

# City of Brookings **WORKSHOP Agenda**

## **CITY COUNCIL**

**Monday, December 5, 2011, 4:00pm**

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

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

### **B. Roll Call**

### **C. Topics**

1. Franchise Fees. Pg. 2
  - a. Recent electric franchise fee survey. Pg. 5
  - b. 2008 League of Oregon Cities survey of electric franchise agreements. Pg. 6
  - c. September 16<sup>th</sup> news article, "City exploring new revenue options." Pg. 10
  - d. Proposed letter to the Coos Curry Electric Cooperative (CCEC). Pg. 15
  - e. Current CCEC franchise agreement and amendment. Pg. 16
  - f. Current Verizon/Frontier franchise agreement. Pg. 21
  - g. Current Curry Transfer and Recycling franchise agreement. Pg. 28
2. Water and Wastewater Rates. Pg. 56
  - a. Water/Wastewater Rates Worksheet. Pg. 57
  - b. Projected Budgets, FY 2012-13 – 2014-15. Pg. 58
  - c. Future Capital Projects. Pg. 65
  - d. Adopted Budget 2011-12 for Water/Wastewater funds. Pg. 66
  - e. Willdan Wastewater Rate Recommendations. Pg. 74
  - f. Memo dated December 23, 2009. Pg. 75
3. Railroad Street Improvements. Pg. 80

### **D. Council Member Requests for Workshop Topics**

### **E. Adjournment**

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

# CITY OF BROOKINGS

## COUNCIL WORKSHOP REPORT

Meeting Date: December 5, 2011

Originating Dept: City Manager

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

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**Subject:** Utility Franchise Fees

**Background/Discussion:**

During the 2011-12 budget discussions, the topic of franchise fee revenues was raised, specifically with reference to the electric utility. Staff researched the electric utility franchise fee matter and provided a report at the October City Council workshop. Subsequently, staff has reviewed franchise fee agreements with cable TV, telephone and garbage service providers. This report expands the discussion to all franchises.

The City currently collects a franchise fee of 5.0 per cent from Charter Cable and 3.3 per cent from Frontier. The franchise fee is commonly levied by cities for two reasons: 1) these utilities have an exclusive franchise to provide these services in the City, and 2) these utilities use the public right-of-way to conduct their business by installing and maintaining poles, transmission lines and underground facilities. The City also collects a franchise fee from Curry Transfer and Recycling of one-half of one percent of their basic solid waste collection service component. (A 2008 League survey found that solid waste franchise rates range from 2.0 – 10.0 percent). Some Council members have suggested moving to a uniform rate for all City franchisees.

The City Manager recently completed an informal survey of Oregon cities to explore practices with respect to electric utility franchise fees. Attached are the results of that survey. Also attached is a 2008 League of Oregon Cities survey on franchise fees.

Madras is the closest city of like size to Brookings included in the League survey. They reportedly collected \$212,258 in electric franchise fees (5.0%), \$43,000 in telephone franchise fees (7.0%) and \$48,000 in garbage franchise fees (5.0%) in 2008. By comparison, Brookings received street lighting value of about \$70,000 in lieu of an electric franchise fee, \$19,493 in telephone franchise fees (3.3%) and \$7,457 in garbage franchise fees (0.5%)...a combined total of \$206,308 less revenue.

Factors to consider in establishing a franchise fee include:

- The impact of the fee on the consumer.
- The City's financial needs and how franchise fees fit into an overall stable funding source matrix.
- Business equity. Utilities predominantly operate on public property and therefore contribute less in property tax than other commercial enterprises. Consideration should also be given to the franchise rate paid in other communities where the franchise provides the same services.
- Value of using public property/right of way as a conveyance for their services.

- Value of being a sole-source provider. Essentially, the franchise becomes the only provider of its service to the community thereby gaining a “captive market.”

#### **COOS CURRY ELECTRIC COOPERATIVE (CCEC)**

While most Oregon cities collect a franchise fee from their local electric utility based upon gross receipts, the franchise agreement between the City of Brookings and CCEC provides that CCEC maintain a certain number of street lights in the City at no cost in lieu of paying a franchise fee. Only cities served by CCEC also have this type of in lieu arrangement. This method of compensation for the franchise was first established in 1953.

According to CCEC General Manager Roger Meader, the cost to CCEC of providing street light services in the City is \$65-70,000 annually, while each one per cent of gross receipts revenue would equal about \$85-90,000 annually. The City currently pays about \$11,000 annually for street lights that are not covered under the terms of the franchise agreement.

Oregon Administrative Regulations, 860-022-0040, allows a city to levy an electric utility franchise fee of up to 3.5 per cent without having the fee separately listed on the electric utility bill. There is no statutory limit on the overall amount of franchise fee.

Based upon the estimates from CCEC, the City could generate \$297-315,000 annually at a franchise rate of 3.5 per cent or \$425-450,000 annually at a rate of 5.0 per cent, which would provide \$227-380,000 in net revenues to the General Fund (after payment of street lighting costs).

The current CCEC franchise agreement runs through 2022, however, agreement terms may be reopened for renegotiations upon a request in writing by either party.

