print Name)

Title

Equipment and Operators

1. List all the equipment that will be used to perform the work:

Year	Brand Name	Make/Model	Reel Capacity	Software Platform	Software Version

2. List all personnel that are anticipated to be performing services:

Name	Years of Experience	Pertinent Certifications and Projects

Service Experience

List five major comparable projects Proposer has undertaken in the last five years. Only list those that the City may contact for a reference. *(Most recent project first.)*

1. Name of Project: _____

Owner & Contact:

Address:

Telephone Number: _____ - _____ - _____

Project Description (i.e., services provided):

Project Location: _____

Contract Amount: \$ _____

Dates Started & Completed: _____

Project Supervisor: _____

Indicate whether: Prime Contractor Subcontractor Joint Venture

Remarks: _____

Owner Representative Name and Contact Information:

2. Name of Project: _____

Owner & Contact:

Address:

Telephone Number: _____ - _____ - _____

Project Description (i.e., services provided):

Project Location: _____

Contract Amount: \$ _____

Dates Started & Completed: _____

Project Supervisor: _____

Indicate whether: Prime Contractor Subcontractor Joint Venture

Remarks: _____

Owner Representative Name and Contact Information:

3. Name of Project: _____

Owner & Contact:

Address:

Telephone Number: _____ - _____ - _____

Project Description (i.e., services provided):

Project Location: _____

Contract Amount: \$ _____

Dates Started & Completed: _____

Project Supervisor: _____

Indicate whether: Prime Contractor Subcontractor Joint Venture

Remarks: _____

Owner Representative Name and Contact Information:

4. Name of Project: _____

Owner & Contact:

Address:

Telephone Number: _____ - _____ - _____

Project Description (i.e., services provided):

Project Location: _____

Contract Amount: \$ _____

Dates Started & Completed: _____

Project Supervisor: _____

Indicate whether: Prime Contractor Subcontractor Joint Venture

Remarks: _____

Owner Representative Name and Contact Information:

5. Name of Project: _____

Owner & Contact:

Address:

Telephone Number: _____ - _____ - _____

Project Description (i.e., services provided):

Project Location: _____

Contract Amount: \$ _____

Dates Started & Completed: _____

Project Supervisor: _____

Indicate whether: Prime Contractor Subcontractor Joint Venture

Remarks:

Owner Representative Name and Contact Information:

Company Information

1. Indicate Proposer's Principal Contact Person for this application:

Contact: _____

Address: _____

Telephone Number: _____ - _____ - _____

Email: _____

Fax Number: _____ - _____ - _____

2. How many years has the Proposer been in business under the present name? _____

3. What previous business names have been used by the Proposer?

4. How many years' experience has the Proposer had performing these services? _____

5. Indicate the licenses held by the Contractor:

Ontario Business License Number: _____ Metro

Business License Number: _____

Other license(s): _____

6. Does the Contractor have an employee drug-testing program in place? _____

If selected, the Contractor must provide a copy of the drug testing program and certify that such a program is in place.

Public Works Contract Experience

1. Is your firm currently certified by the State of Oregon as a Disadvantaged Business Enterprise (DBE)?
(check one)

Yes No

2. Have you ever been disqualified or denied qualification for bidding by any state, local, or federal agency in this or any other state? (check one)

Yes No

If yes, please explain: _____

3. Have you ever been barred from bidding on contracts by any state, local, or federal agency in this or any other state under any State Law or Federal Law? (check one)

Yes No

If yes, please explain: _____

4. Has any officer or partner of the Proposer ever applied for qualification for a goods and services contract with the City of Ontario under a different name? (check one)

Yes No

If yes, please explain: _____

5. Has the Proposer ever failed to complete a state, local, or federal contract? *(check one)*

Yes No

If yes, please explain: _____

6. Has any officer or partner of the Proposer ever had a judgment against them involving a local, state, or federal contract? *(check one)*

Yes No

If yes, please explain: _____

7. Does the Proposer have any unpaid judgments and/or un-adjudicated claims in excess of \$5,000? *(check one)*

Yes No

If yes, please explain: _____

- 4.8 Have any claims been made against Contractor's bond? *(check one)*

Yes No

If yes, please explain: _____

- 4.9 Have any complaints been filed with the Oregon Contractors Board? *(check one)*
Yes No

If yes, please explain: _____

IF THIS INFORMATION IS CONFIDENTIAL, ATTACH A SECOND SEALED ENVELOPE CLEARLY MARKED AS SUCH.

Bid Proposal

Having carefully examined the Agreement titled, City of Ontario CCTV Inspection Services, the Contractor agrees to furnish all the labor, materials, equipment, superintendence, and insurance, as well as other accessories and services, necessary to perform and complete all of the work required by and in strict accordance with this Agreement and the implied intent thereof, for the following schedule of unit prices:

Bidders are to provide lineal foot cost for each of the respective pipe size ranges. Based on the lineal foot price, Bidders are then to project total price for each of the respective pipe size ranges. The TOTAL BID Cost will be the sum of each of the respective pipe size range cost.

Proposals shall identify the lineal unit price for CCTV Inspection for each of the various pipe sizes listed below:

SANITARY SEWER CCTV CONDITION SURVEY BID SHEET

WORK TYPE	PIPE SIZE	ESTIMATED FOOTAGE	PRICE PER FOOT	TOTAL PRICE
INSPECTION	6" TO 12"	267,000		
INSPECTION	13" TO 24"	35,873		
INSPECTION	miscellaneous	109,134		
INSPECTION	Over 30"			
Total Bid				

Contract Modification

If Proposer wishes to modify any portion of the Contract, include a specific reference to the section that Proposer would like to modify, providing reasons why and proposed alternative language, in the space below or on a separate attachment to this Proposal Response Form.

Authorized Employee

1. Authorized Employee Representative of the Proposer

By submitting a Proposal Response for the Services, Proposer expressly represents that (s)he has taken no exception to any term, condition, obligation, or requirement of the RFP that is not clearly and expressly stated in the Proposal Response.

The undersigned further represents that (s)he is an Authorized Employee Representative of the Proposer and will report immediately to the City of Ontario, in writing, any errors, inconsistencies, ambiguities, terms which limit competition, or terms which are otherwise unlawful that (s)he discovers in the RFP.

(Signature)

(Title)

Affidavit

STATE OF _____)
) ss.
County of _____)

I, _____ being first sworn, state that I am _____
(title) of the Proposer herein and that the statements made in this application are true, and I acknowledge that any false, deceptive or fraudulent statements on the application or at a hearing will result in the denial of qualification, and may subject me to charges of false swearing or perjury; should there be any subsequent material reduction in Proposer's ability to carry out any project for which Proposer desires to submit a bid, Proposer will give written notice of such change to the designated officer to whom this application is submitted at least ten days prior to the bid opening and it is understood that such notice may change the eligibility of Proposer to submit a bid.

(Signature)

(Title)

On this ____ day of _____, 2020, before me, a notary public in and for said County and State, personally appeared _____, known to me to be the person whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

NOTARY PUBLIC FOR OREGON

My Commission Expires: __/__/__

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APPENDIX A

PUBLIC WORKS CONTRACT FOR CCTV INSPECTION SERVICES CONTRACT

CITY OF ONTARIO

GOODS AND SERVICES CONTRACT

This Goods and Services Contract (“Contract”) for the Closed Circuit TV (CCTV) Inspection Services Project (“Project”) is made and entered into on this ____ day of _____ 2021 (“Effective Date”) by and between the **City of Ontario**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____, a(n) _____ [state] _____ [corporation/limited liability company, etc.] (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Contractor will perform the closed-circuit television inspection services, as more particularly described in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Work”).

Section 2. Term

The term of this Contract shall be from the Effective Date until all Work required to be performed hereunder is completed and accepted, or no later than June 30, 2022, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Scope of Work.

Section 3. Contract Sum/Project Scope

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Contractor a not to exceed amount of _____ DOLLARS (\$_____) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require express written agreement between the City and Contractor.

3.2. Contractor's Contract Sum is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

3.3. Contractor will be paid for Work upon completion of the Work and within thirty (30) days of receipt of an itemized invoice, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible.

Section 4. City's Rights and Responsibilities

4.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

4.2. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2019-20. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 12**.

Section 5. Project Managers

The City's Project Manager is Casey Mordhorst. Contractor's Project Manager is _____.

Section 6. Subcontractors and Assignments

Contractor shall not subcontract with others for any of the Services prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

Section 7. Contractor Is Independent Contractor

Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 3** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of

Contractor's Work so such Work meets the requirements of the Project. Contractor hereby represents that no subcontractors will be used on the Project.

Section 8. Contractor Responsibilities

8.1. Contractor must comply with all applicable Oregon and federal wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

8.2. Contractor must maintain a City of Ontario or Metro business license at all times while performing Work under this Contract.

8.3. No person shall be discriminated against by Contractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

8.4. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract.

8.5. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

8.6. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1)

week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

8.6.1. All overtime in excess of eight (8) hours in anyone (1) day or forty (40) hours in anyone (1) week when the work week is five (5) consecutive days, Monday through Friday; or

8.6.2. All overtime in excess of ten (10) hours in anyone (1) day or forty (40) hours in anyone (1) week when the work week is four (4) consecutive days, Monday through Friday; and

8.6.3. All work performed on the days specified in ORS 279B.020(1)(b) for public contracts.

8.7. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

8.8. The hourly rate of wage to be paid by any Contractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

8.9. Contractor, and all employers working under the Contract, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

8.10. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. If new or amended statutes, ordinances, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

8.11. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any suppliers.

Section 9. Indemnity

9.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or

claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 9.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers.

9.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will reperform any Work not meeting this standard without additional compensation. Contractor's reperformance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 10. Insurance

10.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

10.1.1. Commercial General Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

10.1.2. Business Automobile Liability Insurance. If Contractor will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

10.1.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality (“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

10.1.4. Workers Compensation Insurance. Contractor and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

10.1.5. Insurance Carrier Rating. Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

10.1.6. Additional Insured & Termination Endorsements. Additional Insured coverage under Contractor’s Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of Ontario, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder.

10.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This

Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

10.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 11. Suspension

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 12. Early Termination; Default

12.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

12.1.1. By mutual written consent of the parties,

12.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person; or

12.1.3. By Contractor, effective upon seven (7) days' prior written notice, in the event of substantial failure by the City to perform in accordance with the terms through no fault of Contractor, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

12.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of three (3) days to cure the default. If Contractor notifies the City that it cannot, in good faith, do so within the three (3)

day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

12.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

12.4. Termination under any provision of this **Section 12** shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, for which Contractor has received payment or the City has made payment.

Section 13. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor.

Section 14. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Ontario
Attn: Paul Woods, City Engineer
1551 NW 9th St.
Ontario, OR 97914

To Contractor: _____
Attn: _____

Section 15. Miscellaneous Provisions

15.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

15.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

15.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

15.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the Ontario Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

15.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

15.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

15.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

15.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

15.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

15.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

15.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

15.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday

observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

15.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

15.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

15.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

15.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

15.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

15.18. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein represent the entire agreement between the parties.

15.19. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

15.20. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

By:

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF ONTARIO

By:

Print Name: _____

As Its: _____



**AGENDA REPORT
NEW BUSINESS
October 26, 2021**

To: Mayor and City Council

FROM: Al Cablay, Public Works Director

THROUGH: Adam J. Brown, City Manager

SUBJECT: CONTRACT AWARD: JANITORIAL SERVICES FOR CITY FACILITIES

DATE: October 14, 2021

PROPOSED MOTION:

I MOVE THE CITY COUNCIL AWARD THE CONTRACT FOR JANITORIAL SERVICES TO WESTERN BUILDING MAINTENANCE, BOISE, IDAHO.

SUMMARY:

The current contract for Janitorial Services have been on a month-to-month basis since the original contract expired on June 30, 2021. The Request for Proposal (RFP) for this contract service has been advertised twice. The first advertisement process did not yield a single proposal being submitted.

The second advertisement resulted in two proposals.

BACKGROUND:

The first RFP was issued through the procurement process that the JACOBS Company utilizes for Bids and Proposals that is referred to as 'ARRIBA'. It is a proprietary procurement program used by JACOBS for contract services that are fulfilled through a Vendor or Contractor. Due to the requirements asked of each potential Bidder and/or Proposer the participation from small to medium size companies is usually low. This was the case with the first Janitorial RFP that resulted in no proposals submitted.

The determination was made by Public Works staff to have the second RFP advertised by the city. The decision to not use the JACOBS ARRIBA process was based on past RFPs for contract services which resulted in viable proposals being submitted.

CURRENT SITUATION:

Two proposals were received and found to be in compliance with the requirements stated in the RFP. The two proposals received were:

- Western Building Maintenance - Boise, Idaho
- KBS - Oceanside, California

The original contract was issued to Varsity Janitorial Company who were later purchased by KBS in 2020. KBS is the current Vendor-Contractor providing janitorial service. There have been performance issues dealing with consistency with the current Vendor which have been cause for concern. Maintaining both the frequency and quality of service have been two of the primary areas the incumbent has under performed.

ANALYSIS:

- A. **STRATEGIC PLAN** This action has no impact on the strategic plan.
- B. **FINANCIAL** The use of the RFP process allows selection to use more than price as a reason to select the successful Proposer. The price of the services is taken into consideration and along with the breadth of experience and clientele references allow for the decision to be made using all of the appropriate considerations necessary.

There will be no apparent financial impact on the city. The City will contract with and pay the janitorial service upfront and then will bill Jacobs for the amount. This is a part of the Jacobs contract.

- C. **TIMING** The end of a contract is the ideal time to introduce a new Vendor for Contract Services. A thirty-day transition period will be implemented to allow for a smooth transition from the incumbent Vendor to the new Vendor.
- D. **POLICY/LEGAL** The RFP process differs from the Request for Bid (RFB) process and is used for different purposes. Generally service contracts are accomplished through the RFP process. The focus is on the quality of service being performed and the elements of that are best demonstrated by the experience of the company and its staff members (employees).

ALTERNATIVES:

Reject staff recommendation and select the incumbent Vendor, or not select either vendor and rebid.

RECOMMENDATION:

Staff recommends approval of the proposal submitted by Western Building Maintenance of Boise, Idaho.

ATTACHMENTS:

1. RFP_08-2021-02_janitorial_subcontract_EXTENDED
2. Western Building.RFP_Oct.2021



Bid Number: 08-2021-02 444 SW
4th St.
Ontario, OR 97914

Request for Proposals

Bid for Janitorial Subcontract

BID INFORMATION

Proposal Title: Bid for Janitorial Subcontract
Soliciting Department: Public Works
Proposal Number: 08-2021-02
Proposal Issue Date: August 18, 2021
Proposal Due Date: **October 5, 2021**
Proposal Due Date Time: **3:00 PM**
Proposal Opening Location: Public Works Shop
Proposals to be delivered to: Al Cablay
1551 NW 9th Street
Ontario, OR 97914

You are invited to submit a Bid for the janitorial work for the City of Ontario, OR project. Bids shall be submitted on a Lump Sum basis, with the individual buildings then broken out, in strict accordance with this Inquiry, the Instructions to Bidders, and the other Bid Documents contained or referenced herein.

1. The city requests firms to submit offers (quotations) attached for the project services described in the following Scope of Work.
2. Firms invited to submit offers (quotations) are under no obligation to do so. Offerors will not be reimbursed for any costs incurred in connection with the preparation and submission of their offers.
3. A complete copy of the offer (quotation) must be received by the city not later than **October 5, 2021.**

Offers (quotations) may be submitted in person or by email, mail, or courier; however, offerors are responsible for ensuring that their offers are received on time. Email is the preferred method. A late offer (quotation) will not be considered even though it became late as a result of circumstances beyond the offeror's control; provided, however, that a late offer (quotation) will be considered if the sole cause of its having been late was mishandling by the city or its employees or agents and if the offer is received before an award is made.

4. Any technical or bidding questions may be addressed to Public Works Director, Al Cablay, no later than October 1, 2021. All questions and answers will be distributed equally amongst the bidders to ensure fair and competitive bidding.
5. Each quotation must list subcontractor's date of availability to start the project.
6. An offer (quotation) may be modified at any time prior to the deadline for the submission of offers (quotations). Written notice of the modification, together with the full details thereof, must be received by the city at the address or fax number given above before such

deadline. An offer may be withdrawn at any time before acceptance by Jacobs. Acceptance of the offer (quotation) will be effective upon dispatch. However, withdrawal of the offer (quotation) will not be effective until received by the Jacobs in writing.

7. An award may be made to the responsible offeror whose offer is most advantageous to the city considering the following evaluation factors:
 - a. Meets specifications as outlined in the Technical Specifications;
 - b. Meets project timelines;
 - c. Price; and
 - d. Experience / references.
8. A "responsible" offeror is one that has the technical expertise, management capability, workload capacity, health and safety program, and financial resources needed to perform the contract.
9. The city may conduct negotiations with the highest ranked offeror or with all offerors determined to be within the competitive range. Jacobs reserves the right, however, to make an award based solely on original offers without conducting negotiations, if the city determines that doing so is in its best interests. Jacobs further reserves the right to reject all offers and make no award with respect to any or all of the items.
10. The City of Ontario will perform background checks on the employees of the winning bidder because City Hall, including the police department (which is on the Scope of Work for cleaning) is requiring the background checks. The background checks will take place and be approved before the start of the contract work.
11. Companies based out of other states will have to have or obtain an Oregon contractor's license to perform the job.

THE PROJECT:

The project site is located at 1551 NW 9th St., Ontario, OR 97914.

THE WORK:

The work, which is the subject of this inquiry, consists of janitorial work, as described more fully in the scope of work below.

SCHEDULE:

Your bid shall be based on performing the work in accordance with the following schedule milestone dates:

Anticipated Award: October 12, 2021

Start Work: ASAP (November 1, 2021)

Complete Work: a 2-year contract with the option for a 1-year extension

The Bid Documents consist of the documents included below. The Bid Documents shall be the basis of your Bid. The Bid Documents shall be made a part of any Agreement resulting from this Inquiry.

Attachment A: Provisions

Attachment B: Scope of Services

MANDATORY PRE-BID MEETING

A pre-bid meeting and Site Visit / Job Walk will begin on Wednesday, September 29, 2021 @ 9:00am MST (Mountain Standard Time) at City Hall located at: 444 SW 4th St., Ontario, OR 97914.

If you are interested in the project but unable to make this meeting, contact Jay to make other arrangements.

Your contact for this meeting will be: Jay Hysell: Jay.Hysell@jacobs.com.

QUESTIONS AND REQUESTS FOR INFORMATION

All questions or requests for information related to this Inquiry must be directed to the undersigned at the address shown below. All questions and requests for information shall be submitted in writing by fax or email. Clarifications or modifications to the Bid Documents will be issued to all bidders by Addendum to this Inquiry. Bidder shall include the name of the Project and Inquiry number on all correspondence relating to this Inquiry.

Al Cablay, Public Works Director
1551 NW 9th Street
Ontario, OR 97914
541-889-8572
Al.cablay@jacobs.com

1.00 FORM AND STYLE OF BIDS

- 1.01 You are invited to submit a Bid for the Work described by the scope of work, technical specifications, and attachments in accordance with these instructions and all Bid Documents contained in the Inquiry.
- 1.02 Where so indicated in the Bid Form, pricing shall be expressed in both words and numbers. In case of discrepancy between such entries, the words shall govern.
- 1.03 Bidders are cautioned not to submit proprietary information. While the city will endeavor to treat all submissions as confidential, no bid identified in whole or in part as proprietary will be accepted.
- 1.04 The Bid shall be signed by a duly authorized officer of the company with the signatory's name and title typed below the signature. Bids not signed in the manner described, or unsigned Bids, shall be considered invalid.

2.00 ALTERNATE BIDS

- 2.01 No modifications to, or deviation from, the bid specification shall be made unless authorized by written Addendum. Bids shall be submitted using all criteria specified.
- 2.02 BIDDER MUST BE RESPONSIVE TO THE REQUIREMENTS OF THE BASE BID. Alternate Bids that are not specifically called out in the Inquiry, or Addenda thereto, may be considered at the sole option of Jacobs provided that the requirements for the Base Bid have first been met. FAILURE TO ADDRESS THE BASE BID REQUIREMENTS SHALL RESULT IN THE REJECTION OF THE BID.

3.00 MODIFICATIONS OR WITHDRAWAL OF BID

- 3.01 Bids submitted prior to the Bid Due Date may be modified or withdrawn only by written notice, signed by the duly authorized officer who signed the Bid.

4.00 RIGHT TO REJECT OR ACCEPT

- 4.01 The city reserves the right to reject any and all proposals.

- 4.02 Prior to award, bid clarification meetings may be held with Bidders whose bid is under consideration. If such clarification meeting result in agreement to modify any terms of this Invitation to Bid, such agreement shall be set forth in writing.
- 4.03 The selection of the successful Bidder shall be made at the sole discretion of the city whose decision shall be considered final and indisputable.
- 4.04 There shall be no obligation on the part of the city to accept the lowest bid or for that matter, any of the bid proposal submittal. In this event, the Bidder shall have no entitlement to make any claim upon the city or any person or organization associated with the Bidders response to this Invitation to Bid.
- 4.05 The city reserves the right to cancel, suspend or revise this Invitation to Bid at any time during the bid process without recourse to the Bidders. In such an event, the Bidder shall have no claim whatsoever on Jacobs or any persons or organizations associated with the Invitation to Bid.

5.00 BID EXPIRATION

- 5.01 All bids shall be valid for a period of not less than one-hundred and twenty (120) days from the Bid Due Date.

6.00 EXCEPTIONS

- 6.01 Technical exceptions may be grounds for rejection of the Bid if such exceptions are interpreted as a deviation or a deletion from the requirements of the Specification, especially if the value of the Subcontract is affected. If the Bidder, with due consideration of the risk of rejection of the Bid believes that technical exceptions must be taken, all such exceptions must be specifically and clearly defined and listed on the Bid Form under "Technical Exceptions".
- 6.02 Commercial exceptions to the terms and provisions of the Bid Documents may be grounds for rejection of the Bid. If the Bidder, with due consideration of the risk of rejection of the Bid, believes that exceptions must be taken, all such exceptions must be specifically and clearly defined and listed on the Bid Form under "Commercial Exceptions". Reference must be made to Article Numbers, paragraphs and page numbers in order for exceptions to be given consideration. Inclusion of Bidder's printed Terms and Conditions are not considered specific exceptions and shall be cause for rejection.

7.00 INTERPRETATIONS, QUESTIONS AND REQUEST FOR CLARIFICATION

- 7.01 All questions pertaining to the submission of your Bid including apparent omissions or conflicting Bid Documents, and requests for Technical and Commercial clarification shall be directed to the Individual identified in the Inquiry.
- 7.02 Bidder shall include the name of the Project and Inquiry number on all correspondence relating to this Inquiry.
- 7.03 All clarifications to the Bid Documents will be forwarded to the Bidders in writing, incorporated by written Addenda and thereafter shall become part of the Bid Documents. Any oral instruction or clarification, no matter by whom given, requiring changes in the Bid Documents is invalid unless confirmed in writing as described. The city and Jacobs will not be bound by any instruction or clarification not so confirmed.

8.00 RESPONSIBILITY OF BIDDERS

- 8.01 Each Bidder, before submitting its Bid, shall visit the site of the proposed Work and shall be held responsible for having observed and ascertained all visible conditions which may be encountered in the performance of the Work, including, location, accessibility, general conditions and terrain, existing structures and objects, the character and extent of Work, if any, then in progress, conditions with respect to adjacent properties and the nature of the neighborhood. Likewise, the Bidder, before submitting its Bid, shall familiarize itself with labor conditions which may affect the performance of the Work.
- 8.02 Each Bidder, by submitting its Bid, represents that:
- 8.02.1 It is an expert in all aspects of the Work described by the Bid Documents.
 - 8.02.2 It has read and understands the Bid Documents, has examined the Project Sites, is familiar with obstacles, conditions and limitations that will affect the Work and its Bid is made in accordance therewith.
 - 8.02.3 Its bid is based upon the services, materials, systems and equipment described in the Bid Documents without exception, except as otherwise provided for in these Instructions to Bidder.
 - 8.02.4 No extra charges will be allowed for ignorance of Subcontract requirements or site conditions. The inter-relationship of all Subcontract Documents must be carefully examined by Bidders.
 - 8.02.5 It has satisfied all licensing laws related to the Work described in the Bid Documents.
 - 8.02.6 It can and will comply with the specified insurance requirements.
- 8.03 Each Bidder shall carefully examine all documents and material bound herewith or related hereto, together with all appropriate Addenda. It is the Bidder's responsibility to assure that all documents referenced in the Inquiry have been included in the Bidder's package. Should a bidder find discrepancies in, or omissions from, the Bid Documents or should it be in doubt as to their meaning, Bidder shall at once request clarification in writing. Failure to identify discrepancies or omissions immediately shall be understood to indicate the Bidder's acceptance and full compliance.
- 8.04 The Submission by any Bidder of a Bid shall constitute conclusive evidence that the Bidder has satisfied itself as to the conditions to be encountered, as to the character, quality and quantities of Work to be performed and materials to be furnished, and as to the requirements of the documents hereinbefore mentioned and no allowance or concession to the Subcontract Price will be made by the city or Jacobs, at any time, for lack of such information on the part of the Bidder if his Bid subsequently shall be accepted.
- 8.05 Bidder is advised that the successful Bidder's personnel, including Lower Tier Subcontractors, will be required to comply with all the requirements of the Proposed Subcontract. All costs associated with these requirements shall be provided for in Bidder's pricing and schedule.