If the City changes to a franchise fee method of compensation, the rate should be at least equal to the cost of providing street lighting. While there is no restriction on the use of franchise fee revenues, the City Council may wish to designate uses. Using a 5.0 per cent fee, as an example, Council could direct that revenues be allocated as follows:

- 1.0 per cent to street lighting
- 1.0 per cent to utility undergrounding
- 1.0 per cent to street improvements
- 1.0 per cent to public safety
- 1.0 per cent to Parks

#### **FRONTIER**

The current franchise agreement with Verizon, (now Frontier) expired in January 2004 but Frontier has continued to pay the 3.3 per cent franchise fee. The maximum allowable telephone franchise fee under federal law is 5.0 per cent. However, according to a 2008 League of Oregon Cities survey, many cities are charging a 7.0 per cent “privilege tax.”

We will be notifying Frontier of the need for a new agreement, but will need some direction from the City Council on the amount of franchise fee to propose. Current 3.3. per cent? 5.0 per cent?

#### **CHARTER COMMUNICATIONS**

The City is currently in negotiations with Charter Communications for a new franchise agreement. The agreement expired on August 21, 2010, but was extended until November 30, 2011, or until a new agreement is negotiated.

Charter has agreed to continue the existing 5.0 per cent franchise fee, but is seeking to eliminate or substantially reduce other "free" services now provided as a part of the franchise financial consideration including free service to public buildings and schools.

**CURRY TRANSFER AND RECYCLING (CTR)**

The current CTR franchise agreement was granted in 1995. The agreement has no set term and provides for a ten year notice of termination.

**Attachment(s):**

- a. Electric Franchise Fees recent survey
- b. Electric Franchise Agreements 2008 League survey
- c. "City exploring new revenue options," Sept 16, Corvallis Gazette-Times
- d. Proposed letter to CCEC
- e. Current CCEC Franchise Agreement and amendment
- f. Current Verizon/Frontier Franchise Agreement
- g. Current CTR Franchise Agreement

## **Electric Franchise Fees**

### **Cities @7.0 percent**

Aumsville  
Cave Junction  
Coos Bay  
Enterprise  
Hood River

La Pine  
North Bend  
Ontario  
Pendleton  
Sisters

### **Cities @ 5.0 percent**

Albany  
Fairview  
Forest Grove  
Happy Valley  
Independence (seeking increase to 7%)  
Keizer  
La Grande  
Medford

Nehalem  
North Plains  
Rogue River  
Roseburg  
Tangent  
Tillamook  
Wood Village

Most cities that have enacted a 5.0 percent fee have enacted it as a 3.5 percent "franchise fee" and a 1.5 percent "privilege fee."

### **Cities @3.5 percent**

Ashland  
Dundee  
Estacada (seeking increase to 5.0%)

Halsey  
Lafayette  
Turner

### **Other**

Scio - 3 percent

Condon - 4 percent

Central Point - 5.5 percent

Bandon - owns its own electric utility. Charges its city-owned utility a 6.0 percent franchise fee. City owned electric utility also pays for street lights.

Drain - Same as Bandon, but franchise fee is 7.0%

Milton-Freewater - Same as Bandon, but franchise fee is 8.0%

Monmouth - Same as Milton-Freewater.

## FRANCHISE FEE SURVEY - 2008

League of Oregon Cities - Summer 2008

### ELECTRIC FRANCHISE AGREEMENTS

City	Electric Provider	Fee/Tax		NOTE
		Rate	Revenue 2006-07	
Adrian	Idaho Power	3.5%	\$5,330	1
Albany	Consumers Power	5%	\$82,582	1
	PacifiCorp	5%	\$1,502,954	
Arlington	PacifiCorp	7%	\$16,000	
Astoria	PacifiCorp	3.5%	\$224,807	
Aurora	Portland General Electric	3.5%	\$20,606	
Baker City	Oregon Trail Electric Co-op.	5%	\$314,704	
Banks	Portland General Electric	3.5%	\$39,330	
Bay City	Tillamook PUD	Not Available	\$20,333	
Beaverton	Portland General Electric	3.5%	\$2,181,408	
Boardman	Umatilla Electric Co-op	3%	\$63,461	
Brownsville	PacifiCorp	5%	\$36,337	
Cannon Beach	PacifiCorp	3.5%	\$71,428	
Carlton	Portland General Electric	5%	\$54,131	2
Cave Junction	PacifiCorp	7%	\$87,782	
Central Point	PacifiCorp	3.50%	\$262,019	3
Clatskanie	Clatskanie PUD	5%	\$60,838	
Columbia City	Columbia River PUD	Not Available	\$37,840	
Condon	Columbia Basin Electric	4%	\$25,786	
Coos Bay	PacifiCorp	7%	\$846,350	
Cornelius	Portland General Electric	3.5%	\$161,409	
Corvallis	Consumers Power	5%	\$161,051	
	PacifiCorp	5%	\$1,746,266	
Cottage Grove	Emerald PUD	3.5%	\$24,505	
	PacifiCorp	3.5%	\$166,856	
Damascus	Portland General Electric	3.5%	\$157,379	
Depoe Bay	Central Lincoln PUD	3.5%	\$37,905	4

1. The fee rate is for a privilege tax.

2. The 5% fee is comprised of a 3.5% franchise fee and 1.5% privilege tax.

3. Fee increased to 5% in October 2008.

4. Only 0.75% is applied to revenues received from industrial customers.

City	Electric Provider	Fee/Tax		NOTE
		Rate	Revenue 2006-07	
Dundee	Portland General Electric	3.5%	\$52,500	
Eagle Point	PacifiCorp	5%	\$149,097	
Echo	PacifiCorp	3.5%	\$13,336	
Enterprise	PacifiCorp	7%	\$118,322	
Estacada	Portland General Electric	5%	\$94,409	
Fairview	Portland General Electric	5%	\$227,720	5
Florence	Central Lincoln PUD	3.5%	\$330,429	6
Gearhart	PacifiCorp	3.5%	\$47,788	
Gladstone	Portland General Electric	3.5%	\$213,043	
Glendale	PacifiCorp	3.5%	\$19,697	
Grants Pass	PacifiCorp	5%	\$1,125,196	
Halsey	PacifiCorp	3.5%	\$16,009	
Happy Valley	Portland General Electric	5%	\$252,335	7
Helix	PacifiCorp	3.5%	\$5,343	
Hermiston	Umatilla Electric Co-op	3%	\$526,030	
Hillsboro	Portland General Electric	3.5%	\$3,944,332	
Irrigon	Umatilla Electric Co-op	4.5%	\$39,147	
Jacksonville	PacifiCorp	3.5%	\$49,648	
John Day	Oregon Trail Electric Co-op	5%	\$73,420	
Johnson City	Portland General Electric	Not Available	\$10,259	
Jordan Valley	Idaho Power	3%	\$5,406	
Joseph	PacifiCorp	3.5%	\$31,496	
Keizer	Salem Electric	5%	\$258,995	
	Portland General Electric	5%	\$580,987	
Klamath Falls	PacifiCorp	7%	\$706,058	
La Grande	Oregon Trail Electric Co-op	5%	\$371,092	
Lafayette	Portland General Electric	3.5%	\$47,780	
Lake Oswego	Portland General Electric	3.5%	\$943,269	
Lakeview	PacifiCorp	3.5%	\$60,005	
Lebanon	PacifiCorp	5.94%	\$494,350	
	Consumer Power	5.94%	\$55,642	
Lexington	Columbia Basin Electric	5%	\$8,579	
Lincoln City	PacifiCorp	Not Available	\$365,592	
Long Creek	Oregon Trail Electric Co-op	Not Available	\$358,221	

5. The 5% fee rate is comprised of a 3.5% franchise fee on gross receipts and an additional 1.5% tax.

6. Only 0.75% is applied to revenues received from industrial customers.

7. The 5% fee is comprised of a 3.5% franchise fee and 1.5% privilege tax.

City	Electric Provider	Fee/Tax		NOTE
		Rate	Revenue 2006-07	
Lowell	Lane Electric	4.5%	\$23,806	
Lyons	PacifiCorp	3.5%	\$26,961	
Madras	PacifiCorp	5%	\$212,258	
Malin	PacifiCorp	5%	\$14,294	
Manzanita	Tillamook PUD	5%	\$29,893	
Medford	PacifiCorp	7%	\$2,767,942	
Milwaukie	Portland General Electric	3.5%	\$756,026	8
Molalla	Portland General Electric	3.5%	\$147,751	
Moro	PacifiCorp	Not Available	\$9,262	
Mosier	PacifiCorp	3.5%	\$11,146	
Myrtle Creek	PacifiCorp	3.5%	\$56,682	9
Myrtle Point	PacifiCorp	5%	\$71,760	
Newberg	Portland General Electric	5%	\$646,109	10
North Bend	PacifiCorp	7%	\$481,381	
Nyssa	Idaho Power	3%	\$37,184	
Oakridge	Lane Electric	4.5%	\$115,719	11
Ontario	Idaho Power	5%	\$577,026	
Oregon City	Portland General Electric	Volumetric	\$687,442	
Philomath	Consumers Power	5%	\$34,163	
	PacifiCorp	5%	\$108,291	
Pilot Rock	PacifiCorp	3.5%	\$49,096	
Portland	PacifiCorp	5%	\$5,674,281	
	Portland General Electric	5%	\$17,526,885	
Prairie City	Oregon Trail Electric Co-op	3%	\$29,637	
Prineville	PacifiCorp	5%	\$315,867	
Redmond	Central Electric Co-op	5%	\$43,964	
	PacifiCorp	5%	\$901,109	
Richland	Idaho Power	3%	\$3,596	
Rivergrove	Portland General Electric	Not Available	\$5,726	
Rogue River	PacifiCorp	5%	\$82,342	
Roseburg	PacifiCorp	5%	\$832,502	
Sandy	Portland General Electric	3.5%	\$155,524	