- 8.06 The Bidder shall refrain from making any statements, or publishing article(s), etc. in the press and / or media. In the event that the Bidder wishes to make a press release, then the Bidder is required to receive written permission from Jacobs prior to any action being taken by Bidder.
- 8.07 All expenses incurred by Bidder in preparing the bid, attending meetings, making site visits and any and all such expenses otherwise associated with this proposal solicitation shall be borne solely by Bidder. Neither Jacobs nor the city shall be liable for any costs or expenses whatsoever, or, howsoever incurred by the Bidder during the bid preparation.
- 8.08 All documents in this Invitation to Bid including all drawings, specifications or other appended or related data are the property of the city and are only issued for the purpose of Bidder preparing and submitting proposal in response to this Invitation to Bid. All information contained or referred to in the Invitation to Bid documents shall not be disclosed or released for any other purpose. Unsuccessful Bidders will be required to return all documents, upon notification of their unsuccessful proposal.

9.00 TAXES

- 9.01 Unless otherwise noted in the bid documents, and supported by the appropriate tax exemption forms, the bid shall include all taxes which are imposed by applicable law.

10.00 DOCUMENTS REQUIRED WITH BID

- 10.01 The Bidder shall include a fully completed "Bid Form", as furnished to the Bidder with the Inquiry, duly signed by an Officer of the Bidder's Company and properly witnessed. Bidder shall include with its Bid Form all documents listed in the Bid Form as Attachments. Failure to include all information described on the Bid Form will cause the Bid to be considered unresponsive. The Bid shall be consistent with the definitions shown below.
- 10.02 Labor hours - All labor hours estimated for completion of each project component, including Bidder's hours and any of its lower-tier Subcontractor's hours. Labor Billing Rates for Cost Plus or Time and Material Basis - The Bidder shall submit a complete labor rate schedule showing the method of calculation of each applicable billing rate.
- Unit Prices Basis - All material unit prices listed shall identify the associated unit of measure and the material price per unit. The price shall be inclusive of all labor and material required for the complete installation of the units identified as well as all additional expenses such as freight, applicable taxes, insurance, dunnage, storage, etc.

11.00 ELECTRONIC DOCUMENTS

- 11.01 It is understood and agreed that the governing documents applicable to this Inquiry are the printed documents furnished herewith and as may subsequently be amended. These printed documents define the scope, extent, and character of the Work. Jacobs may provide electronic versions of certain documents. By accepting the electronic files, the Bidder agrees as follows:
- 11.01.1 The City will use its best efforts to provide electronic versions that are virus free, uncorrupted and resemble the most current printed

documents. However, since electronic versions may be corrupted during the transfer process or by other means beyond our control, Jacobs cannot warrant that these files are complete without defects or inaccuracy or that the files will be virus free. To the extent that the electronic files differ from the printed documents, any conclusions or information gained from the electronic files are at Bidder's own risk and no claims shall be made against Jacobs and/or Owner regarding any of the files.

- 11.01.2 All information that is disclosed by Jacobs or the city through delivery of these files should be considered confidential and proprietary to Jacobs and/or the city. Bidder shall disclose such information only to such employees who have a need to know to carry out the Work, and only to those individuals who have read this Agreement and agree to be bound by it.
No implied licenses or any intellectual property rights are granted under this Agreement.
- 11.01.3 The city's delivery of these files does not relieve Bidder of any contractual responsibilities to maintain and provide current records and required drawings and data throughout the course of the Work.

12.00 APPLICABLE LAW

- 12.01 The solicitation and any resulting contract shall be governed in all aspects by the laws of the State of Oregon. All entities both public and private shall comply with applicable Federal, State, and local laws and regulations.

13.00 ETHICS IN CONTRACTING

- 13.01 By submitting their proposals, proprietors certify that their proposals are made without collusion or fraud and they have not offered or received any kickbacks or enticements from any other offer, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, or services.

14.00 INSURANCE

- 14.01 Contractors working for the City of Ontario shall maintain insurance coverage as stated in policy #5100. The following are the minimum acceptable limits of liability:
- 14.01.1 \$1,000,000.00 per occurrence of bodily injury and/or property damage.
- 14.01.2 \$1,000,000.00 per offense of personal and advertising injury.
- 14.01.3 \$1,000,000.00 Annual Aggregate for products/completed operations.
- 14.01.4 \$2,000,000.00 General Aggregate
- 14.01.5 \$50,000.00 Fire Damage Liability

15.00 OWNERSHIP OF PROPOSAL DOCUMENTS

15.01 All proposals and other materials submitted will become the property of the City of Ontario. Failure to complete the Design Build Proposals as outlined above may preclude consideration of the bid/proposal.

16.00 INDEMNITY

16.01 The Proposer will indemnify, hold harmless and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims demands, damages, cost, expenses, and attorney fees incident to any work done in the performance of the contract. The Proposer will not be liable for any claims, demands, damages, cost, expenses, or attorney fees arising out of an act or omission on the part of the City, its officers, agents, servants, and employees.

17.00 TERMINATION OF AGREEMENT

17.01 Cancellation of the contract by the City may be for:

17.01.1 Default by the contractor: Default is defined as the failure of the contractor to fulfill the obligations of their quotation or contract. In the case of default by the contractor, the City may cancel the contract immediately and procure the articles or services from another source and hold the contractor responsible for any excess costs occasioned thereby. In the event that the City no longer needs the service or commodity specified in the contract due to relocation of offices, or lack of funding, the City may cancel the contract by giving 30-day notice of cancellation without penalty or fine.

The City may terminate this agreement if any condition of the contract is not met. The City shall offer the proprietor a reasonable amount of time, 30 days, to come into compliance with the conditions of the contract. If the conditions are not corrected, the City will give 30-days' notice for the proprietor to vacate. The proprietor may terminate this agreement upon written 60-days' notice.

17.01.2 Lack of financing. Payments for services shall be paid by the City within 30 days of billing.

ACKNOWLEDGEMENT

Agreement: I, _____, representing _____ certify that I offer to furnish materials or services in strict accordance with the requirements of this bid including terms and conditions listed in the bid specifications. I certify that the prices quoted are correct and he/she agrees that this proposal is valid for a period of 120 days from due date noted above.

Authorized Signature (In Ink) _____ Title _____

Date Signed _____

NOTICE OF INTENT TO BID

Date: _____

Attention: Al Cablay

1551 NW 9th Street Ontario, OR 97914

541-889-8572; al.cablay@jacobs.com

Project: Janitorial Subcontract

Inquiry: 08:2021-02

We acknowledge receipt of the Bid Documents. Listed below are documents not received:

_____.

☐ We will bid as required by the stipulated Bid Due Date.

☐ We will not be bidding this Subcontract, and the Bid Documents are returned.

The reason for not bidding is _____

_____.

Sincerely,

{Bidder Company Name}

By: _____

Title:

Date:

Phone:

E-Mail: _____

(Name of Bidder)

Bid Submitted to: City of Ontario

Attention: Al Cablay

Subject: Invitation to Bid

Project: **Janitorial Subcontract**

Inquiry: **08-2021-02**

Bidders:

The undersigned, having carefully examined the Bid Documents and conditions under which the Work is to be performed, hereby proposes to execute the Work in accordance with the Bid Documents, as follows. All pricing is firm, fixed for the duration of the Work as proposed.

PRICING BASIS: ☒ **Lump sum** ☐ Time and Materials ☐ Cost plus fee ☐ Unit prices For a Lump sum basis, the Lump Sum Bid Price is inserted.

Scope	Janitorial Work INCL paper products	Janitorial Work NOT INCL paper prod
City Hall		
Permit Center		
Public Works Headquarters		
Cemetery		
Water Plant		
Wastewater Plant		
TOTAL COST (\$USD):		

EXCEPTIONS TO BIDDING DOCUMENTS

Listed below are exceptions to the Bid Documents. NOTE THAT EXCEPTIONS MAY BE CAUSE FOR BID REJECTION. If no exceptions to the Bid Documents are proposed, state “NONE”.

Technical Exceptions:

Commercial Exceptions:

AUTHORIZATION:

(Name of Bidder)

(P.O. Box, City, State, Zip)

(Street, City, State, Zip)

(Name of Authorized Person)

(Title of Authorized Person)

(Signature of Authorized Person)

(Date)

Notes:

1. Signature is by a person legally authorized to bind Bidder to a Subcontract. If the signature is by an agent of the Bidder, the current Power-of-Attorney certifying the agent's authority to bind the Bidder is attached.
2. If Bid is by a corporation, the corporate seal is affixed immediately below.
- 3.

ATTACHMENT A - SCOPE OF WORK

SUBCONTRACTOR will provide all necessary labor, **materials and supplies** to clean office buildings as listed in the scope below for the City of Ontario Oregon.

Scope of Work:

- Services to be performed to the following schedule:

City Hall:
444 SW 4th Street

Monday thru Friday between **10pm** and 6am (five days a week)

Permit Center (Annex Bldg.):
458 SW 3rd Street

2 days a week – between **10pm** and 6am (non-consecutive days)

Public Works Headquarters:
1551 NW 9th Street

3 days a week – between **10pm** and 6am (non-consecutive days)

Cemetery:
1155 S. Park Blvd

2 days a week – between **10pm** and 6am (non-consecutive days)

Water Treatment Plant:
1900 SE 5th Ave

2 days a week – between **10pm** and 6am (non-consecutive days)

Wastewater Treatment Plant:
2405 Malheur Drive

2 days a week – between **10pm** and 6am (non-consecutive days)

SCHEDULE OF SERVICES

1. RESTROOMS

A. Daily Services

- Empty all trash receptacles; clean and disinfect as needed, and replace liners (supplied by subcontractor)
- Clean and disinfect all vitreous fixtures including toilet bowls, urinals, and hand basins
- Clean and disinfect toilet seats
- Clean, disinfect and polish bright metal surfaces (faucets, trim rings, flush handles, ADA grab bars, etc.)
- Spot clean and polish all glass and mirrors
- Spot clean and disinfect partitions **
- Spot clean and disinfect exterior of all dispensers
- Refill all dispensers to normal limits (supplied by subcontractor)
- Remove spots, stains, splashes from surfaces around hand basins
- Disinfect light switches
- Clean and disinfect all metal door handles and push plates
- Dust mop floors

B. Weekly Services

- Wash and disinfect partitions **
- Spot clean and disinfect walls to hand height (70")
- Remove dust and cobwebs from ceiling area
- Damp clean baseboards along walls and corners
- Spot damp mop floors with neutral cleaner and disinfect

D. Quarterly Services

- Machine scrub floors

E. Semi-Annual Services (Nov & May)

- Wash and disinfect all walls to hand height (70")
- Clean ceiling vents (air intakes and discharge outlets)
- Scrub and refinish (wax) hard/vinyl floors, apply five coats **

2. ENTRANCES / LOBBIES / HALLWAYS / COMMON AREAS

A. Daily Services

- Empty all trash receptacles; clean and disinfect as needed, and replace liners (supplied by subcontractor)
- Spot Clean interior storefront and door glass **
- Clean and disinfect water fountains **
- Dust, clean and disinfect all vinyl furniture **
- Clean and disinfect all metal door handles, push plates and push bars
- Damp clean and disinfect all horizontal surfaces and service counters
- Spot clean all walls to hand height (70")
- Disinfect light switches
- Spot dust mop hard floors
- Spot damp mop hard floors
- Spot clean and vacuum entrance mats
- Spot clean carpet as needed with spot carpet cleaner (supplied by subcontractor)

B. Weekly Services

**** Where applicable**

- Clean interior and exterior storefront and door glass **
- Dust above hand height (70") all horizontal surfaces including any shelves, moldings, ledges, pipes, ducts, vents, and heating outlets
- Damp clean baseboards along walls and corners
- Dust and Damp mop floors
- Disinfect vending machine surfaces and buttons **
- Vacuum carpet

C. Bi-Weekly Services

- Remove dust and cobwebs from ceiling area
- Damp clean baseboards
- Wipe down vinyl furniture

D. Semi Annual Services

- Clean ceiling vents (air intakes and discharge outlets)

E. Annual Services

- Shampoo carpets **
- Machine Scrub and refinish (wax) hard/vinyl floors, apply five coats **

3. OFFICES / OPEN PLAN OFFICES / DISPATCH CENTER

A. Daily Services

- Empty wastebaskets and replace liners as needed (supplied by subcontractor)
- Spot clean desktops (where possible)
- Spot clean counter tops **
- Spot clean carpet as needed with spot carpet cleaner (supplied by subcontractor)

B. Weekly Services

- Dust furniture tops and chairs
- Dust all surfaces to hand height (70")
- Vacuum all carpet

C. Monthly Services

- Disinfect light switches
- Dust all exposed filing cabinets, bookcases, and shelves
- Clean desktops (where possible)
- High dust to hand height all horizontal surfaces, including shelves, moldings, ledges, pipes, ducts, and heating outlets
- Clean door glass **
- Clean interior window glass
- Sweep baseboards, corners, around and under desks
- Remove fingerprints from doors, frames, light switches, kick push plates, handles, and moldings around doorways

D. Quarterly Services

- Dust blinds **
- Remove dust and cobwebs from ceiling area

E. Semi Annual Services

- Clean ceiling vents (air intakes and discharge outlets)

F. Annual Services

- Shampoo carpets

4. COUNCIL CHAMBERS / MEETING ROOMS / BREAK ROOMS / COPY ROOMS

A. Daily Services

- Empty all trash receptacles; clean and disinfect as needed, and replace liners (supplied by subcontractor)
- Spot dust mop hard floors
- Spot damp mop hard floors
- Spot clean carpet as needed with spot carpet cleaner (supplied by subcontractor)

B. Weekly Services

- Remove dust and cobwebs from ceiling area
- Damp mop floors
- High dust above hand height (70") all horizontal surfaces including any shelves, moldings, ledges, pipes, ducts, vents, and heating outlets
- Vacuum carpet

C. Monthly Services

- Clean door glass **
- Dust furniture tops and chairs
- Clean and disinfect all metal door handles and push bars
- Damp clean and disinfect all work surface areas (tables, podiums, countertops, etc.)
- Disinfect light switches
- Damp clean baseboards along walls and corners
- Clean interior window glass

D. Semi Annual Services

- Shampoo carpet in Council Chambers twice a year.
- Clean ceiling vents (air intakes and discharge outlets)

E. Annual Services

- Shampoo carpets once a year
- Scrub and refinish (wax) hard/vinyl floors, apply five coats **

5. STAIRWELLS **

A. Daily Services

- Spot clean exit doors
- Spot clean walls to hand height (70")
- Spot mop stairs and landings

B. Weekly Services

- Sweep stairs and landings

- Damp mop stairs and landings
- Dust and damp clean ledges and sills
- Clean and disinfect handrails
- Clean and disinfect all metal door handles, push plates and push bars

C. Monthly Services

- Clean interior window glass
- Disinfect light switches

D. Quarterly Services

- Dust blinds

E. Semi Annual Services

- Clean ceiling vents (air intakes and discharge outlets)

F. Annual Services

- Scrub and refinish (wax) hard/vinyl floors, apply five coats

6. ELEVATOR **

A. Daily Services

- Spot clean exterior doors
- Spot clean interior walls and doors
- Spot clean carpet as needed with spot carpet cleaner (supplied by subcontractor)

B. Weekly Services

- Clean, disinfect and polish exterior doors
- Clean, disinfect and polish interior walls and doors
- Disinfect all interior and exterior elevator buttons
- Vacuum carpets

7. HOLDING CELLS **

A. Weekly Services

- Clean and disinfect all vitreous fixtures including toilet bowls, urinals, and hand basins
- Clean and disinfect toilet seats
- Clean, disinfect and polish bright metal surfaces (faucets, trim rings, flush handles, etc.)
- Clean and disinfect all metal door handles and push plates
- Wipe down cement benches with neutral cleaner and disinfect
- Wipe down plastic seats with neutral cleaner and disinfect
- Dust mop floors
- Damp mop floors with neutral cleaner and disinfect

B. Quarterly Services

- Wipe down bars with neutral cleaner and disinfect

C. Semi Annual Services

- Clean ceiling vents (air intakes and discharge outlets)

8. BUILDING(s) EXTERIOR

A. Weekly Services

- Sweep approaches
- Empty trash receptacles **

B. Monthly Services

- Clear cobwebs around entrances

C. Quarterly Services

- Empty cigarette urns **

D. Semi-Annual Services

- Clean all exterior window glass (1st floor only **)



NOTICE OF INTENT TO BID

Date: 8/31/21

Attention: Al Cablay

1551 NW 9th Street Ontario, OR 97914

541-889-8572; al.cablay@jacobs.com

Project: Janitorial Subcontract

Inquiry: 08:2021-02

We acknowledge receipt of the Bid Documents. Listed below are documents not received:

- ☒ We will bid as required by the stipulated Bid Due Date.
☐ We will not be bidding this Subcontract, and the Bid Documents are returned.

The reason for not bidding is _____

Sincerely,

WESTERN BUILDING MAINTENANCE
{Bidder Company Name}

By: Russ Biaglieri
Title: OPERATIONS DIRECTOR
Date: 9/31/21
Phone: 204.348-2991
E-Mail: R.BIAGLIERI@WBMclean.com

Commercial Exceptions: None

AUTHORIZATION:

WESTERN BUILDING MAINTENANCE

(Name of Bidder)

P.O. Box 9408

3275 BROWN ST.

BOISE, ID 83707

GARDEN CITY, ID 83714

(P.O. Box, City, State, Zip)

(Street, City, State, Zip)

RUSSELL R. BIAUGH

OPERATIONS DIRECTOR

(Name of Authorized Person)

(Title of Authorized Person)

Russell R. Biagh

9/17/21

(Signature of Authorized Person)

(Date)

Notes:

1. Signature is by a person legally authorized to bind Bidder to a Subcontract. If the signature is by an agent of the Bidder, the current Power-of-Attorney certifying the agent's authority to bind the Bidder is attached.
2. If Bid is by a corporation, the corporate seal is affixed immediately below.
- 3.

Wednesday, August 18, 2021

Janitorial Subcontract: 08-2021-02

ACKNOWLEDGEMENT

Agreement: I, Russ Blawie, representing Western Fulfillment ^{Maine} certify that I offer to furnish materials or services in strict accordance with the requirements of this bid including terms and conditions listed in the bid specifications. I certify that the prices quoted are correct and he/she agrees that this proposal is valid for a period of 120 days from due date noted above.

Authorized Signature (In Ink) R B Title OPERATIONS DIR.

Date Signed 8/31/21

Labor Hours

City Hall – estimating 3 hours per visit for janitorial. City Hall is slated to be cleaned 5 nights per week. With this in mind, there will be an average of 21.5 nights of cleaning each month meaning there will be an average of 64.5 hours of cleaning monthly (21.5×3). Our billable rate per hour for this project will be \$18 leading to a monthly janitorial price of \$1161 (64.5×18).

Window cleaning - \$100 per time = \$200 per year

Hard floor scrubbing - \$1160 per time $\times 4 = \$6760$ per year

Hard floor stripping = \$3900

Carpet cleaning = \$2800

Total yearly price = \$27,592

Total yearly price with paper products = \$31,192 (assumption of average monthly cost of \$300)

Permit Center – estimating 1 hour per visit for janitorial. The Permit Center is slated to be cleaned 2 nights per week. This leads to an average of 9.5 nights of cleaning each month with an average of 9.5 hours of cleaning monthly (9.5×1). At \$18/hr., the monthly janitorial price is \$171 (9.5×18).

Hard floor scrubbing - \$65 per time $\times 4 = \$260$

Hard floor stripping = \$75

Carpet cleaning = \$360

Total yearly price = \$2747

Total yearly price with paper products = \$3947 (assumption of average monthly cost of \$100)

Public Works Headquarters – estimating 1.5 hours per visit for janitorial. The Public Works Headquarters is slated to be cleaned 3 nights per week meaning an average of 13.5 nights of cleaning each month. This equals an average of 20.25 hours of cleaning monthly (13.5×1.5). At \$18/hr., the monthly janitorial price is \$364.50 (20.25×18).

Hard floor scrubbing - \$312 per time $\times 4 = \$1248$

Hard floor stripping - \$360

Carpet cleaning - \$448

Total yearly price = \$6430

Total yearly price with paper products = \$8830 (assumption of average monthly cost of \$200)

Cemetery – estimating .5 hours per visit for janitorial. The Cemetery is slated to be cleaned 2 nights per week meaning there is an average of 9.5 nights of cleaning each month. This equals an average of 4.75 hours of cleaning monthly ($9.5 \times .5$). At \$18/hr., the monthly janitorial price is \$85.50 (4.25×18).

Hard floor scrubbing - \$5.20 per time $\times 4 = \$20.80$

Hard floor stripping = \$6

Carpet cleaning = \$24

Total yearly price = \$1076

Total yearly price with paper products = \$1576 (assumption of average monthly cost of \$41.67).

Water Plant – estimating 1.5 hours per visit for janitorial. The Water Plant is to be cleaned 2 nights per week meaning there is an average of 9.5 nights of cleaning each month. This equals an average of 14.25 hours of cleaning monthly (9.5×1.5). At \$18/hr., the monthly janitorial price is \$256.50 (14.25×18).

Hard floor scrubbing - \$520 per time = \$2080 per year

Hard floor stripping = \$600

Carpet cleaning = \$80

Total yearly price = \$5838

Total yearly price with paper products = \$6738 (assumption of average monthly cost of \$75).

Wastewater Plant – estimating 1 hour per visit for janitorial. The Wastewater Plant is to be cleaned 2 nights per week meaning there is an average of 9.5 nights of cleaning each month. This equals an average of 9.5 hours of cleaning monthly (9.5×1). At \$18/hr., the monthly janitorial price is \$171 (9.5×18).

Hard floor scrubbing - \$390 per time $\times 4 = \$1560$

Hard floor stripping = \$450

Total yearly price = \$4062

Total yearly price with paper products = \$4762 (assumption of average monthly cost of \$58.33).

WESTERN BUILDING MAINTENANCE
(Name of Bidder)

Bid Submitted to: City of Ontario

Attention: Al Cablay

Subject: Invitation to Bid
Project: **Janitorial Subcontract**
Inquiry: **08-2021-02**

Bidders:

The undersigned, having carefully examined the Bid Documents and conditions under which the Work is to be performed, hereby proposes to execute the Work in accordance with the Bid Documents, as follows. All pricing is firm, fixed for the duration of the Work as proposed.

PRICING BASIS: ☒ Lump sum ☐ Time and Materials ☐ Cost plus fee ☐ Unit prices

For a Lump sum basis, the Lump Sum Bid Price is inserted.

Scope	Janitorial Work INCL paper products	Janitorial Work NOT INCL paper products
City Hall	\$ 31,192	\$ 27,592
Permit Center	\$ 3947	\$ 2747
Public Works Headquarters	\$ 8830	\$ 6430
Cemetery	\$ 1576	\$ 1076
Water Plant	\$ 6738	\$ 5838
Wastewater Plant	\$ 4762	\$ 4062
TOTAL COST (\$USD):	\$ 56,845	\$ 47,545

EXCEPTIONS TO BIDDING DOCUMENTS

Listed below are exceptions to the Bid Documents. NOTE THAT EXCEPTIONS MAY BE CAUSE FOR BID REJECTION. If no exceptions to the Bid Documents are proposed, state "NONE".