8. The city started implementing a 1.5% privilege tax in 2007-08.

9. Fee rate increased to 7% as of July 1, 2008.

10. The 5% fee is comprised of a 3.5% franchise fee and 1.5% privilege tax.

11. Fee rate will increase to 5% in 2009-11.



City	Electric Provider	Fee/Tax		NOTE
		Rate	Revenue 2006-07	
Scio	PacifiCorp	3.5%	\$15,000	
Seneca	Electric Trail Co-Op	5%	\$4,930	
Sheridan	Portland General Electric	Not Available	\$101,235	
Siletz	Central Lincoln PUD	5%	\$23,085	
Silverton	Portland General Electric	3.5%	\$194,280	
Sisters	Central Electric Co-op	7%	\$118,615	
Springfield	Springfield Utility Board	Volumetric	\$1,759,019	
St. Paul	Portland General Electric	3%	\$11,550	
Sutherlin	Douglas Electric	3.5%	\$17,683	
	PacifiCorp	3.5%	\$133,649	
Sweet Home	PacifiCorp	5%	\$243,484	
Talent	PacifiCorp	5%	\$151,047	
Tangent	PacifiCorp	3.5%	\$41,464	
The Dalles	Northern Wasco Co. PUD	3%	\$552,677	
Tigard	Portland General Electric	3.5%	\$1,371,065	
Toledo	Central Lincoln PUD	2% - 3.5%	\$313,724	12
Troutdale	Portland General Electric	3.5%	\$467,931	13
Unity	Idaho Power Corp.	3.5%	\$3,005	
Waldport	Central Lincoln PUD	3.5%	\$57,675	14
Warrenton	PacifiCorp	5%	\$231,783	
Waterloo	PacifiCorp	3.5%	\$3,212	
West Linn	Portland General Electric	5%	\$972,862	15
Weston	PacifiCorp	3.5%	\$25,682	
Willamina	Portland General Electric	3.5%	\$43,375	
Wilsonville	Portland General Electric	3.5%	\$723,035	
Wood Village	Portland General Electric	3.5%	\$127,709	
Yoncalla	Douglas Electric Co-op.	3.5%	\$21,299	

12. Only a 2% rate is applied to industrial customer revenue. A 3.5% rate is applied to all other revenue.

13. The 5% fee is comprised of a 3.5% franchise fee and 1.5% privilege tax.

14. Only 0.75% is applied to revenues received from industrial customers.

15. After FY 2006-07, the local paper mill, who is a major power user, found an alternative source to buy power from. This resulted in a significant and unexpected decrease in franchise revenue for FY 2007-08 - \$655,929.

[x gazettetimes.com](#)

## City exploring new revenue options

By Nancy Raskauskas, Corvallis Gazette-Times | Posted: Friday, September 16, 2011 8:00 am

*Council hears presentations on six possible taxes and fees*

The City Council is considering a half-dozen strategies to generate more revenue to pay for government services.

Voters approved a property tax levy in May that will raise roughly \$5.6 million over three years and helped patch a \$3.6 million shortfall in this year's budget. In addition, the city made \$2.3 million in midyear cuts to programs, services, projects and set-asides for reserves during fiscal year 2010-11.

But the city's struggle to match revenues with costs didn't end there. Projections from the Finance Department paint a picture of continuing shortfalls in the coming years.

Even after the influx of levy funds earmarked for the library, aquatic center, senior center and social services, the city's midrange estimates project a shortfall of \$1 million in fiscal 2012-13, increasing to \$3.1 million in 2013-14, if no steps are taken to raise additional revenues or cut costs.

The strategies to raise revenues discussed by the council at a recent work session include a business services fee, an entertainment tax, a fire protection fee, an increase to existing franchise fees, a local income tax and a telecommunications tax.

"The purpose was really to understand more about each potential option and to get people's questions answered," said Mayor Julie Manning.

The conversation ties into the council's goal to create a sustainable budget. The council also has scheduled a work session to discuss expenses.

### Opposition seems likely

Deciding which, if any, of these options to pursue is an important discussion for the council as any new tax, fee or rate hike will likely face some stiff opposition.

Take, for instance, the idea of an entertainment tax.

The tax could cover many types of activities, from plays and concerts to Oregon State University athletic events, renting a DVD or eating at a restaurant.

The city estimates that a 1 percent entertainment tax could net \$41,100 a year on theater revenues or \$82,000 annually on restaurant sales.

But the big score would come from a tax on Oregon State sports. The city estimates that a 1 percent ticket tax at OSU athletic events could earn \$274,908 a year.

That calculation is based on the city's estimate of \$27.5 million of total athletic revenue. A third of that would come from OSU football games, with an anticipated 75 percent of seats sold at an average of \$45 a ticket.

However, it might prove impossible to force a state institution such as OSU to participate in the tax.

In addition, Mark Spencer, OSU's senior associate athletic director for finance and business affairs, said he thinks the city has overestimated the revenue available from an entertainment tax on OSU sports.

He estimates ticket sales that could be subject to such a tax at approximately \$8.5 million annually, not \$27.5 million.

Spencer's numbers suggest that such a tax would net about \$85,440 annually for the city.

More to the point, though, Spencer said OSU officials likely would not support such a tax.

"OSU athletic events have an estimated economic impact to Corvallis of \$22 million annually, which directly supports the community," he said. "The athletics department is not in a position to absorb the additional cost, so it would directly affect the fans via an increased ticket price."

"We probably would have some concerns," agreed OSU Assistant Athletic Director Steve Fenk.

Another drawback to such a tax is the competitive disadvantage it could impose on some institutions. For instance, tickets to a play at Corvallis High School would be taxed, but Crescent Valley High School productions would be exempt because the school is outside the city limits.

Although the council has not come to a consensus on supporting any of the six revenue alternatives at this point, some of the others could be problematic as well.

City finance director Nancy Brewer said the administrative difficulties of implementing a local income tax make that an unlikely option. No other communities in the Pacific Northwest impose such a tax.

In addition, a number of questions remain about the structure of a fire protection fee, which in theory would eliminate the need for property tax support of fire services.

"There is some desire to look at it more," Brewer said. "I suspect there will be more work on that."

The fire protection fee idea is to charge metered utility customers for fire protection services, but then possibly refund the fee against property tax payments.

Essentially, it's a way to generate revenue from entities in Corvallis that don't pay property taxes, such as OSU and the nonprofit Good Samaritan Regional Medical Center.

This concept was proposed by Ward 8 City Councilor Biff Traber as a way to provide the Fire Department with its own revenue source outside property tax support.

Corvallis has not considered such a fee before, although it is similar in structure to the sustainability initiative fees that have been added to utility bills since February.

"You do kind of have to start thinking outside the box because there is nothing left in the box," Brewer said of the idea.

### **Budget challenges**

The city has faced "structural challenges" in its budget for nearly two decades. While property tax revenue grows no more than 3 percent a year, the city's total costs have gone up by up to 5 percent to 6 percent annually, spurred by the rising cost of health insurance, pension funds and employee salaries, Brewer explained.

In addition, there are costs that the city cannot control, including a pending property tax appeal from Hewlett-Packard.

"We don't have an income system that matches expenses," Brewer added.

To that end, the council is not just looking for more ways to raise money, it's also looking for more ways to cut expenses, including an aggressive attempt to control payroll costs through the renegotiation of labor contracts.

The council will talk more about department budgets and possible cuts at its next work session at 7 p.m. Monday at the downtown fire station, 400 N.W. Harrison Blvd.

### **Top six revenue proposals**

*On Monday, the City Council met in a work session to discuss the six strategies to generate new revenue to fund city services. Below are details on each of the proposed fees and taxes, summarized from a report by city finance director Nancy Brewer.*

#### **BUSINESS SERVICES FEE**

**What is it?:** An annual fee for businesses to operate within the city. The fee could be based on number of employees, percentage of net income or a set dollar amount per business.

**How much would it earn?** The city has about 1,800 businesses. A flat rate for each business would generate between \$90,000 and \$360,000 annually.

With an estimated 24,845 to 32,087 people employed in the city, a business license fee of \$10 per employee would produce at least \$248,450 annually.

**Restrictions:** The fee could be earmarked for a specific program or service or used as nondesignated revenue in the general fund.

Many other communities that have a local business services fee charge a fee to all entities doing business within the city. For instance, a contractor from Albany who wants to do business in Corvallis would be required to pay the fee.

**History:** In 2008, the Corvallis City Council pursued a business license fee to fund economic development. But the business community, which originally proposed the fee, withdrew its support, and the council dropped the issue.

### ENTERTAINMENT TAX

**What is it?** An excise tax on leisure activities within the city limits. Taxable activities might include everything from attending a play or an Oregon State University athletic event to renting a DVD or eating at a restaurant.

**How much would it earn?** A 1 percent entertainment tax on theater revenues would net the city an estimated \$41,100 a year. A 1 percent tax on restaurants would earn an estimated \$82,000 annually. A 1 percent tax on OSU athletic events would earn an estimated \$274,908, based on the city's estimate of OSU's ticket revenue of \$27.5 million. More than one-third of this amount would come from football revenue, using an estimate of 75 percent of seats being sold at home games at \$45 a ticket.

However, it might prove impossible to force a state institution such as OSU to participate in the tax.

**Restrictions:** There are no requirements governing the use of a local entertainment tax.

Restaurants, theaters and other entertainment venues might be placed at a disadvantage relative to those outside the city.

**History:** In 2003, the Corvallis City Council asked city staff to develop information on an entertainment tax. At the time the city estimated annual revenue of between \$287,000 and \$387,000. That was before Carmike Cinema 12 opened and OSU expanded Reser Stadium. At the time, the city was considering the tax to fund nongovernment services such as festivals.

The Corvallis Downtown and Economic Vitality Plans Implementation Committee looked at a meal tax in 2007 but decided not to pursue it in the face of stiff opposition from the restaurant industry.

Also in 2007, the committee discussed an entertainment tax. OSU explicitly stated that it would not participate unless it received a significant portion of the revenue from the tax.

Ashland has a tax of 5 percent on prepared meals that was passed in 2009. It is the only voter-approved sales tax in Oregon. Ashland uses the funds for open space and parks purchases and to offset the cost of a new wastewater treatment plant.

### FIRE PROTECTION FEE

**What is it?** A monthly fee paid by all metered utility customers within the city limits for fire protection. The fee could possibly be refunded or rebated against property tax payments.

Essentially, this is a way to get revenue from entities such as Oregon State University and Good Samaritan Regional Medical Center, which don't pay property taxes. The fee could be adjusted so that the effects on private companies and citizens are canceled out by some rebate or refund. In fact, a residential customer could end up paying slightly less in property tax as a result.

**How much would it earn?** The rate could be adjusted to match the cost of fire protection in the city (estimated at \$7.8 million next year — the amount not covered by other revenues such as fire protection districts and ambulance fees). Based on that revenue target, a homeowner would pay a monthly fee of about \$29. After rebates for some customers, net revenue estimates for the city range from \$182,600 to \$382,300 annually.

**Restrictions:** Revenue would be restricted for use in fire services. In return, the fire fund would reduce or eliminate its dependency on property tax revenue.

This type of fee would need to be administered by the city and is complex to determine and administer.

The fire protection fee would be based on a sliding scale so that larger, more intensive water users would pay more. The rate assumes that larger facilities have a larger impact on fire services.

**History:** Medford and Newberg have a public safety fee that is collected through utility bills. Keizer is sending a similar fee to voters in November.