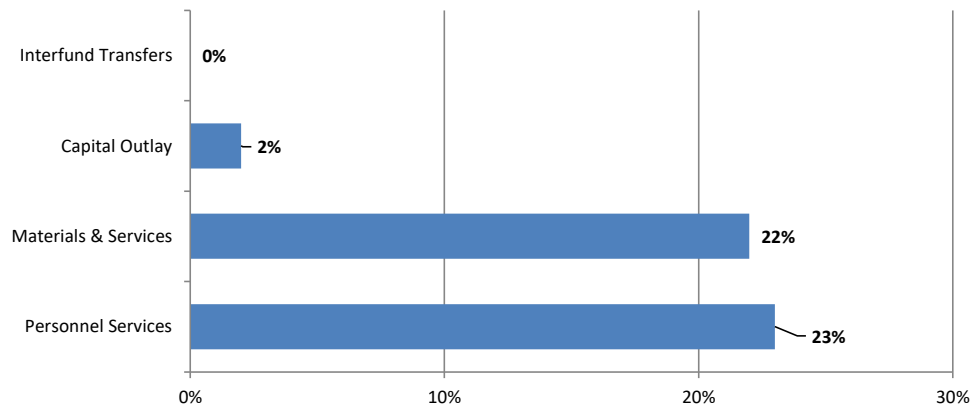
Technical Exceptions: None

**CITY OF ONTARIO
GENERAL FUND - DEPARTMENT EXPENSE
FOR THE PERIOD ENDED
SEPTEMBER 30, 2021**

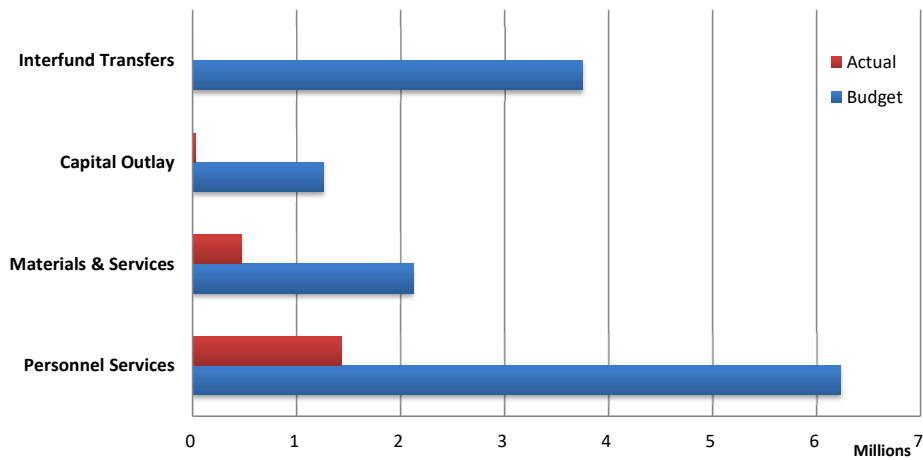
DEPARTMENT	BUDGET	ACTUAL	% EXPENDED	COMMENTS
Parks	339,707	47,888	14.1%	
Parks & Recreation	339,707	47,888	14.1%	
Fire	1,884,340	392,830	20.8%	
Code Enforcement	151,348	30,006	19.8%	
Police	4,171,983	926,811	22.2%	
Police reserves	2,625	666	25.4%	
Public Safety Total	6,210,296	1,350,313	21.7%	
Administration	535,334	119,580	22.3%	
City Council	28,359	9,726	34.3%	publications
Business Registration	1,100	6	0.5%	
Cemetery	206,775	18,995	9.2%	
Finance	254,736	38,142	15.0%	
Technology	193,641	67,395	34.8%	Licenses timing
General Government Total	1,219,945	253,844	20.8%	
Community development	192,607	41,907	21.8%	
Community Development	192,607	41,907	21.8%	
Administrative Overhead	1,301,110	179,389	13.8%	
Non-Departmental Contributions	379,015	44,208	11.7%	
Other Total	1,680,125	223,597	13.3%	
Operating Transfers Out	3,715,818	-	0.0%	
GENERAL FUND TOTALS	\$ 13,358,498	\$ 1,917,549	14.4%	
YTD BUDGET BENCHMARK				25.0000% 

**CITY OF ONTARIO
GENERAL FUND - DEPARTMENT EXPENSE
FOR THE PERIOD ENDED
SEPTEMBER 30, 2021**

% Expended by Category



Budget to Actual by Category



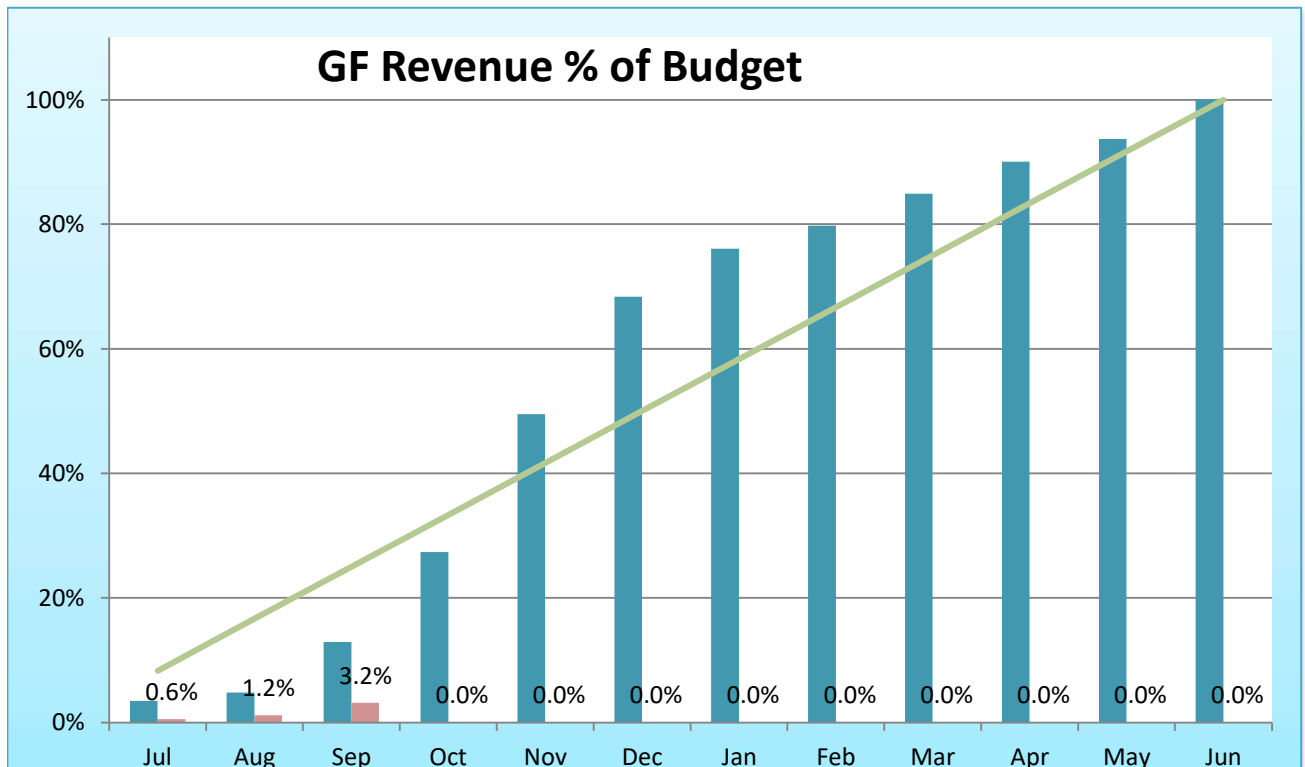
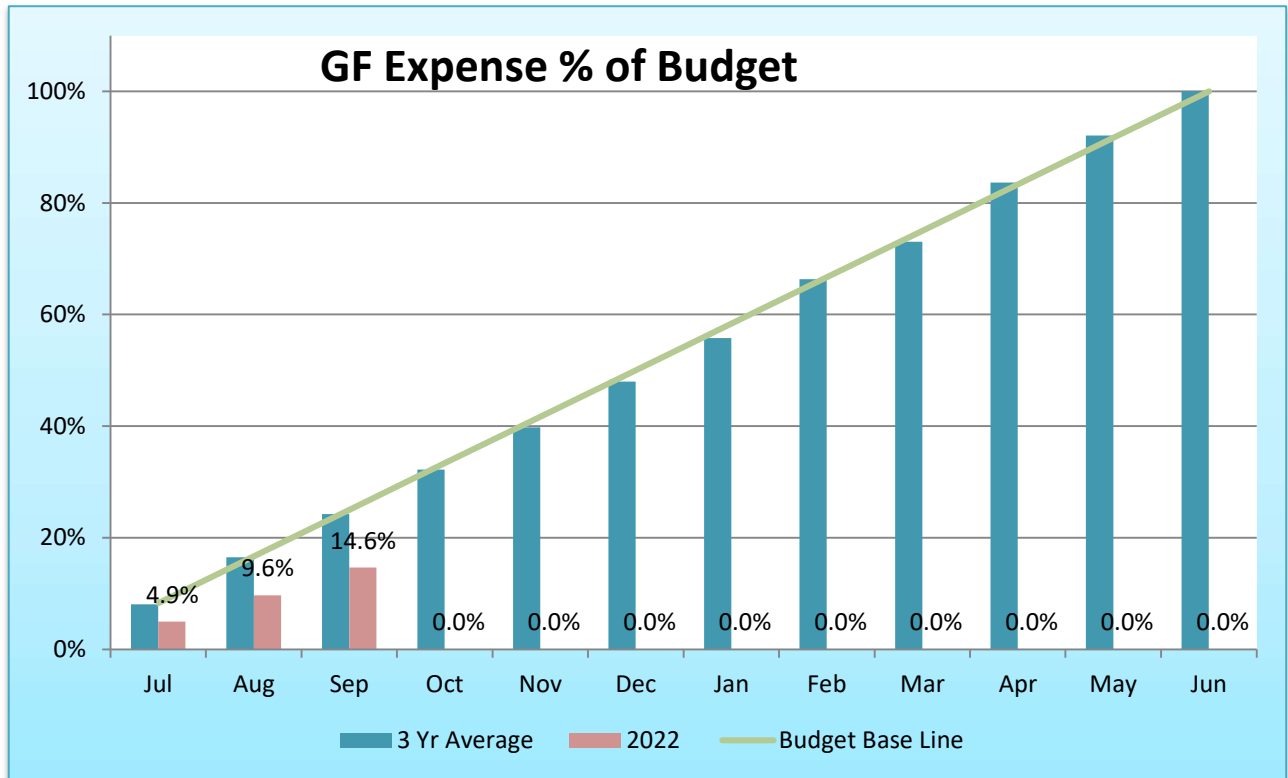
**CITY OF ONTARIO
GENERAL FUND - DEPARTMENT REVENUE
FOR THE PERIOD ENDED
SEPTEMBER 30, 2021**

DEPARTMENT	BUDGET	ACTUAL	% REALIZED	COMMENTS
GENERAL FUND BEGINNING FUND BALANCE	4,864,297	0	0.0%	(not calculated in totals)
Parks	2,000	460	23.0%	
Parks & Recreation	2,000	460	23.0%	
Fire	234,572	357	0.2%	
Code Enforcement	70,800	3,294	4.7%	
Police	199,850	13,545	6.8%	
Dispensary Business License	55,800	39,446	70.7%	
	-			
Public Safety Total	561,022	56,642	10.1%	
Interest	28,000	5,424	19.4%	
State Revenue Sharing	153,265	-	0.0%	
Administrative Services	497,148	124,287	25.0%	
Other General Revenues	8,485	9,218	108.6%	
Donations	10,000	-	0.0%	
Property Taxes	3,983,255	43,397	1.1%	
Alcohol Bvg License & Fee	238,446	221,166	92.8%	
Cigarette tax	13,376	1,862	13.9%	
Marijuana tax	3,000,000	-	0.0%	
Franchise Fees	1,579,874	2,180	0.1%	
Business Registration	2,500	145	5.8%	
Cemetery	35,000	6,875	19.6%	
General Government Total	9,549,349	414,553	4.3%	
Planning & Zoning	4,000	2,459	61.5%	
Community development	4,000	2,459	61.5%	
Operating Transfers In	223,480	-	0.0%	
Transfer Total	223,480	-	0.0%	
GENERAL FUND REVENUE TOTALS	\$ 10,339,851	\$ 474,114.25	4.6%	
YTD CURRENT YEAR PROFIT(LOSS)	\$ (1,443,435)			
YTD BUDGET BENCHMARK	25.0%			-20.4%

**CITY OF ONTARIO
OTHER FUNDS - DEPARTMENT EXPENSES AND REVENUE
FOR THE PERIOD ENDED
SEPTEMBER 30, 2021**

DEPARTMENT/FUND	EXPENDITURES				REVENUES		
	BUDGET	ACTUAL	% EXPENDED		BUDGET	ACTUAL	% REALIZED
002 Marijuana Enforcement Fund	30,000	6,356	21.2%		30,000	6,356	21.2%
010 Grant Fund	152,500	48,553	31.8%		152,500	1,256,279	823.8%
027 Building Fund	200,945	36,750	18.3%		393,464	44,989	11.4%
030 Capital Projects Fund	3,027,069	2,288	0.1%		5,785,897	965,208	16.7%
031 SDC Fund	539,542	-	0.0%		539,542	3,566	0.7%
045 Street Fund	6,048,299	341,290	5.6%		6,048,299	619,947	10.2%
050 Trust Funds	815,886	149,967	18.4%		815,886	157,541	19.3%
055 Reserve Funds	3,951,207	1,539,661	39.0%		5,166,407	106,681	2.1%
060 Revolving Loan Fund	339,021	-	0.0%		339,021	1,308	0.4%
105 Water Fund	6,768,246	548,656	8.1%		8,091,463	1,098,419	13.6%
110 Sewer Fund	8,269,707	527,061	6.4%		9,924,236	851,584	8.6%
115 Storm Sewer Fund	314,109	19,809	6.3%		463,445	27,628	6.0%
120 Airport Fund	436,632	28,043	6.4%		436,632	43,023	9.9%
Comments:							
YTD BUDGET BENCHMARK			25.0%				

**CITY OF ONTARIO
GENERAL FUND
FOR THE PERIOD ENDED
SEPTEMBER 30, 2021**



**CITY OF ONTARIO
BUDGET RESOLUTIONS
FOR THE PERIOD
SEPTEMBER 30, 2021**

RESOLUTION #	FUND	DEPARTMENT	ACCOUNT	BUDGET CHANGE	NET CHANGE
2021-123	SEWER FUND	SEWER FUND	CDBG SEWER PROJECT	\$ 434,744	\$ 434,744.00
2021-123	SEWER FUND	SEWER FUND	CDBG GRANT	\$ 50,000	
2021-123	SEWER FUND	SEWER FUND	CONTINGENCY	\$ (384,744)	
2021-125	AIRPORT FUND	AIRPORT	CARES ACT FUNDING	\$ 13,000	\$ 13,000.00
2021-125	AIRPORT FUND	AIRPORT	SECURITY IMPROVEMENTS	\$ 14,492	
2021-125	AIRPORT FUND	AIRPORT	MINOR AIRPORT IMPROVEMENTS	\$ (1,492)	
2021-130	GENERAL FUND	ADMIN OVERHEAD	CONTINGENCY	\$ (30,000)	\$ (30,000.00)
2021-130	GENERAL FUND	ADMIN OVERHEAD	E IDAHO TRAFFIC STUDY	\$ 30,000	
2021-136	STREET FUND	STREET	MISC STREET REVENUES	\$ 172,297	\$ 129,500.00
2021-136	STREET FUND	STREET	DORIAN STREET IMPROVEMENTS	\$ 25,000	
2021-136	STREET FUND	STREET	AIRPORT WAY STREET PROJECT	\$ 104,500	
2021-136	STREET FUND	STREET	CONTINGENCY	\$ 42,797	
2021-136	CAPITAL PROJECTS	UCF	AIRPORT WAY WATER & SEWER LINE	\$ 35,000	35,000
2021-136	CAPITAL PROJECTS	UCF	CONTINGENCY	\$ (35,000)	
2021-136	STORM SEWER	STORM SEWER	STORM DRAINAGE MAINLINE REPAIR	\$ (10,500)	
2021-136	STORM SEWER	STORM SEWER	AIRPORT WAY STORM SEWER	\$ 10,500	10,500
2021-133	GENERAL FUND	GENERAL REVENUES	TRANSFER IN	\$ 223,480	\$ 223,480.00
2021-133	GENERAL FUND	ADMIN OVERHEAD	DOWNTOWN LIGHTING	\$ 288,480	
2021-133	GENERAL FUND	ADMIN OVERHEAD	DOWNTOWN ATTRACTION	\$ (50,000)	
2021-133	GENERAL FUND	TRANSFERS	TRANSFER TO AIRPORT FUND	\$ (15,000)	
2021-133	AIRPORT FUND	AIRPORT	TRANSFER IN	\$ (15,000)	(15,000)
2021-133	AIRPORT FUND	AIRPORT	PHANTOM CONCRETE PAD	\$ (15,000)	
2021-133	CAPITAL PROJECTS	SPECIAL PROJECTS	CAPITAL ASSET SALES	\$ 223,480	223,480
2021-133	CAPITAL PROJECTS	SPECIAL PROJECTS	TRANSFER OUT	\$ 223,480	
2021-133	SEWER FUND	SEWER	FLOW PACING	\$ 63,465	63,465
2021-133	SEWER FUND	SEWER	CONTINGENCY	\$ (63,465)	



**AGENDA REPORT
DISCUSSION ITEMS
October 26, 2021**

To: Mayor and City Council

FROM: Adam J. Brown, City Manager

THROUGH: Adam J. Brown, City Manager

SUBJECT: TOT INCREASE APPROVAL PROCESS

DATE: October 18, 2021

PROPOSED MOTION:

INFORMATION ONLY

SUMMARY:

Councilor Hart requested that staff provide the process for increasing a transient lodging tax (also referred to as transient occupancy tax) for purposes of supporting the Ontario Aquatic Center and the Malheur County Fairgrounds.

BACKGROUND:

The City currently has a 9% Transient Lodging Tax (TLT). The current distribution is attached. The most recent increase to the TLT was on November 11, 2005 which added an additional 1% tax specifically for the Four Rivers Cultural Center.

The TLT was approved in Ontario as early as 1978. The levy or the appropriation has been amended at least six times since its beginning. It appears that the amount has been changed by the City Council and also by referring the matter to the voters.

CURRENT SITUATION:

Councilor Hart has requested that staff provide information on how an increase to the transient lodging tax could be implemented by an additional 1%. Prior to 2001 there was very little, if any, restrictions on how cities chose to allocate their TLT. Legislation passed in 2001 grandfathered previous allocations of TLT, but required a certain percentage of future increases to be dedicated to tourism related activities or tourism-related facilities.

Tourism related facilities are defined as conference centers, convention centers, visitor information centers, or other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities. A city

can not reduce the amount appropriated towards tourism related activities.

The state has not capped the room tax. Ontario's current tax is at 9%. A breakout of Ontario's tax is attached. A new tax must comply with the 70/30 percent distribution and the 5% collector deduction.

ANALYSIS:

- A. **STRATEGIC PLAN** This generally falls within the desirability goal of the strategic plan and in the "Things to do" strategy of the Ontario Strategic Plan.
- B. **FINANCIAL** One percent of transient lodging tax brings in approximately \$120,000. Of that percent, 5% is required to be returned to the room owners for administration and collection of the tax.
- C. **TIMING** The Council can increase the tax at any time by ordinance. If the Council wished to refer the matter to voters the earliest general election for it to be considered would be in May of 2022.
- D. **POLICY/LEGAL** From my research I believe the Malheur County Fairgrounds and the Ontario Aquatic Center, run by the Ontario Recreation District would be considered under the definition provided by the state for eligible recipients and facilities.

ALTERNATIVES:

Take No Action.

RECOMMENDATION:

Staff recommends that council provide direction on future discussion or requests for moving forward with an increase to the transient lodging tax.

ATTACHMENTS:

- 1. TLT_Guide_-_Updated_Feb_2019
- 2. TOT - 9 Percent Flow Chart_1
- 3. 1894 Levy 5% Transient Room Tax
- 4. 2212 6% TOT
- 5. 2227 OMC 3-11 Amend Ord 2212 Tax Collection 05-18-1987
- 6. 2344(1994) OMC 3-11 1% TOT for WTVCC
- 7. 2382 OMC 3-11 Establish 7% TOT
- 8. 2685-2013 OMC 3-11-4 re TOT Reallocation and Split
- 9. 2797-2021 OMC 3-11 Transient Occupancy Tax 09-28-2021



GUIDEBOOK

LEAGUE OF OREGON CITIES

Legal Guide to Collecting Transient Lodging Tax in Oregon

Updated February 2019

Prepared in cooperation with
Ashley Driscoll and Chad Jacobs,
Beery Elsner & Hammond, LLP



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Introduction

This Transient Lodging Tax Guidebook (“guidebook”) is designed to provide city leaders with background information on the state’s regulation of local transient lodging tax, an overview of how the state law works, and answers to questions regarding: (1) how the tax is collected and remitted to cities; (2) how cities can use the tax revenue; and (3) the impact of making changes to an existing tax. The guidebook also highlights emerging challenges for cities in collecting the tax—mainly, the growing prevalence of short-term rental platforms such as Airbnb and VRBO.

Finally, the guidebook provides documents intended to assist cities in implementing and amending a transient lodging tax, including a model ordinance for amending an existing tax, a model ordinance for regulating short-term rental platforms, a model collection agreement between cities and short-term rental platforms, and model forms including a registration form and a tax remittance form.

Disclaimer

This guidebook is not intended as a substitute for legal advice. Many of the legal issues highlighted herein are not settled law; a city should choose a course of action based on how much risk the city is willing to take. These discussions should be had with a trusted legal advisor.

Background

Since the 1940s, many local governments have imposed some form of a “transient lodging tax” (TLT) on occupied hotel, motel, and inn dwelling units within their jurisdiction. Often, cities and counties would reinvest these funds into their local tourism industries. Some local governments allocated these funds to general fund purposes such as fire, police, streets, and sewers that benefited both residents and tourists alike. Local TLT rates vary based on jurisdiction.

As explained below, the Oregon Legislature first began regulating TLTs in 2003, and then made changes and expansions to the original law with significant changes in 2005, 2013, 2017, and 2018.

Statewide Regulation

In 2003, the Oregon Legislature passed HB 2267, which established a 1 percent statewide TLT and created the Oregon Tourism Commission. The law required the commission to use at least 80 percent of the state-wide tax revenue to fund state tourism and marketing programs and up to 15 percent to implement regional tourism marketing programs. The state tax is administered by the Oregon Department of Revenue with proceeds directed to the semi-independent agency, Travel Oregon.

In addition, HB 2267—over the objections of local government officials from across the state—preempted local control over TLTs and restricted much of a local government’s decision-making in allocating funds from local TLTs. The bill placed restrictions on any new or increased TLT imposed by cities or counties by requiring at least 70 percent of the net revenue to go towards “tourism promotion” or “tourism-related facilities” and requiring local governments to allow lodging tax collectors to retain at least 5 percent of local TLT revenues as reimbursement for collecting the tax.

Local governments with TLTs already in place were “grandfathered” under HB 2267. Local governments with pre-existing TLTs must maintain the distribution ratios they had in place on July 1, 2003, but cannot decrease the percentage of total tax revenue actually expended to fund tourism promotion or tourism-related facilities. For example, if a local government had a 5 percent tax in place on July 1, 2003, with 50 percent of the revenue going to tourism promotion and 50 percent going toward the general fund, the local government must not decrease the portion of the tax revenue going toward tourism promotion and tourism-related facilities below the established 50 percent.

Changes in 2005

In 2005, the Oregon Legislature amended state law to include more than just hotels, motels, inns, and camping spots, but also houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

Most Recent Changes and Challenges

In 2013, the Oregon Legislature passed HB 2656 to address the growing number of online travel companies facilitating transient lodging. The amendments intended to require online travel companies to assess the state and local tax on the sale price of the rooms as paid by the lodger, rather than the discounted price the online travel company originally pays for the room. For example, an online travel company may purchase a block of rooms for \$100 each and then sell rooms to lodgers for \$150, retaining the extra \$50 as their “fee” for facilitating the sale. In November 2013, online travel companies sued the Oregon Department of Revenue, challenging the state and local government’s ability to tax their “fee” for facilitating the sale. The parties later settled without fully resolving this issue.

The 2013 amendments also added transient lodging intermediary to the definition of transient lodging tax collector, intending to hold them responsible for the tax. The change was in response to the growing prevalence of residents engaging in short-term rentals—*i.e.*, individuals or “hosts” who list their homes, or a room in their homes, on a website such as Airbnb or HomeAway and allow “guests” to stay with them and charge rent. The problem is that hosts are often not individuals in the tourism industry, may not be aware of the tax, and their rental may not be allowed by local regulations. For all these reasons, it is difficult to collect the TLT from hosts. Instead of attempting to track down every host within the jurisdiction, the state and many cities—including Portland, San Francisco, and New York City—have instead attempted to impose regulations and requirements on the hosting platforms. This new type of regulation has led to a series of court cases across the country—some of which have been resolved, either through court decision or new legislation.

In 2017, the Legislature passed a bill that gave the Oregon Department of Revenue authority to collect local TLTs on behalf of cities and counties. Note that as of February, 2019, DOR has not begun implementing that program.

Finally, in 2018, the Legislature amended the definition of “transient lodging intermediary” to include online hosting platforms like Airbnb, VRBO, and HomeAway.

Key Definitions

Below are definitions for several relevant terms commonly used when discussing TLTs in Oregon. These definitions are found in ORS 320.300.

Transient lodging tax “means a tax imposed by a unit of local government on the sale, service or furnishing of transient lodging.” ORS 320.300(4).

Transient lodging “means (a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; (b) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or (c) Houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any dwelling units, that are used for temporary human occupancy.” ORS 320.300(11). Note that transient lodging includes both traditional lodging businesses like hotels and motels as well as individuals who rent out all or a portion of their home.

Transient lodging provider “means a person that furnishes transient lodging.” ORS 320.300(13).

Transient lodging intermediary “means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging.” ORS 320.300(12) (added in 2013). Under HB 4120 (2018), all online platforms that facilitate short-term rentals (*i.e.*, Airbnb, VRBO, etc.), are considered “transient lodging intermediaries” and are thus required to collect TLTs.

Transient lodging tax collector “means a transient lodging provider or a transient lodging intermediary.” ORS 320.300(14).

Collection reimbursement charge “means the amount a transient lodging tax collector may retain as reimbursement for the costs incurred by the transient lodging tax collector in collecting and reporting a transient lodging tax and in maintaining transient lodging tax records.” ORS 320.300(1).

Tourism-related facility “means: (a) A conference center, convention center, or visitor information center; and (b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.” ORS 320.300(9).

Tourism promotion “means any of the following activities: (a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists; (b) Conducting strategic planning and research necessary to stimulate future tourism development; (c) Operating tourism promotion agencies; and (d) Marketing special events and festivals designed to attract tourists.” ORS 320.300(7).

How the Law Works

Local governments can impose a tax on transient lodging at any rate.¹ People paying for transient lodging—*i.e.*, tourists or others who rent out the transient lodging—are responsible for paying the tax. Transient lodging tax collectors are responsible for collecting the tax from the tourist and remitting it to the local government. The 2013 amendment to state law clarified that the transient lodging taxes are on the total retail price the occupant pays.

Remittance and Reimbursement

TLT collectors are required to keep sufficient records regarding the tax and to remit the tax to the local government on a schedule determined by the local government.² To offset the administrative burden, TLT collectors can retain a reimbursement.

The amount a local government must allow TLT collectors to retain as a reimbursement varies depending on when the local government first imposed the TLT and if the local government has increased the tax:

Grandfathered Tax: Local governments that imposed a TLT before January 1, 2001, may maintain whatever reimbursement rate they allowed before January 1, 2001, but cannot decrease it. For example, if the collector could retain 4 percent to offset its administrative burden, the city does not have to change the rate, but it cannot decrease it. If the local government had a TLT and had no reimbursement before January 1, 2001, the local government need not provide one.

New Tax: Local governments that impose a new TLT on or after January 1, 2001, must allow collectors to retain a minimum of 5 percent of all collected tax revenues as reimbursement for the costs of collecting the tax.

Increased Tax: Local governments that increase a TLT on or after January 1, 2001, must allow a collector to retain a minimum of 5 percent of *all collected tax revenues*, including revenues that would have been collected without the increase, as reimbursement for the costs of collecting the tax. Said differently, if the local government increases an existing tax, the 5 percent reimbursement minimum applies to the *entire* tax collected, not simply the difference between the former tax rate and the new tax rate. In addition, a local government cannot take certain actions to offset the increased reimbursement rate.³

¹ The Oregon Travel Impacts report, prepared annually for the Oregon Tourism Commission by Dean Runyan Associates, collects TLT rate and annual revenue information on all cities and counties. See <http://industry.traveloregon.com/content/uploads/2018/05/Dean-Runyan-FINAL-2018.pdf>.

² There are alternative remittance methods for camping and recreational vehicle spaces. See ORS 320.347.

³ A unit of local government may not offset the loss of local transient lodging tax revenues caused by collection reimbursement charges allowed under this section by: (a) Increasing the rate of the local transient lodging tax; (b)

In 2017, the Legislature amended ORS 305.620 to allow the Oregon Department of Revenue (DOR) to collect local TLTs on behalf of cities. Under that amendment, the DOR is permitted to collect local TLTs if a city and the DOR enter into an intergovernmental agreement and the DOR recoups their administrative costs. For such a collection effort to occur, a city's collection and accounting practices must be coordinated with collection and accounting procedures used by the DOR. The League anticipates that the intergovernmental agreement for TLT collection will closely resemble the model intergovernmental agreement used by the DOR to collect local marijuana taxes. Before the DOR can enter into agreements and begin collection for local governments, the DOR must alter their own state collection processes and tax forms (currently segregated by 10 regions across the state, rather than by city and county). In addition, their computer system will need to be revised to distribute the taxes appropriately to the correct local government taxing districts. The up-front costs are estimated at \$900,000. The League is working with the DOR and the Legislature on a payment method and anticipates a bill in the 2019 legislative session to help resolve that issue.

The Legislature also amended ORS 320.332 in 2017, which authorizes cities and the DOR to share confidential TLT information with one another to improve the abilities of state and local governments in collecting TLTs. The DOR has not begun sharing information but is expected to adopt rules in consultation with local governments soon that establish the process for making requests and provide forms for records requests. *See* ORS 320.332(7).

How Cities Can Use TLT Revenue

Although state law does not restrict the tax rate a local government may impose on transient lodging, it does restrict how the revenue from newly imposed or newly increased TLTs can be used. As a basic mandate, a local government that did not have a TLT in place or approved on July 1, 2003, may not impose one, unless the local government ensures that at least 70 percent of the TLT revenue will be used for tourism promotion, tourism-related facilities, or to finance or refinance debt for tourism-related facilities. The local government is at liberty to allocate up to 30 percent for general city or county services (hereinafter “the 70/30 distribution”).

Grandfathered Taxes

If a local government already had a TLT in place or approved on or before July 1, 2003, the local government's use of the tax revenue is grandfathered, with the following caveat: the local government may not decrease the percentage of total TLT revenues that were expended or agreed to be expended to fund tourism promotion or tourism-related facilities.⁴ For example, if a

Decreasing the percentage of total local transient lodging tax revenues used to fund tourism promotion or tourism-related facilities; or (c) Increasing or imposing a new fee solely on transient lodging tax collectors or tourism promotion agencies that are funded by the local transient lodging tax. ORS 320.345(4).

⁴ The actual recipients of the tax may change, but the total percentage going toward tourism promotion or tourism-related facilities may not.

local government imposed a 5 percent TLT in 1990 and allocated 20 percent of the funds to tourism promotion and 80 percent to the general fund, the local government may continue to do so. The local government may even increase the total percent of the revenue allocated for tourism promotion or tourism-related facilities, but it may not decrease it below 20 percent. See below for restrictions that apply to increased taxes.

New TLTs

Under HB 2267 (2003), codified in ORS 320.350, local governments that impose a new TLT after July 1, 2003, may only expend TLT revenue in three ways:

- (1) For “tourism promotion” or “tourism-related facilities” as those terms are defined in ORS 320.300;
- (2) For city and county services; or
- (3) To finance or re-finance the debt on tourism-related facilities and pay associated administrative costs, with some restrictions.

In addition, if the local government imposes a new tax, it must comply with the 70/30 distribution and the 5 percent collector reimbursement deduction.

Increasing a Grandfathered Tax

If the local government has a grandfathered TLT, it may increase the tax rate. However, doing so will trigger the 70/30 distribution. Although not completely free from doubt (see Appendix A), most local governments interpret the 70/30 distribution to only apply to the revenue from the *increased portion* of the TLT, *not the total revenue* generated from the entire TLT.

For example, if the local government had a 5 percent grandfathered tax with 20 percent going to tourism promotion and 80 percent going to the general fund, it could continue to apply the 20/80 distribution. If, however, the local government increased the tax to 8 percent, the 20/80 distribution would apply to revenue generated from the grandfathered 5 percent rate, and the 70/30 distribution would apply to revenue generated from the additional 3 percent rate. In addition, an increase will trigger a 5 percent collector reimbursement requirement under ORS 320.345(3).

What are “Tourism-Related Facilities”?

By definition, tourism-related facilities are conference centers, convention centers, visitor information centers, or other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities. ORS

320.300(9). The law also provides definitions for conference centers⁵ and convention centers.⁶ Unfortunately, the law does not provide any additional guidance on what constitutes “other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.”

Many local governments—especially those that tend to accommodate more tourists than residents—question whether infrastructure such as sewers or roads qualify as “tourism-related facilities.” That is an open legal question. Local governments seeking to use TLT revenue on public facilities used both by residents and tourists are encouraged to contact legal counsel for further guidance.⁷

Other Amendments to a Grandfathered Transient Lodging Tax Ordinance

Local governments with grandfathered TLTs may be interested in updating their codes to address the challenges in collecting from the online short-term rental marketplace but are hesitant to do so out of concern that amending their tax ordinance to capture short-term rentals will jeopardize their grandfathered status. Although not free from doubt, for most cities, amending an existing code to collect from the short-term rental marketplace will likely not impact the status of a grandfathered tax. However, cities seeking to make this change, or similar changes, should consult with their city attorneys.

Grandfathered status may be lost if the city imposes a “new” tax. Generally, a city imposes a “new” tax when it creates an obligation to pay the charge. Most cities will likely be able to maintain their grandfathered status because their current code language already *imposes* a tax on the occupants of short-term rentals (*i.e.*, the city already created the obligation to pay) and the code amendments pertain only to how the city will *collect* that tax.⁸

⁵ “Conference center” means a facility that: (a) Is owned or partially owned by a unit of local government, a governmental agency or a nonprofit organization; and (b) Meets the current membership criteria of the International Association of Conference Centers. ORS 320.300(2).

⁶ “Convention center” means a new or improved facility that: (a) Is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting rooms and any other associated space, including without limitation banquet facilities, loading areas and lobby and registration areas; (b) Has a total meeting room and ballroom space between one-third and one-half of the total size of the center’s exhibition space; (c) Generates a majority of its business income from tourists; (d) Has a room-block relationship with the local lodging industry; and (e) Is owned by a unit of local government, a governmental agency or a nonprofit organization. ORS 320.300(3).

⁷ Todd Davidson requested an Attorney General opinion on this issue in 2008. See Opinion Request OP-2008-32008 WL 5246389 (Or. A.G. Nov. 14, 2008). Attorney General opinions are advisory only and therefore do not have the force of law.

⁸ A government imposes a tax when it creates a legal obligation to pay the charge. See *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 379 (1993). A local government may amend a tax code without “imposing” a new tax if the amendments do not pertain to “those portions of a local government enactment that relate to the imposition of a charge.” *Homebuilders Ass’n of Metropolitan Portland v. Metro*, 250 Or App 437, 445 (2012) (discussing the text of a statute that prohibits a local government from imposing a new tax on construction). Similarly, a local government

To discern whether the city has already imposed a tax on short-term rentals, the city should review their definition of “transient lodging.” If the definition includes broad language that covers renting out all or a portion of one’s home, the city could likely collect from occupants of short-term rentals without “imposing” a new tax.

New Challenges: Short-Term Rental Platforms such as Airbnb, VRBO, and Others

Hosting platforms (usually internet sites) that act as facilitators to connect “hosts” and “guests” pose a challenge for local governments attempting to collect a TLT from a “host” that either is not aware of the tax or is seeking to avoid tax and regulation. As background, most cities that have a TLT also have a registration requirement—anyone furnishing transient lodging must register and thereafter comply with the tax and other local regulations.

Challenges

Hosts may be unaware of the regulation. Individuals renting out all or part of their homes may not be aware of a local tax and registration requirement. Further, such individuals may not want to register because doing so puts them in the regulatory spotlight as many local governments in Oregon are specifically regulating the short-term rental market to ensure the safety of both hosts and guests.⁹ As an additional challenge, many hosts do not collect payment directly from guests. The guests often pay via an online platform—such as Airbnb or VRBO—which then transfers the payment to the hosts.

Hosting platforms are not incentivized to assist local governments. Hosting platforms such as Airbnb and VRBO historically have been resistant to complying with local governments in collecting TLTs or enforcing local regulations. Many hosting platforms do not want to divulge the list of properties advertising on their website because they are likely aware of some properties that are not in compliance with local regulations, and as such, divulging property locations could limit their client list.

In addition, the hosting platforms do not wish to assume liability for acts of the hosts—meaning the online platform would be fined or penalized when a local host does not pay the tax or comply with local regulations.

Legal Challenges. In 2013 the Legislature passed HB 2656 and added the term “transient lodging intermediary” to ORS 320.300. The bill was intended to require intermediaries to pay taxes directly rather than forwarding taxes to the transient lodging provider. That is, the “tax

may amend “other elements of an ordinance that may in some way relate to the administration of a tax but do not directly bear on its imposition.” *Id.*

⁹ These regulations are outside the scope of this guidebook. However, sample regulations include working smoke detectors and bedrooms with legal egress.

shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging.”¹⁰ However, some online travel companies and hosting platforms argued that they were not transient lodging intermediaries under the state law (and local ordinances that track state law) because they did not “charge for occupancy.” Instead, they argued, they only facilitated the transaction between the host and the occupant. ORS 320.300(12). Likewise, those companies argued that they were not required under state law to collect and remit TLTs because they did not “receive the rent.” ORS 320.350(7)(b). HB 4120 (2018), however, clarifies that hosting platforms are indeed transient lodging intermediaries and therefore are required to collect TLTs from hosts. HB 4120 became effective on July 1, 2018.

Internet hosting platforms have also challenged local governments’ ability to regulate them under the federal Communications Decency Act of 1996 (“CDA”) and the federal Stored Communications Act (“SCA”). Under the CDA, no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. The CDA also includes an express preemption clause, mandating “[n]o cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with this section.” 47 U.S.C. § 230(e)(3). The SCA restricts government access to stored electronic communications by limiting the government’s ability to compel internet service providers to disclose information in their possession about their customers or subscribers. 18 U.S.C. §§ 2701—2712.

In layman’s terms, under the CDA, an online platform such as Airbnb cannot be held responsible for monitoring the content of its internet site, and local governments cannot pass regulations to make them responsible. Therefore, a local government cannot force an online platform to ensure that every property on their website is registered with the city and complying with the tax as a condition of advertising on the internet platform. Doing so would require the online platform to monitor the content.

Recently, the California Court of Appeal upheld an administrative subpoena issued by the city of San Francisco to HomeAway. The subpoena sought information relating to hosts who had used HomeAway to offer accommodations in the city, as well as data identifying rental transactions between hosts and occupants that used the HomeAway platform. HomeAway argued that the city’s subpoena violated the SCA and HomeAway’s constitutional rights. The California Court of Appeal disagreed, explaining that Section 2703(c)(2) authorizes the government to issue an administrative subpoena to obtain a limited set of records from an internet service provider, such as the identity of a subscriber and the services the subscriber has utilized. Although the California decision is not precedential in Oregon, it offers a good analysis for local governments who are faced with arguments that their ordinances or administrative enforcement of TLTs violates federal law.¹¹

¹⁰ See ORS 320.305(1)(c) and ORS 320.350(7)(b).

¹¹ Cities wishing to issue an administrative subpoena for records must first pass an ordinance granting subpoena authority to the city council and/or select staff members. LOC’s model subpoena ordinance is available at: <https://www.orcities.org/application/files/1115/7904/4210/ModelSubpoenaOrdinance3-10-19.pdf>.

Potential Solutions

Under HB 4120 (2018), online transient lodging platforms are considered “transient lodging intermediaries” under ORS 320.300, unless otherwise provided by city or county ordinance, resolution, or agreement. Cities wishing to require hosting platforms and online travel companies to collect and remit the local TLT should ensure that local ordinances and agreements utilize the definition of “transient lodging intermediary” found in Section 1 of HB 4120 (amending ORS 320.300).

Model Ordinance – Appendix B

The model ordinance attached to this guidebook regulates two different actions hosting platforms may undertake:

- (1) Accepting a registration fee from hosts: Hosting platforms may only accept registration fees from hosts if the host produces a certificate indicating it has registered with the city.
- (2) Facilitating the payment of rent: Any hosting platform that collects rent from the occupant—even if they are not the final recipient of the funds—is also then responsible for collecting and remitting the TLT.

Model Collection Agreement – Appendix D

The second approach is to have an ordinance that does not address short-term rentals and instead separately negotiate an agreement with desired hosting platforms for tax collection. Quite a few local governments in Oregon have taken this approach, as it avoids the possibility of litigation.

This approach has its difficulties, including requiring separate agreements with each internet platform (VRBO, Airbnb, HomeAway, etc.) and ensuring that if a new internet platform enters the market, the city contacts and negotiates an agreement with them as well. Following the passage of HB 4120 (2018), local governments should no longer need to enter into voluntary tax collection agreements with online short-term rental platforms, because HB 4120 clarified that such companies are “transient lodging intermediaries” and thus required to collect and pay TLTs.

The collection agreements that online platforms have agreed to with local jurisdictions in Oregon have been problematic because they do not require the online platform to divulge the name or location of hosts. This makes it difficult for local governments to locate hosts to ensure the transient lodging facilities comply with the local health and safety codes, along with land use codes. The new law requires them to collect taxes, file a tax return, and pay taxes.

Ordinance and a Collection Agreement

A final option would be to draft an ordinance (or amend an existing code) to address short-term rental internet platforms *and* negotiate an agreement with the platforms for tax

collection. Using this option, a city could use the ordinance as a backstop to impose regulations on those platforms that it does not have an agreement with, but permit platforms with whom the city has an agreement to be bound by the agreement instead. Again, voluntary collection agreements are no longer necessary, because HB 4120 clarified that internet short-term rental platforms are transient lodging intermediaries and are required to collect TLTs.

The difficulties with this approach are similar to those that exist with simply having collection agreements—*i.e.*, separate agreements create different standards and the lack of information regarding the name or location of hosts.

Which option may best serve the needs of a particular city is likely dependent upon the unique circumstances of each community. To that end, cities are once again encouraged to consult with trusted legal counsel about how best to proceed.

Conclusion

The landscape of the local TLT is evolving and will continue to do so as technology and possibly even state law continues to change. The League of Oregon Cities will update this guide to address such changes as they come about, but cities should remain aware of this changing landscape and adapt their local TLT programs to address their individual local needs.

Appendix A

Legal Note – Increasing a Grandfathered Tax

The Oregon Legislature drafted the 70/30 distribution in ORS 320.350(6) to apply to “net revenue from a new or increased tax.” Whether the 70/30 distribution applies to all the revenue generated from an increased tax or is limited to the revenue generated from the increased portion of the tax is a matter of statutory interpretation. Although no court has examined the matter, a close reading of the statute and legislative history reveal the drafters intended the 70/30 distribution to apply only to the increased portion of tax.

Because this matter hinges on the proper understanding of ORS 320.350, one should employ the three-part hierarchical inquiry for statutory construction. *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993), modified by *State v. Gaines*, 346 Or 160, 171-72 (2009). The first step is to analyze the text and context of the statute. *Id.* The second level examines legislative history. *Id.* Finally, if the legislative intent is still inconclusive, the analysis shifts to non-textual maxims of statutory construction. *Id.*

a. The Text is Ambiguous.

Although the actual text of the statute is the best evidence of legislative intent, the statutory text at issue here could plausibly mean either that the 70/30 distribution applies to: (1) the revenue generated from the entire tax, as increased, or (2) the revenue generated from the increased portion of the tax. As such, one must proceed to examine the statute’s context.

b. Courts should infer from the statutory context that the Legislature intended the 70/30 distribution to apply only to revenue generated from the increased portion of the tax.

In examining the context of the statute, the Legislature intended the 70/30 distribution to apply only to the revenue from the increased portion of the tax. This intent is best displayed by comparing the text in ORS 320.350(6) to a similar provision in a related statute drafted at the same time, ORS 320.345(3). In ORS 320.345(3), the drafters provided that when a local government increases an existing transient lodging tax, such an increase triggers a change in the reimbursement percentage for collectors to “at least five percent of all collected local transient lodging tax revenues, *including revenues that would have been collected without the increase.*” (Emphasis added). In other words, for the reimbursement change the Legislature explained that the new requirement applied to *the entire tax, as increased*, and not simply *the increased portion of the tax*.

When construing a statute, courts consider “the context of the statutory provision at issue, which includes other provisions of the same statute and other related statutes,” and statutory provisions drafted contemporaneously. *PGE*, 317 Or at 611, *see also State v. Stamper*, 197 Or App 413, 417-18 (2005). Moreover, courts presume that the Legislature’s use of a provision in one law and the omission of the provision in a related law means that they intended to omit the concept in the related law. *Stamper*, 197 Or App at 418-19. The Legislature chose not to

include language similar to that included in ORS 320.345(3) language when drafting the 70/30 distribution requirement. As a result, the court must infer the Legislature intended the 70/30 distribution in ORS 320.350 to apply only to the increased portion of the tax.

c. The legislative history confirms the 70/30 distribution only applies to revenue from the increased portion of the tax.

The statute's legislative history confirms the contextual interpretation. In general, "an examination of legislative history is most useful when it is able to uncover the manifest general . . . intent behind an enactment." *Gaines*, 346 Or at 172-3. In testimony and documents presented during the drafting of HB 2677, proponents and opponents alike demonstrated an understanding that the 70/30 distribution only applied to a newly imposed tax or "new revenue" from an increased tax.

Testimony during the committee debates revealed a common understanding regarding the meaning of the term "increased tax." As Ken Strobeck from the League of Oregon Cities explained at a hearing in front of the House Revenue Committee, in all versions of the bill there is "an agreement of 'maintenance of effort' clause," meaning that local governments will be free to "freeze" or maintain what they are currently doing, and the new requirement would only apply to any newly generated, or "additional," tax. Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267) July 23, 2003, Tape 224, side A. This testimony was not challenged.

Other documentation presented during the hearings echoed Strobeck's understanding. For example, Scott West, one of the bill's chief architects, presented an exhibit titled "Summary of HB 2267-9 Proposed Amendments" dated June 25, 2003. The exhibit summarizes the progression of the amendments for the portion of the statute related to increased TLTs: the "[o]riginal bill mandated that *revenues raised from additive increase* to the local tax rate after the implementation date were exclusively (100 percent) dedicated to tourism promotion or tourism-related facilities. Amendments mandate that a minimum of 70 percent of *new revenues* would be dedicated to tourism promotion or tourism related facilities." (Emphasis added).¹² When increasing a tax, the "new revenue" is the revenue produced from the increase, not the revenue produced from the pre-existing tax. By using this language, West demonstrates he intended the 70/30 distribution to apply only to the increased portion of the tax.

By using terms "maintenance of effort" and "new revenue" to describe their intention in how local governments may use tax dollars in the future, the drafters acknowledged that the

¹² West makes a similar statement in his memorandum to the House Revenue Committee on April 17, 2003 titled "Support for HB 2267: the Oregon Tourism Investment Proposal." He stated that HB 2267 does "three important things," one of which is to "protect local resources," that to "fund local tourism project, a local room tax may be increased, or instituted, if . . . 100% of the new tax revenue is for tourism promotion and/or tourism facilities purposes."

distribution only applies to new funds; local governments are able to maintain their current course for all funds generated by the pre-existing tax.

Although this conclusion is not free from doubt as it has not been clarified by the Legislature nor interpreted by a court, using Oregon's statutory interpretation methodology, the text, context and legislative history for ORS 320.350(6) reveals that the drafters intended the 70/30 distribution to apply to the increased portion of a pre-existing tax.

Appendix B

Model TLT Ordinance

AN ORDINANCE OF THE CITY OF [NAME] IMPLEMENTING A [INSERT PERCENT] TRANSIENT LODGING TAX

WHEREAS, a local transient lodging tax is a tax imposed by a local government on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, ORS 320.350 provides that a city council may impose a new local transient lodging tax if at least seventy percent (70%) of the net revenue shall be used to fund tourism promotion or tourism-related facilities or certain debt-related expenses and no more than thirty percent (30%) of net revenue may be used for city services; and

WHEREAS, the city wishes to require any person other than a transient lodging provider that facilitates the retail sale of transient lodging and: charges for occupancy of the transient lodging; collects the consideration charged for occupancy of the transient lodging; or receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging and remitting the tax to the city; and

WHEREAS, the city council wants to impose a [insert percent] transient lodging tax.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Chapter [insert chapter number] is hereby added to the [insert name of city] municipal code as follows:

Section 1: DEFINITIONS

The following definitions apply in this chapter.

A. **Transient Lodging Provider** means a person that furnishes transient lodging.

B. **Transient Lodging Intermediary** means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

- a. Charges for occupancy of the transient lodging;
- b. Collects the consideration charged for occupancy of the transient lodging; or

- c. Receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging.

C. **Transient Lodging Tax Collector** means a transient lodging provider or transient lodging intermediary.

D. **Occupancy** means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

E. **Occupant** means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

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

G. **Rent** means the consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent.

H. **Short-Term Rental** means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents a guest bedroom or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

I. **Short-Term Rental Hosting Platform** means a business or other person that facilitates the retail sale of transient lodging by connecting occupants with transient lodging providers, either online or in any other manner. Short-term rental hosting platforms are transient lodging intermediaries.

J. **Tax Administrator** means the [Finance Director or other position] of the City of [insert].

K. **Transient Lodging or Transient Lodging Facilities** means:

- (1) Hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;
- (2) Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or

- (3) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

L. **TLT** or **tax** means the transient lodging tax.

Section 2: TAX IMPOSED

A. Effective [DATE], each occupant shall pay a TLT in the amount of [TAX RATE] percent of the rent. The occupant shall pay the TLT with the rent to the transient lodging tax collector. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.

B. Bills, receipts or invoices provided to occupants shall list the TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the city, less the [PERCENT¹³] percent administrative charge.