Corvallis has not considered such a fee before, although it is similar in structure to the sustainability initiative fees that have been included in utility bills since February.

This concept was proposed by Ward 8 Councilor Biff Traber as a way to provide a dedicated revenue source for the Fire Department.

## **FRANCHISE FEES**

**What is it?** The city charges a fee to both city and private utilities for use of the public right-of-way. In 2002, Corvallis implemented a 5 percent fee on city utilities. The rate of that fee could be increased.

**How much would it earn?** Currently, the 5 percent fee charged to the city's water, wastewater and stormwater funds generates \$881,950 per year in revenue. Increasing that rate to 6 percent would increase that revenue to \$1.06 million annually. A hike to 7 percent would bring in \$1.2 million annually.

If all privately owned utilities that could have their franchise rates increased were also charged 7 percent, revenues from them would increase by approximately \$1.26 million annually.

**Restrictions:** Each franchise agreement has a specific contract period. It's possible to reopen the contracts sooner, but opposition from the utility companies could result in a staggered implementation and revenue increase. NW Natural's contract will expire in 2012, the Pacific Power and Consumer Power deals will expire in 2017, and the Allied Waste agreement is up in 2018.

**History:** Oregon cities that charge more than 5 percent in city utility franchise fees include Pendleton, Eugene and Oregon City. Portland reduced its rate from 7.5 to 5 percent in recent years.

Over the past few years, Medford negotiated a franchise rate increase on utilities not owned by the city from 5 percent to 6 percent or 7 percent. Pendleton charges all utilities not owned by the city a 7 percent fee.

Revenue from franchise fees has begun to decrease in recent years due to energy conservation efforts and a reduction in telephone land lines.

## **LOCAL INCOME TAX**

**What is it?** A tax on earned and unearned income received by people who earn income in Corvallis.

**How much would it earn?** A 0.25 percent personal income tax might gross as much as \$5.27 million annually, but revenue could vary widely depending on how it is assessed and collected.

**Restrictions:** There are no requirements for how a local personal income tax might be used.

Corvallis finance staff warns it could be difficult to administer locally without significant additional staffing and resources. A more likely model would be to contract with the state Department of Revenue.

Depending on how it is implemented, people who work outside Corvallis but live in the city might not have to pay the tax. Conversely, people who work here but live elsewhere could end up paying a local income tax to a community other than their home.

**History:** No other city in the Pacific Northwest charges such a tax.

## **TELECOMMUNICATIONS TAX**

**What is it?** Also known as a cellphone tax, this proposal would levy a 3 percent to 5 percent tax on all revenues generated by providers of wireless telecommunication services.

**How much would it earn?** Without the disclosure of revenue data from service providers, the revenue from such a tax can only be estimated.

Assuming that the average cellphone bill is \$70 a month and that the number of cellphone users with billing addresses in the Corvallis area ranges from 28,350 to 42,630, the city finance staff estimates that a 5 percent tax would generate \$1.1 million to \$1.7 million annually. A 3 percent tax would raise between \$530,000 and \$890,000.

**Restrictions:** There are no restrictions on the use of a local telecommunications tax. A logical earmark: Corvallis Regional Communications Center or public safety funding.

Wireless telecommunication companies would be responsible for paying the city a percentage of their gross revenues from Corvallis addresses.

**History:** Wireless providers in Corvallis currently pay no local tax.

In a study conducted in 2010, state and local tax rates for wireless services in Oregon ranked last nationwide at 1.81 percent. The majority of states were greater than 8 percent.

Eugene adopted a version of a telecommunications tax in 1997, which included a 2 percent registration tax that was later challenged in court. Although Eugene has been successful in defending the legality of the tax, it's been a costly legal battle.

In 2005, Springfield adopted a 5 percent tax on all utility providers. The ordinance was referred to voters and overturned in May 2005.

In 2006, the Corvallis City Council approved a telecommunications service tax. An initiative petition — heavily supported by the telecommunications industry — referred the issue to voters in a special election that September. The measure was overturned, 69 percent to 31 percent.

When Keizer explored the possibility of a "wireless license fee" in November 2010, citizens responded with more than 3,000 signatures in an effort to put the 3 percent fee on telecommunications providers before the voters. The city ended up repealing the fee and going in a different direction to fund police and fire agencies.

Contact city reporter Nancy Raskauskas at [nancy.raskauskas@lee.net](mailto:nancy.raskauskas@lee.net) or 541-758-9542. Follow her on Twitter [@NancyR10](https://twitter.com/NancyR10).



# City of Brookings

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[gmilliman@brookings.or.us](mailto:gmilliman@brookings.or.us)

**GARY MILLIMAN**

*City Manager*

Credentialed City Manager

International City Management Association

December 6, 2011

Roger Meader  
General Manager/CEO  
Coos Curry Electric Cooperative, Inc.  
P.O. Box 1268  
Port Orford, OR 97465

This letter is submitted pursuant to Section 12 of the Franchise Agreement adopted through Ordinance 02-O-555. By this letter, the City is requesting renegotiation of Section 4 of said Franchise Agreement/Ordinance.

The City of Brookings is interested in substituting a franchise fee as consideration for granting the franchise.

Respectfully,

Gary Milliman  
City Manager

**IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON**

In the matter of an Ordinance granting a 20-year )  
franchise to Coos-Curry Electric Cooperative, )  
Inc., for the operation of an electric power )  
transmission distribution system within the City )  
of Brookings; prescribing the terms, conditions )  
and manner of the acceptance of such franchise; )  
repealing ordinance no. 82-O-368. )

**ORDINANCE No. 02-O-555**

**Sections:**

- |             |   |
|-------------|---|
| Section 1.  | Repeal of Ordinance No. 82-O-368.                                   |
| Section 2.  | Grant of 20-year franchise to Coos-Curry Electric Cooperative, Inc. |
| Section 3.  | Terms and conditions of franchise.                                  |
| Section 4.  | Cooperative to furnish street lights without charge.                |
| Section 5.  | Location of equipment.  |
| Section 6.  | Repairs to be responsibility of Cooperative.                        |
| Section 7.  | City to be held harmless.   |
| Section 8.  | Cooperative to abide by ordinances and Oregon State Statutes.       |
| Section 9.  | City to retain all rights and remedies.                             |
| Section 10. | Franchise to be exclusive.  |
| Section 11. | Acceptance of franchise.  |
| Section 12. | Terms of renegotiation of franchise.                                |

The City of Brookings ordains as follows:

**Section 1.**     Repeal of Ordinance No. 82-O-368. Ordinance No. 82-O-368 of the City of Brookings (hereinafter referred to as "City") is hereby repealed; said repeal effective on the date of this ordinance's passage. The respective claims of the City of Brookings and Coos-Curry Electric Cooperative, Inc. (hereinafter referred to as "Cooperative"), under said Ordinance No. 82-O-368 shall be settled between said parties as of the date that the Cooperative shall have accepted the franchise herein provided in this ordinance, said acceptance being in written form provided the City by a duly authorized resolution of the Cooperative's governing board.

**Section 2.**     Grant of 20-year franchise to Coos-Curry Electric Cooperative, Inc. There is hereby granted unto the Cooperative, a cooperative corporation organized under the laws of the state of Oregon, upon the terms and conditions hereinafter set forth, the right, privilege and franchise of installing, owning, operating, and maintaining an electric power service transmission and distribution system by means of poles, conduits, wires, cables, and other equipment or appliances in, upon, over, under and along the streets, alleys or other public places within the corporate limits of the City of Brookings for a period of 20 years from the date of the enactment of this ordinance.



**Section 3. Terms and conditions of franchise.** During the period of this franchise the City shall not levy upon or exact from the Cooperative any license fee, franchise or privilege tax, or other charges, the consideration stated hereinbelow being in lieu of all such taxes, license fees or charges.

**Section 4. Cooperative to furnish street lights without charge.** In consideration of the granting of said franchise, the Cooperative shall furnish the City, without charge, 266 street lights with wattage not to exceed 200 watts, including installation, maintenance, replacement of bulbs, and electric energy for operation of same. It is understood that more than this number of street lights may now be in operation within the City; and the remaining lights and all additional lights installed hereafter in excess of 266 shall be upon the customary contractual basis; provided however, that the said 266 lights are furnished based on a theoretical population of the City of 5,680 persons, then and at that time, the Cooperative shall furnish one additional light as the City may designate for each increase of 21 persons over said theoretical population of 5,680 persons.

**Section 5. Location of equipment.** The Cooperative shall advise the City Engineer and City Manager of the City of the proposed location of any new, substitute or replacement poles, conduits, wires, cables or other equipment not less than five days prior to commencement of work thereon or installation or relocation pertinent thereto; and further, the city engineer or city manager may require reasonable changes in proposed locations for the purpose of protecting public health, safety, welfare and traffic.

**Section 6. Repairs to be responsibility of Cooperative.** All openings or breaks in public street, thoroughfares, alleys or the like shall be made and repaired promptly at the sole expense of the Cooperative and shall be lighted and barricaded for the protection of the public.

**Section 7. City to be held harmless.** The Cooperative shall, and by its acceptance hereof does, expressly assure all risk of operation of its system within the City therefrom, including, but not limited to, all damages which may be awarded against it in favor of any person or persons, firm or corporation resulting from any act or thing done or omitted to be done by the Cooperative by virtue of the authority herein granted or said corporation's business operations.

**Section 8. Cooperative to abide by ordinances and Oregon State Statutes.** The Cooperative, its employees or agents shall abide by the ordinances of the City herewith now in existence or hereinabove enacted as equally and to the same extent as any private citizen or public concern, excepting only for the rights and privileges granted said Cooperative hereunder; and further, the Cooperative shall not violate any applicable provisions of the Oregon Antitrust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation thereof; and further, the Cooperative shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provisions; and further, should any part hereof contravene such terms or provisions, then any provision herein contained contrary thereto shall be deemed null and void.

**Section 9. City to retain all rights and remedies.** Except for the franchise right granted herein, the City shall retain all of its rights and remedies under ORS 221.420 to 221.470. The City shall retain its general municipal police powers and the exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the Cooperative

in streets, alleys and public ways; and further, such police powers shall extend to the designation of on what parts of streets there may be erected poles, lines, conduits or other apparatus, or in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decrease the obstruction of the streets or increase the safety or convenience of the public in their use; and further, said power shall extend, although not limited to, the regulation of the use, location, height, and size of utility poles as part of the City's general planning and zoning process and power.

**Section 10. Franchise to be exclusive.** No franchise shall be granted unto any other person, firm or corporation to engage in a similar business within the City of Brookings during the term of this franchise, except upon payment of comparable consideration to the City of Brookings in money or services, unless otherwise permitted under the provisions hereof or mandated by any state or federal law, rule or regulation.