Section 3: COLLECTION OF TAX BY TRANSIENT LODGING TAX COLLECTOR

A. Every transient lodging tax collector shall collect the TLT at the time rent is paid, unless an exemption applies. If payment is by credit card, for purposes of this section, payment is made at the time credit card information is provided to the transient lodging tax collector, not when the transient lodging tax collector ultimately receives credit for the transaction. While holding the payment in trust for the city, a transient lodging tax collector may commingle the tax proceeds with the transient lodging tax collector's funds, but the transient lodging tax collector is not the owner of tax proceeds, except that, when a return is filed, the transient lodging tax collector becomes the owner of the administrative fee authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payment based on amounts accrued but not yet collected. The transient lodging tax collector is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant.

B. Upon request of the city, transient lodging tax collectors must provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

¹³ For new or increased TLTs, the administration fee cannot be less than 5%. *See* ORS 320.345.

Section 4: SHORT-TERM RENTAL HOSTING PLATFORM FEES

A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

Section 5: LIABILITY FOR TAX

Transient lodging providers who receive any portion of the rent for transient lodging and transient lodging intermediaries that provide booking service are both transient lodging tax collectors and are jointly and severally liable for the tax.

Section 6: EXEMPTIONS¹⁴

No TLT shall be imposed upon:

- A. A dwelling unit in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;
- B. A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;
- D. A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;
- E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or
- F. A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:
 - (1) All dwelling units occupied are within the same facility; and
 - (2) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

¹⁴ Under state law, exemptions are only applicable to the state tax, but most local jurisdictions choose to apply the exemptions to the local tax as well.

Section 7: REGISTRATION OF TRANSIENT LODGING PROVIDER – FORM AND CONTENTS – EXECUTION – CERTIFICATION OF AUTHORITY

A. Every person engaging or about to engage in business as a transient lodging provider shall provide a completed registration form to the tax administrator within 15 calendar days after commencing business. The registration form shall require the transient lodging provider to provide the name of the business, any separate business addresses, and other information as the tax administrator may require to implement this Chapter. Transient lodging providers who own or operate transient lodging facilities in [CITY] shall provide the address of the lodging facility. The registration form shall be signed by the transient lodging provider. The tax administrator shall, within 15 days after registration, issue without charge a certificate of authority to collect the TLT. The transient lodging provider's obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If the rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction.

B. Certificates shall be non-assignable and non-transferable and shall be surrendered to the tax administrator when the business is sold or transferred or when a transient lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to a transient lodging provider for a specific lodging facility shall be prominently displayed at the lodging facility and include:

- (1) The name of the transient lodging provider;
- (2) The address of the transient lodging facility;
- (3) The date the certificate was issued; and
- (4) The certificate number as assigned by the tax administrator.¹⁵

Section 8: REMITTANCES AND RETURNS

A. Transient lodging tax collectors must submit a completed tax return form to the tax administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a [five percent] administration fee.¹⁶

¹⁵ A certificate of authority should look something like a building permit or any city-issued permit.

¹⁶ Under ORS 320.345, 5 percent is the minimum reimbursement for new or increased TLTs. Cities can choose to increase this percentage, but not decrease it.

Cities can alter the tax due date. This schedule aligns with the state TLT under ORS 320.315.

In addition, ORS 320.347 makes an exception for camping and recreational vehicle spaces:

- B. The transient lodging tax collector is entitled to the administration fee. If a transient lodging facility has multiple owners, they are not entitled to retain additional fees.
- C. Remittances are delinquent if not made by the last day of the month in which they are due.
- D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the administrative fee retained by the transient lodging tax collector. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.
- E. Tax returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.
- F. The tax administrator may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except by the city council. Any transient lodging tax collector to whom an extension is granted shall pay interest at the rate of [PERCENT] per month on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties.

Section 9: PENALTIES AND INTEREST

- A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the tax administrator was originally required to be filed to the time of payment.
- B. If a transient lodging tax collector fails to file a return or pay the tax as required, a penalty shall be imposed in the same manner and amount provided under ORS 314.400.
- C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted to the tax administrator.
- D. Taxes, interest, and penalties paid to the tax administrator under this section shall be distributed to the city's {Name of Designated Fund}.

“(1) Except as provided in this section, a unit of local government that imposes a tax on the rental of privately owned camping or recreational vehicle spaces shall, regardless of a schedule imposed by the unit of local government for remitting tax receipts, allow a transient lodging tax collector to hold the tax collected until the amount of money held equals or exceeds \$100.

(2) Once the amount held by a transient lodging tax collector equals or exceeds \$100, or by December 31 of each year if the \$100 threshold is not met, the transient lodging tax collector shall remit the tax collected at the next following reporting period established by the unit of local government for payment of the tax.

(3) A unit of local government may not assess any penalty or interest against a transient lodging tax collector that withholds payments pursuant to this section.”

Section 10: DEFICIENCY DETERMINATION – FRAUD, EVASION, LOCAL TAX TRUSTEE DELAY

A. Deficiency Determination. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the transient lodging tax collector, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.

- (1) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.
- (2) Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
- (3) The time to remit deficient payment amounts under this section shall be extended if the local tax trustee timely requests a redetermination.

B. Fraud – Refusal to Collect – Evasion. If any transient lodging tax collector fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the transient lodging tax collector for tax remittance, interest and penalties and provide notice to the transient lodging tax collector of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final 10 business days after the date notice was delivered if no petition for redetermination is filed.

Section 11: REDETERMINATIONS

A. Any person affected by a deficiency determination may file a petition for redetermination with the tax administrator within 10 business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.

B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least 20 business days to prepare for the hearing.

C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and mail the decision to the petitioner. During the redetermination process, the tax administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.

D. The decision of the tax administrator on redetermination becomes final and payment is due 10 business days after the decision is mailed unless the petitioner files an appeal to the city council within that time. The appeal shall be filed with the tax administrator. The city council's decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within 10 business days of mailing of the city council decision.

Section 12: COLLECTIONS

A. The city may bring legal action to collect on any amounts owed to the city under this chapter within three years after remittance is due to the city or within three years after any determination becomes final.

B. The city is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the city under this chapter.

Section 13: LIENS

The city may record a lien in the city's lien docket against any real property owned by a transient lodging provider who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the transient lodging provider.

Section 14: REFUNDS

A. Refunds by City to Transient Lodging Tax Collector. If the transient lodging tax collector remits more tax, penalty or interest than is due, the transient lodging tax collector may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the transient lodging tax collector.

B. Refunds by City to Occupant. A transient lodging tax collector may file a claim for refund by filing a claim in writing within three years of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund to the occupant.

C. Refunds by Transient Lodging Tax Collector to Occupant. If an occupant has paid tax to a transient lodging tax collector but stays a total of 30 or more consecutive days in the same transient lodging facility, the transient lodging tax collector shall refund to the occupant any tax collected for any portion of the continuous stay. The transient lodging tax collector shall account for the collection and refund to the tax administrator. If the transient lodging tax collector has remitted the tax prior to the refund or credit to the occupant, the transient lodging tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.

D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

Section 15: ADMINISTRATION

A. Use of TLT Funds.¹⁷ Seventy percent of the revenue from the tax rate of [tax rate] shall be used for tourism promotion and tourism -related facilities. Thirty percent of the revenue of the [tax rate] shall be used for City services.¹⁸

B. Records Required from Local Tax Trustee. Every local tax trustee shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months.

C. Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee relating to receipt of rent and TLT and remittance of tax during normal business hours and may obtain copies of the records to audit returns.

D. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. Rules and regulations of general application shall be mailed to all registered transient lodging

¹⁷ The example provided here assumes the city did not have a TLT prior to 2003 and therefore the entire tax is subject to the 70/30 distribution required by state law for newly imposed TLTs. ORS 320.350. If a city has a grandfathered TLT with a different distribution ratio and the city would like to increase the tax rate, it may do so but the increase will trigger the 70/30 distribution required by state law. Although not completely free from doubt, most local governments interpret the 70/30 distribution to only apply to the *increased portion* of the TLT, *not the total revenue* generated from the increased tax as a whole.

For example, if the local government had a 5 percent grandfathered tax with 20 percent going to tourism promotion and 80 percent going to the general fund on or before July 1, 2003, it could continue to apply the 20/80 distribution. However, if the local government increased the tax to 8 percent, the 20/80 distribution would apply to the funds raised by the grandfathered 5 percent and the 70/30 distribution would apply to the funds raised by the 3 percent increase. Sample language for this scenario would be:

Twenty percent of the revenue from the first 5 percent shall be used for tourism promotion and 80 percent of the revenue from the first five percent of the tax shall go into the general fund. Seventy percent of the funds generated by the remaining three percent of the tax may be used for any tourism purpose consistent with state law. Thirty percent of the funds generated by the remaining 3 percent shall go into the general fund.

¹⁸ Cities are advised to closely track TLT funds. The best practice is to form a “Tourism Fund” where the tax revenue is used only for tourism promotion and tourism-related facilities. In this way, if the city’s compliance with ORS 320.350 is ever challenged, the city can prove the funds were used appropriately. If TLT funds are placed in the general fund, or combined with other tax revenue, this may be more difficult.

Likewise, if a city transfers TLT funds to a third party—such as a chamber of commerce—the city should have an agreement with the third party which gives the city the ability to audit the funds to ensure compliance with the law. Please see Appendix C for recommended language to include.

providers. The tax administrator may also issue written interpretations on request of a transient lodging tax collector. As to the transient lodging tax collector to whom the interpretation is issued, the City will act consistently with the interpretation until it is withdrawn, and the city shall provide 30 days' written notice of withdrawal of an interpretation.

E. Confidential Character of Information Obtained – Disclosure Unlawful. The city shall maintain the confidentiality of information provided by transient lodging tax collector. Nothing in this subsection shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.
- (2) Disclosure of information to the transient lodging tax collector and the transient lodging tax collector's agents.
- (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
- (4) The disclosure of general statistics regarding taxes collected or business done in the City.
- (5) Disclosures required by ORS Chapter 192.
- (6) Disclosures required by ORS Chapter 297.

Section 16: APPEALS TO CITY COUNCIL

Any person aggrieved by any decision of the tax administrator may appeal to the city council by filing a written appeal with the tax administrator within 10 business days of the serving or mailing of the decision being appealed. The city manager shall schedule the hearing on a city council agenda and provide the appellant notice of the hearing at least 10 business days before the hearing. The city council may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the tax administrator to the city council by filing a written appeal within 10 business days of the mailing of the notice of the regulation.

Section 17: PENALTY¹⁹

A violation of this chapter is a Class A civil infraction. Each day that a violation remains uncured is a separate infraction.

¹⁹ Cities may want to include a penalty section or make violations subject to the city's general penalty, if applicable.

Appendix C

Model Language for Fund Transfer Agreement with Third Parties

NOTE: This is not a full agreement. Cities will want to craft a full agreement, tailored to their needs, with a third party using TLT tax revenue. This attachment provides sample language to include in such an agreement to ensure cities can monitor how third parties use TLT funds.

- Upon termination of this Agreement, any TLT funds within the control of [third party] shall be immediately returned to the city unless [third party] can demonstrate to the city's satisfaction that such funds are required for the payment of an existing legal obligation related to services provided by [third party] under this Agreement.
- City agrees to disburse to [third party], [percent] of the TLT funds collected during any fiscal year in which this Agreement is in effect. City will make such distributions on a [monthly/quarterly/annual] basis.
- [Third party] agrees to expend funds only for the purposes of "tourism promotion" or "tourism-related facilities" as those terms are defined by ORS 320.300 and in accordance with [reference to specific agreement between third party and city regarding use of funds].
- During the term of this Agreement, [third party] agrees to make a monthly presentation to the city council at one of its regularly scheduled meetings regarding [third party's] progress and accomplishments to date.
- [Third party] agrees to submit an annual fiscal year budget for the use of TLT funds to the city for its review, amendment and adoption in the manner and at the time established by the city during the city budget process for any year in which this Agreement is in effect.
- [City] and its representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all [third party] records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with TLT revenue shall be retained by [third party] and all of their contractors for three years to facilitate any audits or inspections.

Appendix D
Model Collection Agreement

**COLLECTION AGREEMENT
FOR
CITY OF [NAME], OREGON
TRANSIENT LODGING TAX**

**** NB: Following the Passage of HB 4120, Online Booking Companies are now considered “transient lodging intermediaries” under ORS 320.300. Thus, cities no longer need to enter into voluntary agreements with those entities. ****

This Collection Agreement (“Agreement”), dated _____, 201__, is between [online provider], a [state] corporation (“OP”), and the City of [NAME], a municipal corporation (“Taxing Jurisdiction”), collectively referred to as the “Parties.”

RECITALS

- A. OP represents that it provides an Internet-based platform (“Platform”) through which third parties offering accommodations (“Hosts”) and third parties booking such accommodations (“Guests”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which the OP is not a party (“Booking Transactions”).
- B. The Taxing Jurisdiction and OP voluntarily enter into this Agreement to facilitate the reporting, collection and remittance of applicable transient lodging tax (“TLT”) imposed under [insert code section imposing the tax] (“Code”) for booking transactions completed by the Hosts and Guests on the Platform for accommodations located in [City], Oregon (the “Taxable Booking Transactions”).

TERMS OF AGREEMENT

- 1. Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective, and solely for Taxable Booking Transactions completed on the Platform, OP agrees contractually to assume the duties of an “operator” as described in [Code section].
- 2. Starting on [date] (“Effective date”), OP agrees to commence collecting and remitting TLT, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Section 10 of this Agreement, OP shall not assume any obligation or liability to collect TLT for any period or for any transaction prior to the Effective Date or after the termination of this Agreement.²⁰

²⁰ This section waives taxes owed prior to the effective date. If the city would like to collect taxes owed prior to this date, the last sentence should be removed.

3. REMITTANCE OF TLT. OP agrees to aggregate information on the tax return form prescribed by the Taxing Jurisdiction and attached as Appendix G²¹, including all TLT collected from Guests in accordance with this Agreement in the time and manner described in the Code or as otherwise agreed to in writing.
4. OP LIABILITY. OP agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TLT, including but not limited to penalties and interest, lawfully and properly imposed in compliance with the Code. No provision of, nor any action taken pursuant to, this Agreement shall impair, restrict or prevent OP or the Taxing Jurisdiction from asserting any legal or administrative claim or defense relating to TLT or refunds under applicable law or otherwise bar either Party from enforcing any rights afforded by law.
5. OP AUDIT.
 - A. During any period for which OP is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit OP on the basis of TLT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of OP by the Taxing Jurisdiction has been exhausted with the matter unresolved. The Taxing Jurisdiction reserves the right to audit any individual OP Host for activity not covered by this Agreement or that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.
 - B. The Taxing Jurisdiction agrees to audit OP on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed, OP shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the Taxing Jurisdiction of OP with respect to such users.²² The Taxing Jurisdiction agrees that it will not audit or issue an assessment against OP more than once per any twelve (12) month period.²³
 - C. OP agrees to register as a Transient Lodging Tax Collector (“Collector”) for the reporting, collection and remittance of TLT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TLT.

²¹ See Appendix G: Transient Lodging Tax Registration Form

²² This provision clearly does not require the Online Provider to produce the names and addresses of the Hosts, which means the City cannot identify if the Host is in compliance with any other local regulations. A city may attempt to negotiate a Collection Agreement with an Online Provider that requires the Online Provider to produce Host names and addresses. If so, this section would need to be modified.

²³ Online Providers may push back and want fewer audits. Some cities have agreed to one audit every 36 months, limited to a 12-month period within the 36 months. The results of the 12-month audit would be projected over the entire 36-month period.

6. **GUEST AND HOST LIABILITY.** During any period in which this Agreement is effective relating to Taxable Booking Transactions, Hosts shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report TLT, provided OP is in compliance with its obligations under this Agreement.²⁴ Nothing in this Agreement relieves Guests or Hosts from any responsibilities with respect to TLT for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against Hosts for non-Platform transactions.
7. **WAIVER OF LOOK-BACK.**²⁵ The Taxing Jurisdiction releases, acquits, waives and discharges OP, its current or past affiliated parent or subsidiary companies, directors, shareholders, investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TLT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TLT on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Taxing Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.
8. **NOTIFICATION TO GUESTS AND HOSTS.** OP agrees, for the purposes of facilitating this Agreement, that it will notify:
 - a. Hosts that TLT will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement;
 - b. Hosts of their responsibility to maintain proper books and records; and
 - c. Guests and Hosts of the amount of the TLT collected and remitted on each Taxable Booking Transaction.

OP, in relying on a representation made to it by the Hosts, shall be held to the same standard of reliance in “good faith” with respect to the representations made to OP by the Hosts as is generally required with respect to acceptance of documentation of exemption or non-exempt taxable rents.

9. **LIMITATION OF APPLICATION.** This Agreement is solely for the purpose of facilitating the administration and collection of the TLT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth in this Agreement, the execution of or actions taken under this Agreement shall not be considered evidence of or an admission of law or fact under the Code or any other provision of the laws of the United States of America, or any state or local government. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity of interpretation or applicability of the Code, regulation or application of law.

²⁴ See note above regarding requiring Online Platforms to produce the list of Hosts. If a city would like to make such a requirement, this section would need to be modified as well.

²⁵ This provision means the cities may not seek back taxes. If a city wishes to attempt to collect owed but uncollected TLT revenue, this section should be removed.

10. DURATION/TERMINATION.

- A. This Agreement may be terminated by OP or the Taxing Jurisdiction for convenience on ninety (90)²⁶ days written notice to the other Party. Any termination under this Paragraph shall not affect the duty of OP to remit to the Taxing Jurisdiction any TLT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by OP to the Taxing Jurisdiction as of the date of termination.
- B. If the OP terminates the Agreement, such termination will only take effect with at least ninety (90) days written notification by certified or registered mail to each Host offering accommodations in the city through OP's Internet Platform that OP will no longer be collecting TLT for Taxable Booking Transactions.

MISCELLANEOUS

- 11. CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Oregon without regard to its conflict of law principles. Venue shall be in [County], Oregon.
- 12. MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
- 13. MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties and supersedes all prior negotiations, agreements and understandings with respect to the subject matter of this Agreement.
- 14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.
- 15. RELATIONSHIP OF THE PARTIES. The Parties are independent entities and have no relationship with each other except for the contractual relationship established by this Agreement. The Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

²⁶ Jurisdictions have successfully negotiated longer and shorter termination notice periods.

16. **WAIVER AND CUMULATIVE REMEDIES.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated in this Agreement, the remedies provided by the Agreement are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
17. **FORCE MAJEURE.** Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including but not limited to, acts of nature, acts of government, flood, fire, civil unrest, acts of terrors, strikes or other labor acts, or attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
18. **ASSIGNMENT.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, OP may assign this Agreement in its entirety without consent of the Taxing Jurisdiction in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, but shall provide Taxing Jurisdiction notice if any merger, acquisition, reorganization or sale results in a change of name or address for the notices required under Paragraph 20.
19. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.
20. **NOTICES.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; or (b) the third business day after first-class mailing postage prepaid; or (c) the second business day after sending by overnight mail; or (d) facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other party. This paragraph does not supersede the provisions outlined in paragraph 10 therein.

To OP:

[address]

To Taxing Jurisdiction

[address]

IN WITNESS WHEREOF, OP and the Taxing Jurisdiction have executed this Agreement effective the date set forth in the introductory clauses.

Appendix E

Model Ordinance Amending an Existing Tax

NOTE: Please see TLT Guidebook “How Cities Can Use TLT Revenue” section entitled “Other Amendments to a Grandfathered Transient Lodging Tax Ordinance” for more information on amending an existing tax.

AN ORDINANCE OF THE CITY OF [NAME] AMENDING [CHAPTER] OF THE [CITY CODE] IMPLEMENTING THE TRANSIENT LODGING TAX TO COLLECT FROM TRANSIENT LODGING LISTING ON HOSTING PLATFORMS

WHEREAS, a local transient lodging tax (“TLT”) is a tax imposed by [City] on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, [City] adopted [code chapter] on [date] implementing a [percent] transient lodging tax; and

WHEREAS, transient lodging tax collectors, as that term is used in ORS 320.300, are responsible for collecting and remitting the tax to the city.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Section 1: [Code Section Imposing the Tax] is amended to read:²⁷

Effective [effective date], each transient lodging tax collector, including lodging tax intermediaries, shall collect a TLT in the amount of [tax rate] percent of the rent. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.

²⁷ Be sure not to repeal the code section imposing the tax. If the city has a grandfathered tax, repealing the grandfathered tax and replacing it with a new tax may trigger the 70/30 distribution requirement for the tax revenue from the entire tax. Pursuant to the Oregon Court of Appeals decision in *Homebuilders Ass’n of Metropolitan Portland v. Metro*, 250 Or App 437 (2012), a local government may amend a tax ordinance without imposing a “new tax” so long as the amendments do not directly bear on the tax imposition. As a result, a local government may amend an existing tax without imposing a new one if the amendments are administrative and do not change the class of persons or things being taxed, or the rate of the tax. The amendments suggested here are designed to keep the tax rate and classes of transient lodging unchanged. Cities should verify that the amendments do not expand the city’s current definition of transient lodging.

Section 2: All other subchapters of the [city code chapter] are hereby repealed and replaced to read as set forth in Exhibit A.²⁸

²⁸ Exhibit A is the text from the Model TLT Ordinance included with this guidebook.

Appendix F

Model Ordinance Increasing and Amending an Existing Tax

NOTE: Please see TLT Guidebook “How Cities Can Use TLT Revenue” section entitled “Other Amendments to a Grandfathered Transient Lodging Tax Ordinance” for more information on amending an existing tax.

AN ORDINANCE OF THE CITY OF [NAME] AMENDING [CHAPTER] AND INCREASING THE TRANSIENT LODGING TAX

WHEREAS, a local transient lodging tax (TLT) is a tax imposed by [City] on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, [City] adopted [code chapter] on [date] implementing a [percent] transient lodging tax;

WHEREAS, [City] wishes to increase the tax by [X] percent to [new rate]; and

WHEREAS, pursuant to ORS 320.350(5)-(6), at least 70% of the revenue from the increased portion of the tax shall be used for tourism promotion, tourism-related facilities or to finance or refinance the debt of tourism-related facilities and reasonable administrative costs, if allowed by state law.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Section 1: [Code Section Imposing the Tax] is amended to read:²⁹

Effective [DATE], each transient lodging tax collector shall pay a TLT in the amount of [new rate] percent of the rent. The transient lodging tax collector shall pay the TLT with the rent to the tax administrator. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the transient lodging tax collector to the tax administrator with each installment unless the transient lodging tax collector pays the entire amount with the first payment.

²⁹ Be sure not to repeal the code section imposing the tax. If the city has a grandfathered tax, repealing the grandfathered tax and replacing it with a new tax may trigger the 70/30 distribution requirement for the tax revenue from the entire tax.

Section 2: All other subchapters of the [city code chapter] are hereby repealed and replaced to read as set forth in Exhibit A.³⁰

³⁰ Exhibit A is the text from the Model Ordinance included with this Guidebook. Make sure to amend the language in the “Administration” section, subsection A, to reflect the rate increases the city is implementing.

Appendix G: Model TLT Registration Form

CITY OF [NAME]

Transient Lodging Tax Registration Form

Transient Lodging Tax
[Address]
Phone: [Insert #]
Email:[Insert address]
Web: www.[insert address]

Property Information

Name of Property/Business (including Doing Business As)

Property Address City/State Zip

Type of Business (check one): ☐ Hotel/Motel ☐ B&B ☐ House ☐ Townhouse/Condo
☐ RV Park ☐ Online Retailer ☐ Other

Ownership Information (check one): ☐ Individual ☐ Partnership ☐ Corporation

Name (last/first) Title Phone Number Email Address

Mailing Address City/State Zip

Names of Additional Owners, Partners, or Corporate Officers

Name (last/first) Title Phone Number Email Address

Name (last/first) Title Phone Number Email Address

Records/Remittance Information (if different from above)

Individual/company responsible for the completion of the monthly tax form and payment of the taxes

Business Name Contact Person Phone Number Email Address

Mailing Address City/State Zip

Signature Date

Short-Term Rental Operator License # _____ **Land Use Permit #** _____

Business License # _____

Appendix H: Model TLT Remittance Form

CITY OF [NAME]

Phone:

Email:

Website:

OFFICE USE ONLY

Date received

Receipt number

Transient Lodging Tax Remittance Form

**To report multiple locations, please use the Multiple Locations Reporting Form located on our website.

Account Information			
Name of property/business (including Doing Business As)			Reporting month
Property address			
Name of transient room tax contact			Reporting year
Phone number	Email address		

FORM DUE MONTHLY BY THE 15TH FOR THE PRECEEDING MONTH, EVEN IF NO GROSS RENT WAS RECEIVED

1. Gross rent	1.	\$
2. Allowable exemptions:		
2a. Monthly rent (greater than 30 consecutive days) ..	2a.	\$
2b. Rent from authorized Federal employees.....		\$
2c. Rent from transient lodging intermediaries	2c.	\$
2d. Other exemptions (please explain).....	2d.	\$
3. Total allowable exemptions (sum of lines 2a through 2d)		
4. Taxable rent (line 1 minus line 3).....	4.	\$
5. Tax rate	5.	[insert %]
6. Tax due (line 4 multiplied by line 5)	6.	\$
7. Excess tax collected	7.	\$
8. Total tax collected (line 6 plus line 7).....	8.	\$
9. Rebate rate for administrative costs	9.	[insert %]
10. Rebate amount (line 8 multiplied by line 9)	10.	\$
11. Net tax due (line 8 minus line 10)	11.	\$
12. Penalties	12.	\$
13. Interest.....	13.	\$
14. Previous balance	14.	\$
15. TOTAL DUE (sum of lines 11 through 14).....	15.	\$

I declare, under penalty of false swearing, that to the best of my knowledge, the information herein is true, correct, and complete.

Signature	Title	Date
-----------	-------	------

Print completed form and mail with payment to:

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY OF [NAME]. To pay by Visa or MasterCard, email your form to [insert email] and call in your payment to [insert phone number].

City of [Name]
Report of Gross Receipts from Transient Lodging Intermediaries

Identify all transactions with transient lodging intermediaries for this month/quarter. Attach this schedule to your return that you submit to us. Only list transactions for which the transient lodging intermediaries paid tax directly to the City of [Name]. Add additional pages if needed.

Reporting month Reporting year

Name of Transient Lodging Intermediary	Amount Received
Total (Should equal total on line 2C of page1)	\$

Line 1	Gross Rent: Enter the gross rent received for occupancy in transient lodging for the month. "Rent" means the amount paid or payable by an occupant for the occupancy of space in transient lodging. If a separate fee is charged for services, goods or commodities and that fee is optional, that fee is not included in rent. Rent includes all fees and assessments based on the number of occupants (human and/or pets) for which payment is not considered optional to the occupant.
Lines 2a-2d	Exemptions/Exclusions: Enter any gross rents that are not subject to tax or that are excluded from your total gross rents. The most common exemptions and exclusions are:
2a	Monthly Rent: A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more.
2b	Rent from Authorized Federal Employees: Employee of the federal government while on federal business. This exemption does not include state or local government employees.
2c	Rent from Transient Lodging Intermediaries: Gross receipts from transactions with transient lodging intermediaries, i.e.: Online Travel Companies. Do not include transactions for which you collected the tax directly from customers, or transactions for which you received the tax from intermediaries. Complete and attach page 2, Report of Gross receipts from transient lodging intermediaries.
2d	Other Exemptions: Please explain.
Line 3	Total Exemptions/Exclusions: Sum of all exemptions.
Line 4	Taxable Rent: Subtract Total Exemptions (line 3) from Gross Rent (line 1).
Line 5	Current City of [Name] Tax rate: [insert %]
Line 6	Tax due:
Line 7	Excess Tax: Enter any excess tax collected from occupants.
Line 8	Total Tax Collected: Enter the amount of tax collected or required to be collected according to the lodging property's books and records (this amount should total line 6 plus line 7). Please explain any differences.
Line 9	Current Rebate Rate for Administrative Costs: [insert %]
Line 10	Rebate for Administrative Costs: Multiply Total Tax Collected (line 8) by [insert %] (line 9)
Line 11	Net Tax Due: Subtract Rebate for Administrative Costs (line 10) from Total Tax Collected (line 8)
Line 12	[Insert %] Penalty – 30 Days or Less Past Due: If applicable, multiply Net Tax Due (line 11) by [insert %]. If you fail to file the return and remit payment by the 25th day of the month following collection of the tax, a penalty of [insert %] of the tax amount is due. [Insert %] Penalty – Greater than 30 Days Past Due: If applicable, multiply Total Tax Due (line 11) by [insert %]. If the return and remittance are submitted more than 30 days past the due date, the penalty increases by another [insert %] of the tax for a total penalty of [insert %] of the tax.
Line 13	Interest: If applicable, multiply Total Tax Due (line 11) by 1%. If the return and remittance are not submitted by the due date, in addition to the penalties, interest of 1% (per month) of the tax is owed.
Line 14	Previous Balance - Adjustment for Prior Shortage or Overage: Use this line to reflect any shortages or overages of prior periods.
Line 15	Total Tax Remittance: Add and/or subtract, as appropriate, Net Tax Due (line 11), Penalties (line 12), Interest (line 13), and Previous Balance (line 14). Remit this amount to the City of _____.

Appendix I:

Model TLT Multiple Location Form

Form for vacation rental owners and property managers who are reporting multiple properties. Download the Excel document online at www.orcities.org, under the A-Z Index>Transient Lodging Taxes.

Appendix I: Model TLT Multiple Location Form

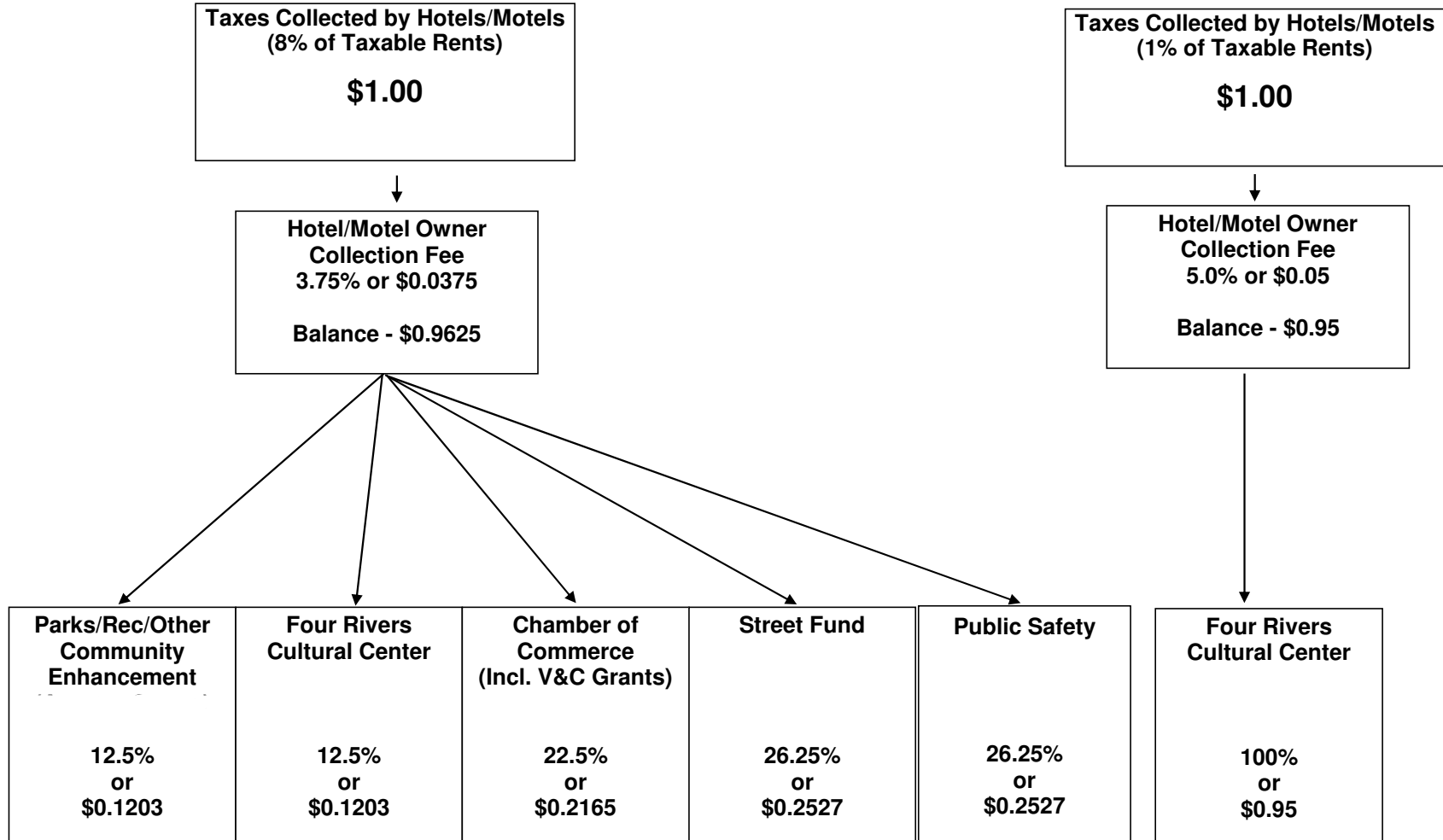
[Insert City Name and Logo]

The City of [Name] tracks Transient Lodging Tax by individual property address. This form is available to Vacation Rental Owners and Property Managers who are reporting multiple properties.

How to use:
Enter each location address along with its income and exemption/exclusions (the form will calculate and total everything).
Attach this form along with your Monthly/Quarterly Room Tax Return form to report the total amount .

Name of Operator/Management Company:					Month:	Year:	
Email:					Phone Number:		
LODGING ADDRESS	INCOME	EXEMPTIONS	EXCLUSIONS	TAXABLE RENT	[Insert %] TAX	[Insert %] REBATE	REMITTANCE
		-		-	-	-	-
				-	-	-	-
				-	-	-	-
				-	-	-	-
				-	-	-	-
				-	-	-	-
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				-	-	-	-
TOTALS	-			-	-	-	-

City of Ontario 9% Transient Occupancy Tax Distribution



Additional 1% Tax Created for Benefit of FRCC - Effective 11/17/2005

AN ORDINANCE LEVYING A 5% TRANSIENT ROOM TAX

THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

Section 1. TITLE. This ordinance shall be known as the Transient Room Tax Ordinance of the City of Ontario.

Section 2. DEFINITIONS. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

- (1) "Accrual Accounting" means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.
- (2) "Cash Accounting" means the operator does not enter the rent due from a transient on his records until rent is paid.
- (3) "City Council" means the City Council of the City of Ontario, Oregon.
- (4) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.
- (5) "Occupancy" means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park or portion thereof.
- (6) "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.
- (7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (8) "Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction.

(9) "Rent Package Plan" means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

(10) "Tax Administrator" means the City Recorder of the City of Ontario.

(11) "Tax" means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(12) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

Section 3.A. TAX IMPOSED. For the privilege of occupancy in any hotel, on and after the effective date of this ordinance, each transient shall pay a tax in the amount of five percent (5%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis and when earned the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations, and parking space in mobile home parks or trailer parks.

B. DISTRIBUTION OF PROCEEDS: Every operator liable for the collection and remittance of the tax imposed by this ordinance may withhold five percent (5%) of the net tax due to cover the operator's expense in the collection and remittance of said tax. The balance of the funds collected and remitted to the city shall be distributed as follows: 45% to the general fund for general city activities; 45% to the general fund to park and recreation activities; 5% to the Ontario Chamber of Commerce for tourist promotion, subject to an acceptable annual accounting of such funds by the Chamber.

Section 4. COLLECTION OF TAX BY OPERATOR: RULES FOR COLLECTION.

(1) Every operator renting rooms in this city, the occupancy of which is not exempted under the terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the City.

(2) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

(3) The Tax Administrator shall enforce provisions of this ordinance and shall have the power to adopt rules and regulations not inconsistent with this ordinance as may be necessary to aid in the enforcement.

(4) For rent collected on portions of a dollar, the first one cent (1¢) of tax shall be collected on ten cents (10¢) through twenty nine cents (29¢), inclusive; and second one cent (1¢) of tax on thirty cents (30¢) through forty nine cents (49¢); the third one cent (1¢) of tax on fifty cents (50¢) through sixty nine cents (69¢); the fourth one cent (1¢) of tax on seventy cents (70¢) through eighty nine cents (89¢) and the fifth one cent (1¢) of tax on ninety cents (90¢) through the next one dollar and nine cents (\$1.09) of rent.

Section 5. OPERATOR'S DUTIES. Each operator shall collect the tax imposed by this ordinance at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this ordinance.

Section 6. EXEMPTIONS. No tax imposed under this ordinance shall be imposed upon:

(1) Any occupant for more than thirty (30) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);

(2) Any occupant whose rent is of a value less than \$2.00 per day;

(3) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;

(4) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.

Section 7. REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY. Every person engaging or about to engage in business as an operator of a hotel in this City shall register with the Tax Administrator on a form provided by him. Operators engaged in business at the time this ordinance is adopted must register not later than thirty (30) calendar days after passage of this ordinance. Operators starting business after this ordinance is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the operator. The Tax Administrator shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall, among other things, state the following:

- (1) The name of the operator
- (2) The address of the hotel
- (3) The date upon which the certificate was issued

(4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Ordinance of the City of Ontario by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said City and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws including but not limited to those requiring a permit from any Board, Commission, department or office of the City of Ontario. This certificate does not constitute a permit."

Section 8. DUE DATE: RETURNS AND PAYMENTS.

1. The tax imposed by this ordinance shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a monthly basis on the fifteenth (15th) day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.

2. On or before the fifteenth (15th) day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.

3. Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

4. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Tax Administrator at his office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

5. For good cause, the Tax Administrator may extend but not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due without pro-ration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this ordinance.

6. The Tax Administrator, if he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case may require returns and payment of the amount of taxes for other monthly periods.

Section 9. PENALTIES AND INTEREST.

1. Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this ordinance prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.

2. Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due plus the amount of the tax and the ten percent (10%) penalty first imposed.

3. Fraud. If the Tax Administrator determines that the non payment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs 1 and 2 of this section.

4. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one half of one percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

5. Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

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

Section 10. DEFICIENCY DETERMINATIONS; FRAUD, EVASION, OPERATOR DELAY.

1. Deficiency Determination. If the Tax Administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 9.

a. In making a determination the Tax Administrator may offset over-payments if any, which may have been previously made for a period or periods, against any under payment for a subsequent period or periods, or against penalties, and interest, on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 9.

b. The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at his address as it appears in the records of the Tax Administrator. In case of service by mail or any notice required by this ordinance the service is complete at the time of deposit in the United States Post Office.

c. Except in the case of fraud, intent to evade this ordinance or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

d. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the Tax Administrator has given notice thereof, provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

2. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make, within the time provided in this ordinance any report and remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against such operator the tax, interest, and penalties, provided for by this ordinance. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the Tax Administrator has given notice thereof, provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

3. Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof, provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten days from the date of service of notice by the Tax Administrator.

Section 11. REDETERMINATIONS.

1. Any person against whom a determination is made under Section 10 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 10 hereof. If a petition for redetermination and refund is not filed within the time required in Section 10, the determination becomes final at the expiration of the allowable time.
2. If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
3. The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined such increase shall be payable immediately after the hearing.
4. The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the City Council within the ten (10) days after service of such notice.
5. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

Section 12. SECURITY FOR COLLECTION OF TAX

1. The Tax Administrator, whenever he deems it necessary to insure compliance with this ordinance, may require any operator subject thereto to deposit with him such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or Five Thousand Dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.
2. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any other State, or of the United States in the name of the City to collect the amount delinquent together with penalties and interest.

Section 13. LIEN . The tax imposed by this ordinance together with the interest and penalties herein provided and the filing fees paid to the Clerk of Malheur County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this ordinance shall be and, until paid, remain a lien from the date of its recording with the Clerk of Malheur County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an

operator within Ontario and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded, and a copy sent to the delinquent operator. The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing the same at public auction after ten days notice which shall mean one publication in a newspaper published in the City of Ontario.

Any lien for taxes as shown on the records of the proper County official shall, upon the payment of all taxes, penalties, and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the City and the operator or person making such payment shall receive a receipt therefor stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

Section 14. REFUNDS

1. Operators Refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this ordinance, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to each operator, his administrators, executors or assignees.

2. Transient Refunds. Whenever the tax required by this ordinance has been collected by the operator, and deposited by the operator with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three years from the date of payment.

Section 15. ADMINISTRATION.

1. Records Required from Operators, etc.; Form. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

2. Examination of Records; investigations. The Tax Administrator or any person authorized in writing by him may examine during normal business hours, the books, papers and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

3. Confidential Character of Information Obtained - Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this ordinance to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:

a. The disclosure to, or the examination of records and equipment by another City of Ontario official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this ordinance; or collecting taxes imposed hereunder.

b. The disclosure after the filing of a written request to that effect, to the taxpayer himself, receivers, trustees, executors, administrators assignees, and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected or interest, and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby.

c. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued.

d. The disclosure of general statistics regarding taxes collected or business done in the City.

Section 16. APPEALS TO CITY COUNCIL. Any person aggrieved by any provision of the Tax Administrator may appeal to the City Council of the City of Ontario by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the City Council who shall fix a time and place for hearing such appeal. The Council shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter.

Section 17. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivision, paragraphs, sentences, clauses, or paragraphs be declared unconstitutional (or otherwise invalid).

Section 18. VIOLATIONS. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a Supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.

Section 19. MISDEMEANOR. Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than Five Hundred Dollars (\$500) or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

Section 20. EFFECTIVE DATE AND TERM OF ORDINANCE. This ordinance shall become effective at 12:01 a.m. on the 1st day of September 1978. The first payment of taxes hereunder shall become delinquent unless paid by October 31, 1978 and thereafter as provided by the other sections of this ordinance.

PASSED AND ADOPTED by the Common Council of the City of Ontario, Oregon on this 10th day of July, 1978 by the following vote:

AYES: Ralph Cornmesser, Ken Osborn, Dr. Paul Thornfeldt, Bob Widmer
Mayor Bellows

NAYS: Dave Stevenson

ABSENT: George Iseri

APPROVED by the Mayor of the City of Ontario, Oregon, this 10th day of July, 1978.


Mayor

ATTEST:


City Recorder



ORDINANCE NO. 2212

AN ORDINANCE OF THE CITY OF ONTARIO,
LEVYING A 6% TRANSIENT ROOM TAX

Section 1: Title: This Ordinance shall be known as the Transient Room Tax Ordinance of the City of Ontario.

Section 2: Definitions: Except where the context otherwise requires, the definitions given in this Section govern the construction of this Ordinance:

ACCRUAL ACCOUNTING means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

CASH ACCOUNTING means the operator does not enter the rent due from a transient on his records until rent is paid.

CITY COUNCIL means the City Council of the City of Ontario.

HOTEL means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied; provided such occupancy is for less than a thirty (30) day period.

OCCUPANCY means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park or portion thereof.

OPERATOR means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall be considered to be compliance by both.

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



RENT means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

RENT PACKAGE PLAN means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this Ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

TAX ADMINISTRATOR means the City Recorder of the City.

TAX means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

TRANSIENT means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

Section 3. Tax Imposed: For the privilege of occupancy in any hotel, on and after the effective date hereof, each transient shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. The tax constitutes a debt owned by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis and when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations and parking space in mobile home parks or trailer parks.



Section 4: Distribution of Proceeds: Every operator liable for the collection and remittance of the tax imposed by this Ordinance may withhold five percent (5%) of the net tax due to cover the operator's expense in the collection and remittance of said tax. The balance of the funds collected and remitted to the City shall be distributed as follows:

70% for street maintenance activities

30% to the Ontario Chamber of Commerce for tourist promotion, subject to City Council approval of the Chamber's annual tourist promotion plan and subject to City Council acceptance of the Chamber's current year's promotional activities and expenditures that are being accomplished with transient room tax revenues.

Section 5: Collection of Tax:

- (A) Every operator renting rooms in this City, the occupancy of which is not exempted under the terms of this Ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the City.
- (B) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.
- (C) For rent collected on portions of a dollar (\$1.00), the following shall apply:

Amount of rent	Tax Collected
\$0.09 through \$0.24 inclusive	First 1¢
0.25 through 0.41 inclusive	Second 1¢
0.42 through 0.58 inclusive	Third 1¢
0.59 through 0.74 inclusive	Fourth 1¢
0.75 through 0.91 inclusive	Fifth 1¢
0.92 through 1.08 inclusive	Sixth 1¢

Section 6: Duties of Operator: Each operator shall collect the tax imposed by this Ordinance at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this Ordinance.



Section 7: Registration Requirements:

(A) Registration Required. Every person engaging or about to engage in business as an operator of a hotel in this City shall register with the Tax Administrator on a form provided by him. Operators engaged in business at the effective date hereof must register not later than thirty (30) calendar days after said effective date. Operators starting business after the effective date hereof must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration.

(B) Contents of Registration. Registration shall set forth the following:

1. Name under which an operator transacts or intends to transact business;
2. The location of his place or places of business; and
3. Such other information to facilitate the collection of the tax as the Tax Administrator may require.

The registration shall be signed by the operator.

(C) Certificate of Authority. The Tax Administrator shall, within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Said certificate shall, among other things, state the following:

1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued; and



4. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Regulations of the City of Ontario by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said City and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws including but not limited to those requiring a permit from any board, commission, department or office of the City of Ontario. This certificate does not constitute a permit."

Section 8: Tax Returns and Payments:

- (A) The tax imposed by this Ordinance shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a monthly basis on the fifteenth day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.
- (B) On or before the fifteenth day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.

Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Tax Administrator at his office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.



- (C) For good cause, the Tax Administrator may extend, but not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due without pro-ration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described in Section 9 of this Ordinance.
- (D) The Tax Administrator, if he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case may require returns and payment of the amount of taxes for other monthly periods.

Section 9: Penalties and Interest:

- (A) Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Ordinance prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.
- (B) Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due in addition to the amount of the tax and the ten percent (10%) penalty first imposed.
- (C) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (A) and (B) of this Section.
- (D) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.



- (E) Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall be merged with and become a part of the tax herein required to be paid.
- (F) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator may petition the City Council for waiver and refund of the penalty or any portion thereof and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 10: Deficiency Determinations; Fraud, Evasion, Operator Delay:

- (A) Deficiency Determination. If the Tax Administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 9 of this Ordinance.
 - 1. In making a determination, the Tax Administrator may offset over-payments if any, which may have been previously made for a period or periods, against any under-payment for a subsequent period or periods, or against penalties and interest on the under-payments. The interest on under-payment shall be computed in the manner set forth in Section 9 of this Ordinance.
 - 2. The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at his address as it appears in the records of the Tax Administrator. In case of service by mail or any notice required by this Ordinance the service is complete at the time of deposit in the United States Post Office.



3. Except in the case of fraud, intent to evade this Ordinance or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the latter.
 4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.
- (B) Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make, within the time provided in this Ordinance any report and remittance of said tax or any portion thereof required by this Ordinance, or makes a fraudulent return or otherwise wilfully attempts to evade this Ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this Ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this Ordinance. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.



- (C) Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

Section 11: Redeterminations:

- (A) Any person against whom a determination is made under Section 10 of this Ordinance or any person directly interested may petition for a redetermination and redemption and refund within the time required in said Section 10. If a petition for redetermination and refund is not filed within the time required in Section 10 of this Ordinance, the determination becomes final at the expiration of the allowable time.
- (B) If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten (10) days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- (C) The Tax administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined, such increase shall be payable immediately after the hearing.
- (D) The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the City Council within the ten (10) days after service of such notice.
- (E) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.



Section 12: Security for Collection of Tax:

- (A) The Tax Administrator, whenever he deems it necessary to insure compliance with this Ordinance, may require any operator subject thereto to deposit with him such security in the form of cash, bond or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or five thousand dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.
- (B) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any other state, or of the United States in the name of the City to collect the amount delinquent together with penalties and interest.

Section 13: Lien: The tax imposed by this Ordinance together with the interest and penalties herein provided and the filing fees paid to the Clerk of Malheur County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this Ordinance shall be and, until paid, remain a lien from the date of its recording with the Clerk of Malheur County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within the City and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded, and a copy sent to the delinquent operator. The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing the same at public auction after ten (10) days notice which shall mean one publication in a newspaper published in the City.

Any lien for taxes as shown on the records of the proper County official shall, upon the payment of all taxes, penalties and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the City and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.



Section 14: Refunds:

- (A) Operator's Refund. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Ordinance, it may be refunded; provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to each operator, his administrators, executors or assignees.
- (B) Transient Refund. Whenever the tax required by this Ordinance has been collected by the operator and deposited by the operator with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient; provided a verified claim in writing therefore, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.

Section 15: Administration of Regulations:

- (A) Records Required From Operators, Form. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.
- (B) Examination of Records; Investigations. The Tax Administrator or any person authorized in writing by him may examine during normal business hours, the books, papers and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.



(C) Information to be Confidential. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this Ordinance to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate, or pay a transient occupancy tax or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided that nothing in this subsection shall be construed to prevent:

1. The disclosure to, or the examination of records and equipment by another City official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this Ordinance; or collecting taxes imposed hereunder.
2. The disclosure after the filing of a written request to that effect, to the tax payer himself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected or interest and penalties; provided, however, that the City Attorney approves each such disclosure and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when, in his opinion, the public interest would suffer thereby.
3. The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.
4. The disclosure of general statistics regarding taxes collected or business done in the City.

Section 16: Appeals to City Council: Any person aggrieved by any provision of the Tax Administrator may appeal to the City Council of the City by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the City Council who shall fix a time and place for hearing such appeal. The Council shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter.



Section 17: Enforcement: The Tax Administrator shall enforce provisions of this Ordinance and shall have the power to adopt rules and regulations not inconsistent with this Ordinance as may be necessary to aid in its enforcement.

Section 18: Exemptions: No tax imposed under this Ordinance shall be imposed upon:

- (A) Any occupant for more than thirty (30) successive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
- (B) Any occupant whose rent is of a value less than two dollars (\$2.00) per day.
- (C) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;
- (D) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.

Section 19: Violations: It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this Ordinance.

Section 20: Penalty for Violation: Any person wilfully violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to the penalty provided in Section 1-4-1 of the City Code.

Section 21: Severability: If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivision, paragraphs, sentences, clauses, or paragraphs be declared unconstitutional (or otherwise invalid).



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Section 22: Effective Date of Tax Collection: Each operator shall collect the tax beginning on July 1, 1987.

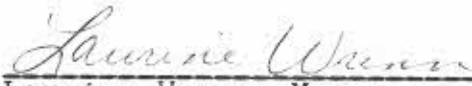
PASSED AND ADOPTED by the Common Council of the City of Ontario this 16th day of March, 1987, by the following vote:

AYES: Max Taggart II, Art Davis, Nancy Biechler, Earl McCollum, Bob Switzer, Mayor Laurine Wrenn

NAYS: None

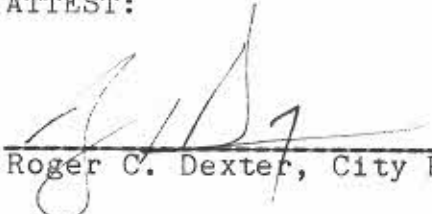
ABSENT: Wayne King

APPROVED by the Mayor this 16th day of March, 1987,



Laurine Wrenn, Mayor

ATTEST:



Roger C. Dexter, City Recorder



ORDINANCE NO. 2227

AN ORDINANCE AMENDING SECTION 22
OF ORDINANCE 2212

The City of Ontario ordains as follows:

Section 1: Section 22 of Ordinance No. 2212 is hereby amended to read as follows:

"Effective Date of Tax Collection: Each operator shall collect the tax beginning on August 1, 1987."

Section 2: Except as specifically amended herein, Ordinance No. 2212 shall remain in full force and effect.

Section 3: The Common Council of the City of Ontario has referred an advisory vote concerning the motel/hotel transient occupancy tax to the voters for the election to be held on June 30, 1987. The Common Council of the City of Ontario desires to postpone the effective date of any motel/hotel transient occupancy tax for a reasonable period pending the outcome of such election to avoid the possibility of incurring unnecessary expenses.

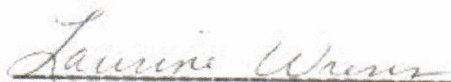
PASSED AND ADOPTED by the Common Council of the City of Ontario this 18th day of May, 1987, by the following vote:

AYES: Art Davis, Nancy Biechler, Wayne King, Bob Switzer and
Mayor Wrenn

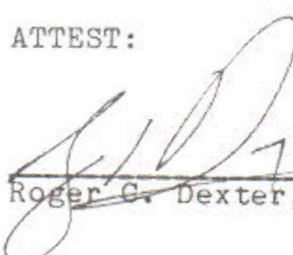
NAYS: None

ABSENT: Max Taggart II and Earl McCollum

APPROVED by the Mayor this 18th day of May, 1987.


Laurine Wrenn, Mayor

ATTEST:


Roger C. Dexter, City Recorder

ORDINANCE NO. 2344

**AN ORDINANCE AMENDING TITLE THREE, CHAPTER 11,
OF THE ONTARIO MUNICIPAL CODE TO ADD AN ADDITIONAL
ONE PERCENT TRANSIENT HOTEL/MOTEL TAX
FOR THE PURPOSE OF SUPPORTING THE CONSTRUCTION OF
THE WESTERN TREASURE VALLEY CULTURAL CENTER**

- WHEREAS,** The City of Ontario recognizes the importance of and the benefit to the City of Ontario which the Western Treasure Valley Cultural Center represents; and
- WHEREAS,** The City of Ontario wishes to express its support and interest in having the Western Treasure Valley Center constructed in Ontario; and
- WHEREAS,** The Western Treasure Valley Cultural Center is designed to increase the number of tourists visiting the City of Ontario; and
- WHEREAS,** The Hotel/Motel owners and/or operators within the City of Ontario recognize the potential benefit to their industry of a greatly increased tourist trade which the Western Treasure Valley Cultural Center could produce and want to facilitate its location in Ontario and have agreed to an increase in the transient tax.

NOW THEREFORE, the Common Council for the City of Ontario hereby ordains as follows:

1. Ontario Municipal Code Section 3-11-3 shall be amended to read:

"3-11-3: **TAX IMPOSED:** For the privilege of occupancy in any hotel, on and after the effective date hereof each transient shall pay a tax in the amount of seven percent (7%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations and parking space in mobile home parks or trailer parks.

2. Ontario Municipal Code Section 3-11-4 shall be amended to read:

"3-11-4: **DISTRIBUTION OF PROCEEDS:** Every operator liable for the collection and remittance of the tax imposed by this Chapter may withhold four and twenty-eight one hundredths percent (4.28%) of the net tax due to cover the operator's expense in the collection and remittance of said tax. The balance of the funds collected and remitted to the City shall be distributed as follows:

Beginning on the effective date of this ordinance and continuing for a period of three years, fourteen and 29/100 percent (14.29) of the gross tax collected shall be placed in a dedicated fund to be used to help in the construction of the Western Treasure Valley Cultural Center, if and when said Center is constructed. In the event construction of the Cultural Center has not began prior to July 1, 1999, then the funds in the dedicated account shall be placed into the budget of the Ontario parks and recreation department. After three years have elapsed from the effective date of this ordinance, the portion of taxes thereafter collected which are covered by this paragraph shall go to the Ontario Parks & Recreation and/or community enhancement projects.

Of the remaining balance, 70% shall be dedicated to street maintenance activities; and

30% shall go to the Ontario Chamber of Commerce for tourist promotion, subject to City Council approval of the Chamber's annual tourist promotion plan and subject to City Council acceptance of the Chamber's current year's promotional activities and expenditures that are being accomplished with transient room tax revenue."

3. Ontario Municipal Code Section 3-11-5(C) shall be amended to read:

"(C) For rent collected on portions of a dollar (\$1.00), the following shall apply:

Amount of Rent		Tax Collected
\$0.07 through	\$0.20 inclusive	First 1¢
0.21 through	0.34 inclusive	Second 1¢
0.35 through	0.48 inclusive	Third 1¢
0.49 through	0.62 inclusive	Fourth 1¢
0.63 through	0.76 inclusive	Fifth 1¢
0.77 through	0.91 inclusive	Sixth 1¢
0.92 through	1.06 inclusive	Seventh 1¢"

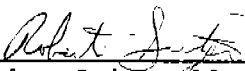
PASSED AND ADOPTED by the Common Council of the City of Ontario this 4th day of April, 1994, by the following vote:

AYES: Wayne King, Pat McCoshum, Nancy Biechler, Joe Mollahan, Bill Peterson, Joe Mollahan and Mayor Robert Switzer

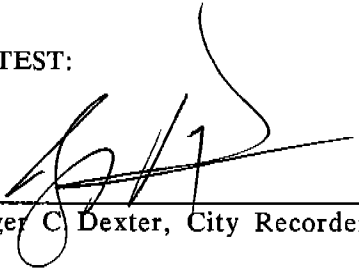
NAYS: None

ABSENT: None

APPROVED by the Mayor this 4th day of April, 1994


Robert Switzer, Mayor

ATTEST:


Roger C. Dexter, City Recorder

**AN ORDINANCE ESTABLISHING A MAXIMUM CONTRIBUTION
TO TOURISM FROM THE ONTARIO TRANSIENT OCCUPANCY TAX**

WHEREAS, The City of Ontario has assessed a 7% transient occupancy tax on establishments providing transient rooming; and

WHEREAS, The revenue raised from the tax, is distributed: 14.29% to the Western Treasure Valley Cultural Center until May 1, 1997 and thereafter to Ontario Parks and Recreation and/or community enhancement projects; of the remainder 70% to the City of Ontario for street maintenance activities and 30% to the Ontario Chamber of Commerce for tourist promotion; and

WHEREAS, The City Council has determined that it is in the best interests of the City of Ontario to limit the amount of the funds transferred to the Chamber of Commerce to no more than \$70,000.

NOW THEREFORE, the Common Council for the City of Ontario hereby ordains as follows:

Ontario Municipal Code Section 3-11-4 shall be amended to read:

"3-11-4: DISTRIBUTION OF PROCEEDS: Every operator liable for the collection and remittance of the tax imposed by this Chapter may withhold four and twenty-eight one hundredths percent (4.28%) of the net tax due to cover the operator's expense in the collection and remittance of said tax. The balance of the funds collected and remitted to the City shall be distributed as follows:

Beginning on the effective date of this ordinance and continuing for a period of three years, fourteen and 29/100 percent (14.29) of the gross tax collected shall be placed in a dedicated fund to be used to help in the construction of the Western Treasure Valley Cultural Center, if and when said Center is constructed. In the event construction of the Cultural Center has not began prior to July 1, 1999, then the funds in the dedicated account shall be placed into the budget of the Ontario parks and recreation department. After three years have elapsed from the effective date of this ordinance, the portion of taxes thereafter collected which are covered by this paragraph shall go to the Ontario Parks & Recreation and/or community enhancement projects.

Of the remaining balance, 70% **plus any excess over \$70,000 of the funds dedicated to tourist promotion** shall be dedicated to street maintenance activities; and

30%, up to \$70,000.00 shall go to the Ontario Chamber of Commerce for tourist promotion, subject to City Council approval of the Chamber's annual tourist promotion plan and subject to City Council acceptance of the Chamber's current year's promotional activities and expenditures that are being accomplished with transient room tax revenue.

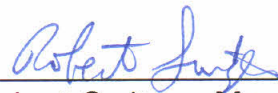
PASSED AND ADOPTED by the Common Council of the City of Ontario this 5th day of August, 1996, by the following vote:

AYES: Bill Peterson, Don Forsyth, Joe Mollahan, Robert Switzer,
David Sullivan, Nancy Biechler, Pat McCoshum

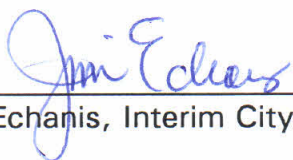
NAYS: None

ABSENT: None

APPROVED by the Mayor this 5th day of August, 1996.


Robert Switzer, Mayor

ATTEST:


Jim Echanis, Interim City Recorder

STATE OF OREGON)
County of Malheur) SS

Inst. No. 96-5686

I certify that the within instrument of
writing was received for record on
the 7 day of Aug 1996
at 10:27 O'clock A M.

DEBORAH R. DeLONG
County Clerk

By :  Deputy

FILED
11:10 A.M.

NOV 08 2013

DEBORAH R. DELONG, County Clerk
By *Deborah R. DeLong* Deputy

ORDINANCE NO. 2685-2013

**AN ORDINANCE AMENDING CITY CODE SECTION 3-11-4
TO ALLOCATE A PERCENTAGE OF FUTURE TRANSIENT ROOM TAX
REVENUES FOR PUBLIC SAFETY AND TO CORRECT PAST
TRANSIENT ROOM TAX MISALLOCATIONS**

- WHEREAS,** City Code Section 3-11-4 sets forth the formula for distribution of tax revenues generated by the transient room tax imposed in Section 3-11-3, and allocates 52.5% of transient room tax revenues to street maintenance activities; and
- WHEREAS,** From July 1, 2005, to December 31, 2012, the City failed to follow that formula by misallocating 52.5% of the transient room tax revenues for activities other than street maintenance activities; and
- WHEREAS,** The misallocation resulted in a reduction in street maintenance expenditures in the cumulative amount of \$2,026,480 between the years 2005 and 2012; and
- WHEREAS,** In order to correct that misallocation, it is in the best interest of the City to allocate \$202,648 annually from non-transient room tax revenues for street maintenance activities for ten years, commencing with the 2013-2014 budget year, until the full amount misallocated has been restored; and
- WHEREAS,** The City's 2013-2014 approved budget includes that amount in the Street Fund for street maintenance activities; and
- WHEREAS,** It is in the best interest of the City to use a portion of future transient room tax revenues for public safety activities, and to establish a public safety reserve fund for that purpose.

NOW THEREFORE, The Common Council For The City Of Ontario Ordains As Follows:

Section 1. Section 3-11-4 of Chapter 11 of Title 3 of the Ontario City Code is hereby amended by deleting that portion that is stricken and adding those portions that are underlined:

3-11-4 - Distribution of proceeds.

(A) Every operator liable for the collection and remittance of the tax imposed by Section 3-11-3, may withhold three and seventy-five one hundredths percent (3.75%) of the net tax due under that Section to cover the operators expense in the collection and remittance of said tax. The balance of the funds collected and remitted to the City shall be distributed as follows:

Twelve and five tenths percent (12.5%) of the gross tax collected shall go to the Ontario Parks and Recreation and/or community enhancement projects.

~~Fifty-two and five tenths percent (52.5%)~~ Twenty-six and twenty-five hundredths percent (26.25%) shall be dedicated to street maintenance activities.

Twenty-six and twenty-five hundredths percent (26.25%) shall be deposited into a public safety reserve account to be spent for public safety activities as directed by the City Council.

Twenty-two and five tenths percent (22.5%) shall be divided with thirty thousand dollars (\$30,000.00), to be distributed in monthly payments of two thousand five hundred dollars (\$2,500.00) each to a grant fund to be administered by a Visitor and Convention Board created pursuant to the Agreement to Provide Tourism Promotion Services between the City of Ontario and the Chamber of Commerce dated September 3, 1997, and the balance to go to the Ontario Chamber of Commerce for tourist promotion, subject to the Chamber's performance in accordance with the terms and conditions of the Agreement to Provide Tourism Promotion Services between the City of Ontario and the Chamber of Commerce dated September 3, 1997.

Twelve and five tenths percent (12.5%) shall be placed in a dedicated fund to be held for distribution pursuant to an agreement to be negotiated between the City of Ontario, Four Rivers Cultural Center (FRCC) and the Hotel Operators and approved by the Ontario City Council.

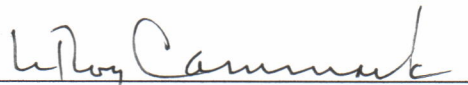
(B) In order to correct transient room tax misallocations in the amount of \$2,026,480 that occurred between July 1, 2005, and December 31, 2012, the City shall budget \$202,648 annually for street maintenance activities for ten years, starting in the 2013-2014 budget year. This is in addition to the 26.25% of transient room tax revenues allocated to street maintenance activities under subsection (A) of this Ordinance. This is also in addition to any unexpended street maintenance funds carried over from prior budget years.

PASSED AND ADOPTED by the Common Council of the City of Ontario this 4th day of November, 2013, by the following vote:

AYES:	Fugate, Crume, Jones, Tuttle, Fox, Verini, Cammack
NAYS:	None
ABSENT:	None

APPROVED by the Mayor this 4th day of November, 2013.

ATTEST:


Leroy Cammack, Mayor


Tori Barnett, MMC, City Recorder

After recording, return to:
City Recorder
City of Ontario
444 SW 4th Street
Ontario OR 97914



FILED
11:59 AM

OCT 04 2021

GAYLE V. TROTTER, County Clerk

By *[Signature]* Deputy
Amy Lamb

ORDINANCE #2797-2021

AN ORDINANCE AMENDING TITLE 3 CHAPTER 11 TRANSIENT ROOM TAX

WHEREAS, The City of Ontario has a transient room tax which supports public safety, roads, and economic development activities; and

WHEREAS, The City Council has reviewed existing the Ontario Municipal Code and deemed that the transient room tax is not applied equally across transient housing services; and

WHEREAS, The City desires all providers of transient housing to be treated the same.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council to adopts the amended language for Title 3, Section 11 Transient Room Tax in attachment A.

EFFECTIVE DATE: Effective 30 days upon passage.

PASSED AND ADOPTED by the Common Council City Council of the City of Ontario this 28th day of September, 2021, by the following vote:

AYES: MILLS, BAKER, KIRBY, HART, HILL

NAYES: NONE

ABSENT: BRADEN, MELENDREZ

APPROVED by the Mayor this 28th day of September, 2021.

[Signature]
Riley J. Hill, Mayor

ATTEST:

[Signature]
Tori Barnett, MMC, City Recorder

Chapter 11 TRANSIENT ROOM TAX

Sections:

3-11-1 Title.

This Chapter shall be known as the Transient Room Tax Ordinance of the City.

3-11-2 Definitions.

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter:

ACCRUAL ACCOUNTING means the operator or transient lodging intermediary enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

CASH ACCOUNTING means the operator or transient lodging intermediary does not enter the rent due from a transient on his records until rent is paid.

CITY COUNCIL means the City Council of the City.

OCCUPANCY means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in transient lodging, or space in a mobile home or trailer park or portion thereof.

OPERATOR means the person who is proprietor of the transient lodging in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Chapter by either the principal or the managing agent shall be considered to be compliance by both.

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

RENT means the consideration charged, whether or not received by the operator or transient lodging intermediary, for the occupancy of space in transient lodging valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

RENT PACKAGE PLAN means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this Chapter shall be the same charge made for rent when consideration is not a part of a package plan.

TAX ADMINISTRATOR means the Finance Director of the City.

TAX means either the tax payable by the transient, or the aggregate amount of taxes due from an operator or transient lodging intermediary during the period for which he is required to report his collections.

TRANSIENT means any individual who exercises occupancy or is entitled to occupancy in a transient lodging for a period of thirty (30) consecutive calendar days or less counting portions of calendar days as full days. The day a transient checks out of the transient lodging shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator or transient lodging intermediary. Any such individual so occupying space in transient lodging shall be deemed to be transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator or transient lodging intermediary and the occupant providing for a longer period of occupancy.

TRANSIENT LODGING shall be defined by Oregon Revised Statute 320.300 (11) or as amended by the Oregon Legislature.

TRANSIENT LODGING INTERMEDIARY shall be defined by Oregon Revised Statute 320.300 (12) or as amended by the Oregon Legislature

(Ord. No. 2721-2016, § 1, 12-5-16)

3-11-3 Tax imposed.

- (A) For the privilege of occupancy in any Transient Lodging, on and after the effective date hereof each transient shall pay a tax in the amount of eight percent (8%) of the rent charged by the operator or transient lodging intermediary. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or transient lodging intermediary or to the city. The transient shall pay the tax to the operator or transient lodging intermediary of the transient lodging at the time the rent is paid. The operator or transient lodging intermediary shall enter the tax on his records when rent is collected if the operator or transient lodging intermediary keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator or transient lodging intermediary with each installment. If for any reason the tax due is not paid to the operator or transient lodging intermediary of the transient lodging, the Tax Administrator may require that such tax shall be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations and parking space in mobile home parks or trailer parks.

(Ord. 2450 § 1, 2000: amd. Ord. 2344, 4-4-94)

3-11-4 Distribution of proceeds.

Every operator or transient lodging intermediary liable for the collection and remittance of the tax imposed by Section 3-11-3, may withhold three and seventy-five one hundredths percent (3.75%) of the net tax due under that Section to cover the operator or transient lodging intermediaries' expense in the collection and remittance of said tax. The balance of the funds collected and remitted to the City shall be distributed as follows:

Twelve and five tenths' percent (12.5%) of the gross tax collected shall go to the Ontario Parks and Recreation and/or community enhancement projects.

Twenty-six and twenty-five hundredths' percent (26.25%) shall be dedicated to street maintenance activities.

Twenty-six and twenty-five hundredths' percent (26.25%) shall be deposited into a public safety reserve account to be spent for public safety activities as directed by the City Council.

Twenty-two and five tenths percent (22.5%) shall be divided with thirty thousand dollars (\$30,000.00), to be distributed in monthly payments of two thousand five hundred dollars (\$2,500.00) each to a grant fund to be administered by a Visitor and Convention Board created pursuant to the Agreement to Provide Tourism Promotion Services between the City of Ontario and the Chamber of Commerce dated September 3, 1997, and the balance to go to the Ontario Chamber of Commerce for tourist promotion, subject to the Chamber's performance in accordance with the terms and conditions of the Agreement to Provide Tourism Promotion Services between the City of Ontario and the Chamber of Commerce dated September 3, 1997.

Twelve and five tenths' percent (12.5%) shall be placed in a dedicated fund to be held for distribution pursuant to an agreement to be negotiated between the City of Ontario, Four Rivers Cultural Center (FRCC) and the transient lodging Operators or transient lodging intermediary and approved by the Ontario City Council.

(Ord. 2450 § 2, 2000: amd. Ord. 2344, 4-4-94)

(Ord. No. 2685-2013, § 1, 11-4-13; Ord. No. 2698-2015, § 1, 2-17-15)

3-11-5 Collection of tax from transients.

- (A) Every operator or transient lodging intermediary renting rooms in this City, the occupancy of which is not exempted under the terms of this Chapter, shall collect the tax set forth in Section 3-11-3 from the occupant. The tax collected or accrued by the operator or transient lodging intermediary constitutes a debt owed by the operator or transient lodging intermediary to the city.
- (B) In all cases of credit or deferred payment of rent, the payment of tax to the operator or transient lodging intermediary may be deferred until the rent is paid, and the operator or transient lodging intermediary shall not be liable for the tax until credits are paid or deferred payments are made.
- (C) For rent collected on portions of a dollar (\$1.00), the following shall apply:

Amount of Rent	Tax Collected
\$0.07 through \$0.20 inclusive	First 1¢
0.21 through 0.34 inclusive	Second 1¢
0.35 through 0.48 inclusive	Third 1¢
0.49 through 0.62 inclusive	Fourth 1¢
0.63 through 0.76 inclusive	Fifth 1¢
0.77 through 0.91 inclusive	Sixth 1¢
0.92 through 1.06 inclusive	Seventh 1¢

(Ord. 2450 § 3, 2000; amd. Ord. 2344, 4-4-94)

3-11-6 Duties of operator or transient lodging intermediary.

Each operator or transient lodging intermediary shall collect the tax imposed by Section 3-11-3 at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator or transient lodging intermediary's records, and any receipt rendered by the operator or transient lodging intermediary. No operator or transient lodging intermediary of transient lodging shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator or transient lodging intermediary, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this Chapter.

(Ord. 2450 § 4, 2000)

3-11-7 Registration requirements.

- (A) **Registration Required.** Every person engaging or about to engage in business as an operator or transient lodging intermediary of a hotel in this City shall register with the Tax Administrator on a form provided by him. Operator or transient lodging intermediaries engaged in business at the effective date hereof must register not later than thirty (30) calendar days after said effective date. Operator or transient lodging intermediaries starting business after the effective date hereof must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration.
- (B) **Contents of Registration.** Registration shall set forth the following:
 - 1. Name under which an operator or transient lodging intermediary transacts or intends to transact business.

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2. The location of his place or places of business; and
 3. Such other information to facilitate the collection of the tax as the Tax Administrator may require.

The registration shall be signed by the operator or transient lodging intermediary.

- (C) Certificate of Authority. The Tax Administrator shall, within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Said certificate shall, among other things, state the following:
1. The name of the operator or transient lodging intermediary;
 2. The address of the transient lodging;
 3. The date upon which the certificate was issued; and
 4. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Regulations of the City of Ontario by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said City and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate transient lodging without strictly complying with all local applicable laws including but not limited to those requiring a permit from any board, commission, department or office of the City of Ontario. This certificate does not constitute a permit."

3-11-8 Tax returns and payments.

- (A) The tax imposed by Section 3-11-3 shall be paid by the transient to the operator or transient lodging intermediary at the time that rent is paid. All amounts of such taxes collected by any operator or transient lodging intermediary are due and payable to the Tax Administrator on a monthly basis on the fifteenth day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.
- (B) On or before the fifteenth day of the month following each month, a return for the preceding month's tax collections under Section 3-11-3 shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator or transient lodging intermediary liable for payment of the tax.

Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of each operator or transient lodging intermediary for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Tax Administrator at his office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

- (C) For good cause, the Tax Administrator may extend, but not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted except by the City Council. Any operator or transient lodging intermediary to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described in Section 3-11-9 of this Chapter.

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- (D) The Tax Administrator, if he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case may require returns and payment of the amount of taxes for other monthly periods.

(Ord. 2450 § 5, 2000)

3-11-9 Penalties and interest.

- (A) Original Delinquency. Any operator or transient lodging intermediary who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.
- (B) Continued Delinquency. Any operator or transient lodging intermediary who has not been granted an extension of time for remittance of tax due and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due in addition to the amount of the tax and the ten percent (10%) penalty first imposed.
- (C) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (A) and (B) of this Section.
- (D) Interest. In addition to the penalties imposed, any operator or transient lodging intermediary who fails to remit any tax imposed by this Chapter shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (E) Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall be merged with and become a part of the tax herein required to be paid.
- (F) Petition for Waiver. Any operator or transient lodging intermediary who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator or transient lodging intermediary may petition the City Council for waiver and refund of the penalty or any portion thereof and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

3-11-10 Deficiency determinations; fraud, evasion, operator or transient lodging intermediary delay.

- (A) Deficiency Determination. If the Tax Administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 3-11-9 of this Chapter.
1. In making a determination, the Tax Administrator may offset overpayments if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 3-11-9 of this Chapter.
 2. The Tax Administrator shall give to the operator or transient lodging intermediary or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator or transient lodging intermediary at his address as it appears

in the records of the Tax Administrator. In case of service by mail or any notice required by this Chapter the service is complete at the time of deposit in the United States Post Office.

3. Except in the case of fraud, intent to evade this Chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.
 4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof; provided, however, the operator or transient lodging intermediary may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.
- (B) **Fraud, Refusal to Collect, Evasion.** If any operator or transient lodging intermediary shall fail or refuse to collect said tax or to make, within the time provided in this Chapter any report and remittance of said tax or any portion thereof required by this Chapter, or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this Chapter from any operator or transient lodging intermediary who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against such operator or transient lodging intermediary the tax, interest and penalties provided for by this Chapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof; provided, however, the operator or transient lodging intermediary may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.
- (C) **Operator or Transient Lodging Intermediary Delay.** If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator or transient lodging intermediary shall immediately pay same determination to the Tax Administrator after service of notice thereof; provided, however, the operator or transient lodging intermediary may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

3-11-11 Redeterminations.

- (A) Any person against whom a determination is made under Section 3-11-10 of this Chapter or any person directly interested may petition for a redetermination and redemption and refund within the time required in said Section 3-11-10. If a petition for redetermination and refund is not filed within the time required in Section 3-11-10 of this Chapter, the determination becomes final at the expiration of the allowable time.
- (B) If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- (C) The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined, such increase shall be payable immediately after the hearing.

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- (D) The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the City Council within the ten (10) days after service of such notice.
 - (E) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator or transient lodging intermediary has first complied with the payment provisions hereof.

3-11-12 Security for collection of tax.

- (A) The Tax Administrator, whenever he deems it necessary to insure compliance with this Chapter, may require any operator or transient lodging intermediary subject thereto to deposit with him such security in the form of cash, bond or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator or transient lodging intermediary's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or five thousand dollars (\$5,000.00), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.
- (B) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any other state, or of the United States in the name of the City to collect the amount delinquent together with penalties and interest.

3-11-13 Lien.

The tax imposed by this Chapter together with the interest and penalties herein provided and the filing fees paid to the Clerk of Malheur County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this Chapter shall be and, until paid, remain a lien from the date of its recording with the Clerk of Malheur County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the transient lodging of an operator or transient lodging intermediary within the City and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his deputy whenever the operator or transient lodging intermediary is in default in the payment of said tax, interest and penalty and shall be recorded, and a copy sent to the delinquent operator or transient lodging intermediary. The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing the same at public auction after ten days' notice which shall mean one publication in a newspaper published in the City.

Any lien for taxes as shown on the records of the proper County official shall, upon the payment of all taxes, penalties and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the City and the operator or transient lodging intermediary or person making such payment shall receive a receipt therefor stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

3-11-14 Refunds.

- (A) Operator or Transient Lodging Intermediary's Refund. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, it may be refunded; provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If

the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator or transient lodging intermediary from whom it was collected or by whom paid and the balance may be refunded to each operator or transient lodging intermediary, his administrators, executors or assignees.

- (B) Transient Refund. Whenever the tax required by this Chapter has been collected by the operator or transient lodging intermediary and deposited by the operator or transient lodging intermediary with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient; provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.

3-11-15 Administration of regulations.

- (A) Records Required From Operators or Transient Lodging Intermediaries, Form. Every operator or transient lodging intermediary shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator or transient lodging intermediary for a period of three (3) years and six (6) months after they come into being.
- (B) Examination of Records; Investigations. The Tax Administrator or any person authorized in writing by him may examine during normal business hours, the books, papers and accounting records relating to room sales of any operator or transient lodging intermediary after notification to the operator or transient lodging intermediary liable for the tax and may investigate the business of the operator or transient lodging intermediary in order to verify the accuracy of any return made, or if no return is made by the operator or transient lodging intermediary, to ascertain and determine the amount required to be paid.
- (C) Information to be Confidential. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this Chapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided, that nothing in this subsection shall be construed to prevent:
1. The disclosure to, or the examination of records and equipment by another City official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this Chapter; or collecting taxes imposed hereunder.
 2. The disclosure after the filing of a written request to that effect, to the tax payer himself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected or interest and penalties; provided, however, that the City Attorney approves each such disclosure and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when, in his opinion, the public interest would suffer thereby.
 3. The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.
 4. The disclosure of general statistics regarding taxes collected or business done in the City.

3-11-16 Appeals to City Council.

Any person aggrieved by any provision of the Tax Administrator may appeal to the City Council of the City by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the City Council who shall fix a time and place for hearing such appeal. The Council shall give the appellant not less than ten (10) days' written notice of the time and place of hearing of said appealed matter.

3-11-17 Enforcement.

The Tax Administrator shall enforce provisions of this Chapter and shall have the power to adopt rules and regulations not inconsistent with this Chapter as may be necessary to aid in its enforcement.

3-11-18 Exemptions.

No tax imposed under this Chapter shall be imposed upon:

- (A) Any occupant for more than thirty (30) successive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
- (B) Any occupant whose rent is of a value less than two dollars (\$2.00) per day;
- (C) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;
- (D) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.

3-11-19 Violations.

It is unlawful for any operator or transient lodging intermediary or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this Chapter.

3-11-20 Penalty for violation.

Any person willfully violating any of the provisions of this Chapter shall be guilty of a violation and upon conviction thereof shall be subject to the penalty provided in Section 1-4-1 of the City Code.

(Ord. 2212, 3-16-87)

(Ord. No. 2652-2010, § 1, 11-15-2010)

3-11-21 Effective date of tax collection.

Each operator or transient lodging intermediary shall collect the tax beginning on August 1, 1987.

(Ord. 2227, 5-18-87)

Accounts Payable

Checks by Date - Summary by Check Date

User: kari.ott
Printed: 10/22/2021 1:55 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
127702	842040	Warrington Irrigation, Inc.	09/02/2021	15,171.40
Total for 9/2/2021:				15,171.40
ACH	878915	Jacobs Engineering Group, Inc.	09/07/2021	14,975.90
ACH	878915	Jacobs Engineering Group, Inc.	09/07/2021	1,625.00
127703	UB*11895	CLASSIC PROPERTIES	09/07/2021	115.13
127704	UB*11897	L DUBOISE - URQUIAGA	09/07/2021	168.93
127705	879363	Danielle Llamas	09/07/2021	57.15
127706	UB*11894	NORTHGATE	09/07/2021	81.62
127707	UB*11898	DEWEY OLUND	09/07/2021	26.96
127709	UB*11896	TOP NOTCH POLISHING	09/07/2021	170.00
Total for 9/7/2021:				17,220.69
127710	&525	American Staffing, Inc.	09/08/2021	724.94
127711	879130	Ani-Care Animal Shelter, Inc.	09/08/2021	1,000.00
127712	130624	B & W Car Wash	09/08/2021	27.00
127713	879592	Michelle Bertalotto	09/08/2021	243.00
127714	879494	Bruneel, LLC	09/08/2021	20.80
127715	626400	Campo & Poole Distributing, LLC	09/08/2021	9,987.16
127716	180798	CIS Trust	09/08/2021	908.50
127717	878954	Cheryl Cruson	09/08/2021	1,000.00
127718	520400	Dorman's, Inc.	09/08/2021	66.16
127719	879530	Nicholas Ducote	09/08/2021	1,197.50
127720	879593	Eastern Oregon Workforce Board	09/08/2021	100.00
127721	879299	Dwayne Allen Holloway	09/08/2021	1,498.75
127722	382005	Interpath Laboratory, Inc.	09/08/2021	44.90
127723	879191	Kristy Lynn Janti	09/08/2021	112.00
127724	428200	League of Oregon Cities	09/08/2021	20.00
127725	441140	Looks Nu, Inc.	09/08/2021	350.00
127726	451350	Malheur County Fair Board	09/08/2021	14,015.00
127727	879422	State of Oregon Department of Administrat	09/08/2021	125.00
127728	879393	PortaPros, LLC	09/08/2021	298.00
127729	641142	The Radar Shop, Inc.	09/08/2021	607.00
127730	642093	Red's Automotive Repair, Inc.	09/08/2021	351.14
127731	368050	Robb Enterprises	09/08/2021	134.28
127732	698800	Stan's Heating, Inc.	09/08/2021	104.39
127733	702008	Staples Business Credit	09/08/2021	104.72
127734	879553	Training & Employment Consortium	09/08/2021	639.00
127735	788402	TransUnion Risk & Alternative Data Soluti	09/08/2021	76.00
127736	879212	Uniforms 2 Gear	09/08/2021	834.44
127737	822503	Utility Truck Equipment	09/08/2021	1,176.90
127738	863995	White Cloud Communications-Boise, Inc.	09/08/2021	364.00
127739	774001	Wtechlink	09/08/2021	300.00
Total for 9/8/2021:				36,430.58

Check No	Vendor No	Vendor Name	Check Date	Check Amount
127740	878923	Oregon Volunteer Firefighters Association	09/09/2021	410.00
127741	879497	Gus Bezates	09/09/2021	9,351.15
127742	412500	Keller Associates, Inc.	09/09/2021	23,690.00
127743	22427	Murrysmith, Inc.	09/09/2021	7,340.00
Total for 9/9/2021:				40,791.15
127744	&525	American Staffing, Inc.	09/10/2021	313.78
127745	033300	Argus Observer	09/10/2021	1,124.40
127746	037600	AT&T	09/10/2021	23.27
127747	879592	Michelle Bertalotto	09/10/2021	5,000.00
127748	637830	Century Link	09/10/2021	474.41
127749	879594	Eldorado Investments, Inc.	09/10/2021	250.00
127750	634311	Frazier Aviation, LLC	09/10/2021	425.00
127751	360015	Home Depot Credit Services	09/10/2021	64.92
127752	879247	Idaho Communications, LLC	09/10/2021	470.00
127753	879417	LightSpeed Networks, Inc.	09/10/2021	1,130.16
127754	451593	Malheur Council on Aging & Community S	09/10/2021	15,000.00
127755	&509	Matsy's Restaurant & Catering	09/10/2021	100.00
127756	461607	MicroTechnology Systems, Inc.	09/10/2021	17,700.00
127757	879301	Net Assets Corporation	09/10/2021	696.00
127758	879166	Pitney Bowes Global Financial Services, LI	09/10/2021	953.25
127759	879145	Silver Signet, LLC	09/10/2021	420.00
127760	130950	Sparklight Business	09/10/2021	104.41
127761	&357	Larry A. Sullivan	09/10/2021	4,791.40
127762	879311	Treasure Valley Community College	09/10/2021	2,000.00
127763	879151	Waste-Pro	09/10/2021	40.05
Total for 9/10/2021:				51,081.05
127764	879534	Public Affairs Counsel	09/15/2021	6,000.00
Total for 9/15/2021:				6,000.00
127765	&525	American Staffing, Inc.	09/17/2021	270.50
127766	UB*11904	BK CONSTRUCTION	09/17/2021	92.07
127767	144000	Cascade Natural Gas Corporation	09/17/2021	41.40
127768	879465	Ergon Asphalt & Emulsions, Inc.	09/17/2021	6,348.30
127769	&260	Four Rivers Cultural Center	09/17/2021	41,285.99
127770	UB*11905	CLAUDIA GARCIA	09/17/2021	62.83
127771	UB*11902	MERCEDES GOMEZ	09/17/2021	150.59
127772	336800	Hach Company	09/17/2021	7,594.76
127773	UB*11900	YAHIR HERRERA M/R	09/17/2021	273.42
127774	UB*11899	BREANNA HULSE	09/17/2021	99.34
127775	376000	Idaho Power	09/17/2021	2,773.60
127776	UB*11901	MONIQUE JAUREGUI	09/17/2021	71.65
127777	441140	Looks Nu, Inc.	09/17/2021	22.00
127778	UB*11907	ANGEL MENDEZ M/R	09/17/2021	37.02
127779	879464	Merchant McIntyre Associates, LLC	09/17/2021	6,500.00
127780	539200	Ontario Area Chamber of Commerce	09/17/2021	34,900.38
127781	879551	Painter Holdings & Business Ventures, Inc.	09/17/2021	34.50
127782	UB*11903	JUAN & CARMEN PESINA	09/17/2021	161.59
127783	642093	Red's Automotive Repair, Inc.	09/17/2021	491.65
127784	879146	Toshiba Financial Services	09/17/2021	1,721.89
127785	879553	Training & Employment Consortium	09/17/2021	711.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
127786	UB*11906	ALISHA WILSON	09/17/2021	120.84
Total for 9/17/2021:				103,765.32
ACH	878915	Jacobs Engineeering Group, Inc.	09/20/2021	474,052.18
ACH	878915	Jacobs Engineeering Group, Inc.	09/20/2021	417,416.09
ACH	878915	Jacobs Engineeering Group, Inc.	09/20/2021	454,292.75
ACH	878915	Jacobs Engineeering Group, Inc.	09/20/2021	447,202.86
Total for 9/20/2021:				1,792,963.88
127787	832852	Wells Fargo Business Elite Card	09/22/2021	6,126.36
Total for 9/22/2021:				6,126.36
127788	441140	Looks Nu, Inc.	09/23/2021	160.00
127789	642080	Petty Cash	09/23/2021	223.35
Total for 9/23/2021:				383.35
127790	&525	American Staffing, Inc.	09/24/2021	362.47
127791	879525	ARAMARK Uniform & Career Apparel Gr	09/24/2021	137.32
127792	879455	Carquest Auto Parts	09/24/2021	66.97
127793	637830	Century Link	09/24/2021	729.28
127794	879596	Command Presence, LLC	09/24/2021	1,496.00
127795	879062	Compass Minerals America, Inc.	09/24/2021	7,302.08
127796	UB*11909	JAMES DUPUIS	09/24/2021	200.00
127797	ELIZT	Tomas Elizondo	09/24/2021	174.95
127798	645195	Fire Rescue Equipment NW, LLC	09/24/2021	2,263.00
127799	UB*11913	ERIK & LACY HARTLEY	09/24/2021	195.51
127800	364001	Holiday Inn Express & Suites Ontario	09/24/2021	1,828.18
127801	376000	Idaho Power	09/24/2021	3,195.82
127802	370401	International Code Council, Inc.	09/24/2021	145.00
127803	UB*11901	MONIQUE JAUREGUI	09/24/2021	98.35
127804	420000	John Deere Financial	09/24/2021	122.16
127805	412500	Keller Associates, Inc.	09/24/2021	26,695.00
127806	440000	L.N. Curtis and Sons	09/24/2021	1,798.49
127807	434008	Lexipol, LLC	09/24/2021	4,000.00
127808	879417	LightSpeed Networks, Inc.	09/24/2021	1,130.16
127809	879363	Danielle Llamas	09/24/2021	170.00
127810	456402	Malheur County Clerk	09/24/2021	107.00
127811	879597	Lacy Mauney	09/24/2021	6,000.00
127812	461607	MicroTechnology Systems, Inc.	09/24/2021	8,850.00
127813	UB*11912	ZACH MILLS	09/24/2021	82.11
127814	879598	Thomas Gill Moreno	09/24/2021	6,000.00
127815	602320	NAPA Auto Parts	09/24/2021	22.97
127816	566003	Ontario Municipal Airport	09/24/2021	2,500.00
127817	516494	State of Oregon Department of Transportati	09/24/2021	527.41
127818	232058	State of Oregon Dept of Administrative Ser	09/24/2021	1,000.00
127819	879012	State of Oregon Dept of Public Safety Stanc	09/24/2021	46.25
127820	528405	Oster Professional Group, CPA's PC	09/24/2021	24,822.42
127821	UB*11911	CHRIS PAULSEN	09/24/2021	96.27
127822	UB*11908	HAROLD POOK	09/24/2021	127.29
127823	642093	Red's Automotive Repair, Inc.	09/24/2021	107.40
127824	716553	Saint Luke's	09/24/2021	110.00
127825	879145	Silver Signet, LLC	09/24/2021	392.40

Check No	Vendor No	Vendor Name	Check Date	Check Amount
127826	879138	Stantec Consulting Services, Inc.	09/24/2021	11,644.37
127827	UB*11910	KRISTIE STREAM*	09/24/2021	103.06
127828	879599	Gary T Taylor	09/24/2021	6,000.00
127829	879595	T-Mobile USA, Inc.	09/24/2021	300.00
127830	288897	Verizon	09/24/2021	1,940.28
127831	863995	White Cloud Communications-Boise, Inc.	09/24/2021	5,633.00
127832	878992	Wolfcom Enterprises	09/24/2021	20.00
Total for 9/24/2021:				128,542.97
127833	&260	Four Rivers Cultural Center	09/28/2021	37,662.87
127834	539200	Ontario Area Chamber of Commerce	09/28/2021	31,617.90
Total for 9/28/2021:				69,280.77
127835	879087	Adam Brown	09/29/2021	389.00
Total for 9/29/2021:				389.00
ACH	PRAFLAC	AMERICAN FAMILY LIFE ASSURANCE	09/30/2021	774.22
ACH	PRAMERF	AMERICAN FUNDS GROUP	09/30/2021	225.00
ACH	PRCCIS	E B S TRUST	09/30/2021	73,786.85
ACH	PRCOLONI	COLONIAL LIFE	09/30/2021	1,008.60
ACH	PRFED	PAYROLL TAXES	09/30/2021	71,468.68
ACH	PRICMA	I C M A RETIREMENT TRUST 457	09/30/2021	550.00
ACH	PRNATW	NATIONWIDE RETIREMENT SOLUTIO	09/30/2021	400.00
ACH	PRORJU	OREGON DEPARTMENT OF JUSTICE	09/30/2021	732.00
ACH	PRORTAX2	OREGON DEPARTMENT OF REVENUE	09/30/2021	275.94
ACH	PRORTAXE	OREGON DEPARTMENT OF REVENUE	09/30/2021	11,787.87
ACH	PROSGP	OREGON SAVINGS & GROWTH PLAN	09/30/2021	7,500.00
ACH	PRPERS	OREGON PERS	09/30/2021	103,834.30
127837	PRLINC	LINCOLN NATIONAL LIFE INS CO	09/30/2021	600.00
127838	PRSFIRE	UMPQUA BANK	09/30/2021	360.00
Total for 9/30/2021:				273,303.46
Report Total (153 checks):				2,541,449.98

MALHEUR COUNTY COURT MINUTES

October 6, 2021

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:00 a.m. in the County Court Office of the Malheur County Courthouse with Commissioner Don Hodge and Commissioner Ron Jacobs present. Staff present was Administrative Officer Lorinda DuBois. Members of the media, public and staff were present electronically. Notice of the meeting was emailed to the Argus Observer, Malheur Enterprise, and those persons who have requested notice, and posted on the Courthouse bulletin board. The meeting was audio recorded. The agenda is recorded as instrument # [2021-5013](#)

PUBLIC HEARING - SUPPLEMENTAL BUDGET

Judge Joyce opened the public hearing for consideration of supplemental budget Resolution R21-33. Notice of the hearing was published in the Argus Observer. A public hearing was required as the supplemental budget will adjust the current budget fund by 10% or more of the expenditures of that fund. No public comments were received. The hearing was closed. Commissioner Hodge moved to approve Resolution R21-33: In the Matter of Fiscal Year 2021/2022 Supplemental Budget by Resolution Under Local Budget Law ORS 294.471. Commissioner Jacobs seconded and the motion passed unanimously. The purpose of the supplemental budget is to allocate additional Cash on Hand funds in the Road Fund that were not anticipated when the adopted budget was prepared - these funds will be used for unanticipated repairs; and to allocate grant funds in the Planning/Zoning budget that were not anticipated when the adopted budget was prepared - these are Eastern Oregon Border Board grant funds to assist with development and implementation of Senate Bill 16. See instrument # [2021-5015](#)

BOPTA

Clerk Gayle Trotter met with the Court and discussed the membership of the Board of Property Tax Appeals (BOPTA) board. Judge Joyce provided the name of one individual interested in serving; Ms. Trotter contacted that person along with two other individuals who are willing to serve on the board; the Court was agreeable to appointing those individuals.

Commissioner Jacobs moved to approve Order No. GO-09-21: In the Matter of the Appointment of Members to the 2022 Board of Property Tax Appeals (BOPTA) Chairperson's Pool and Non-Office Holding Pool. Commissioner Hodge seconded and the motion passed unanimously. Ron Jacobs and Dana Tuckness are appointed to the Chairperson's Pool; Dana Tuckness, Wayne McConnel, Matt Dentinger, and Steve Paulsen are appointed to the Non-Office Holding Pool. See instrument # [2021-5008](#)

COURT MINUTES

Commissioner Jacobs moved to approve Court Minutes of September 29, 2021 as written. Commissioner Hodge seconded and the motion passed unanimously.

CROSSING PERMIT

Commissioner Jacobs moved to approve Crossing Permit #29-21 for Idaho Power Company to install a transformer for a new home on Power Road #907. Commissioner Hodge seconded and the motion passed unanimously. The original permit will be kept on file at the Road Department.

BURN BAN LIFTED

Commissioner Hodge moved to approve Order No. GO-08-21: Order Lifting Burn Ban in Unincorporated Areas of Malheur County Located Outside of a Fire District; Repeal Order GO-05-21; Effective October 1, 2021. Commissioner Jacobs seconded and the motion passed unanimously. See instrument # [2021-5014](#)

AMENDMENT TO SUB-AGREEMENT WITH MCOA

Commissioner Jacobs moved to approve Second Amendment to Sub-Agreement with Malheur Council on Aging and Community Services (MCOA&CS) for General Public Transit Service Pursuant to State Agreement Number 33428, 5311 – Capital, Operating, Planning Recorded with the Malheur County Clerk as Instrument Number [2019-2101](#), First Amendment Recorded as Instrument Number [2021-4393](#). Commissioner Hodge seconded and the motion passed unanimously. The agreement is extended to June 30, 2022.

QUITCLAIM DEED - GONZALEZ

Commissioner Jacobs moved to approve Quitclaim Deed to Melissa R. Gonzalez and Leobardo R. Gonzalez for Ref. #1255. Commissioner Hodge seconded and the motion passed unanimously. See instrument # [2021-5016](#)

EO EARLY LEARNING HUB BOARD

Commissioner Hodge moved to appoint Rod Belknap (Oregon Child Development Center) to the Eastern Oregon Early Learning Hub Board. Commissioner Jacobs seconded and the motion passed unanimously. Mr. Belknap replaces Angelica Fuentes on the Board.

EASOM PROPERTY

County Counsel explained that Cody Easom had been in contact with the Sheriff's Office about his fathers property. Cody Easom indicated he is willing to probate the estate but needs financial assistance. Cody Easom contacted the law firm of Yturri Rose and met with an attorney about probating the estate. The County still has an approximate \$10,000 lien against the property for previous cleanup costs. Ms. Williams inquired if the Court would authorize a promissory note with Cody Easom in the amount of \$3,000 to assist with legal fees to probate the estate. The check would go directly to Yturri Rose for the specific purpose of probating the estate. Additional terms that would be requested of Cody Easom in the promissory note would be that the property is cleanedup and sold. The County would file a Claim against the estate for the \$3,000. The attorney/client relationship would be between Yturri Rose and Cody Easom, not Malheur County, and there are no guarantees that the process would be successful.

Commissioner Jacobs moved to authorize a promissory note with Cody Easom in the amount of \$3,000 to be paid to Yturri Rose to assist with probating the estate of Irvin Easom as discussed. Commissioner Hodge seconded and the motion passed. Judge Joyce abstained as he is the probate judge.

RETIREMENT OF IS DIRECTOR

Commissioner Jacobs moved to accept the retirement of IS Director Frank Goble effective December 31, 2021. Commissioner Hodge seconded and the motion passed unanimously. Judge Joyce requested that County Counsel draft an employment agreement with Mr. Goble for January through March 31, 2022 and requested that Ms. DuBois update the job description for review by the Court and County Counsel.

COVID-19 PREMIUM PAY

COVID-19 premium pay was briefly discussed. Ms. DuBois had shared a proposal for tiers for COVID-19 Premium Pay using ARPA Funds with the Court members. Commissioner Jacobs and Commissioner Hodge indicated they had reviewed the proposal and were supportive of it. ARPA Funds can be used for premium pay for essential workers who did not work from home or remotely. ARPA's definition of an essential employee is any work done by employees of a state, local or tribal government. Most County employees worked during COVID in their offices not from home. Commissioner Jacobs moved to authorize Ms. DuBois proceed with implementing the premium pay for County employees who are still employed by the County and did not work remotely from April 1, 2020 to March 31, 2021 (not limited to only those who worked on COVID, but rather worked during COVID). Commissioner Hodge seconded and the motion passed unanimously.

PUBLIC COMMENTS

Sheriff Wolfe expressed that he was disappointed in the Oregon Attorney General's lawsuit against Harney County and Yamhill County regarding their second amendment sanctuary ordinances. Sheriff Wolfe suggested the County Court send a letter to the Governor or Attorney General expressing the need for local control.

COURT ADJOURNMENT

Judge Joyce adjourned the meeting.