**Section 11. Acceptance of franchise.** The grant of franchise herein made shall be void and of no effect unless the Cooperative shall of itself accept and agree in writing to the terms and conditions of this ordinance, which acceptance shall be filed with the city recorder prior to 45 days after the passage of this ordinance.

**Section 12. Terms of renegotiation of franchise.** Either the City or the Cooperative, as the case may be, may submit a written request to the other for the purposes of renegotiating any or all portions of the franchise hereinunder granted.

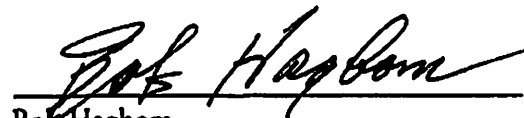
First Reading: November 25, 2002

Second Reading: November 25, 2002

Passage: November 25, 2002

Effective Date: November 25, 2002

Signed by me in authentication of its passage this 25<sup>th</sup> day of November, 2002.

  
Bob Hagbom  
MAYOR

ATTEST:

  
Paul Hughes  
City Finance Director/Recorder

IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON

In the Matter of an Ordinance amending  
Ordinance No. 02-O-555, an Ordinance  
granting a 20-year franchise to Coos-Curry  
Electric Cooperative, Inc. for the operation of  
an electric power transmission distribution  
system within the City of Brookings;  
prescribing the terms, conditions and manner  
of the acceptance of such franchise; repealing  
Ordinance No. 83-O-368.

Ordinance No. 04-O-555.A

Sections:

Section 1	Title
Section 2	Adoption

The City of Brookings ordains as follows:

Section 1.     Title     This Ordinance shall be known as Ordinance No. 04-O-555.A,  
amending the Ordinance of the electric power transmission distribution  
system franchise between the City of Brookings, Oregon and Coos-Curry  
Electric Cooperative, Inc.

Section 2.     Adoption:     Section 4 of Ordinance No. 02-O-555 is hereby amended to  
read:

Section 4.     Cooperative to furnish street lights without charge. In  
consideration of the granting of said franchise, the Cooperative shall  
furnish the City, without charge, 270 street lights plus 9 street lights on the  
Dot Martin Bridge, with wattage not to exceed 200 watts, including  
installation, maintenance, replacement of bulbs, and electric energy for  
operation of same. It is understood that more than this number of street  
lights may now be in operation within the City; and the remaining lights  
and all additional lights installed hereinafter in excess of 279 shall be upon  
the customary contractual basis; provided however, that the said 279 lights  
are furnished based on a theoretical population of the city of 5,765  
persons, then and at the time, the Cooperative shall furnish one additional  
light as the City may designate for each increase of 21 persons over said  
theoretical population of 5,765 persons.

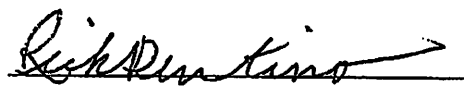
First Reading: September 27, 2004

Second Reading: September 27, 2004

Passage: September 27, 2004

Effective Date: October 27, 2004

Signed by me in authentication of its passage, this 28<sup>th</sup> day of September, 2004.



Rick Dentino  
Council President

-ATTEST:



Paul Hughes  
City Finance Director/Recorder

ORDINANCE NO. 84-O-383

AN ORDINANCE GRANTING TO GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE OF DOING A TELEPHONE AND TELEGRAM BUSINESS WITHIN THE CITY OF BROOKINGS AND EXERCISING THE PRIVILEGES APPURTENANT THERETO. [January 18, 1984]

Sections:

- Section 1. Grant of franchise.
- Section 2. Location of fixtures.
- Section 3. National Electric and Safety Code standards; conformance to city standards.
- Section 4. Restoration of facilities.
- Section 5. Indemnification of city.
- Section 6. Franchise fee and requirements.
- Section 7. Compensation requirements.
- Section 8. Termination of franchise by default.
- Section 9. Compliance with statutory provisions.
- Section 10. City rights and remedies.
- Section 11. Acceptance of condition and terms.
- Section 12. [Emergency clause.]

The city of Brookings ordains as follows:

Section 1. Grant of franchise. Permission and authority are hereby granted to the General Telephone Company of the Northwest, Inc., a corporation, its successors and assigns, upon the terms and subject to the conditions of this ordinance, to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, viaducts and elevated roadways and other public ways of the municipality for a period of 20 years from and after the effective date of the passage of this ordinance, unless sooner terminated as hereinafter provided, its lines of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and to use its said property for the transmission of sound and signals or other means of communication by means of electricity.

Furthermore, on the 5<sup>th</sup> year, 10<sup>th</sup> year, and 15<sup>th</sup> year anniversary of the effective date of the passage of this ordinance, General Telephone Company of the Northwest, Inc., and the city of Brookings may, upon mutual consent expressed in written notice given one to the other, negotiate further changes, amendments, deletions or additions hereto upon the passage of a further supporting ordinance.

**Section 2. Location of fixtures.** The location of said lines of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and the construction thereof, or any change or extension (or the removal thereof), in case said activity shall necessitate the substantial disturbance of any street, alley, viaduct, elevated roadway, bridge or other public way shall be subject to the approval of the Brookings city manager under grant of such authority as may be enacted from time to time by motion of the Brookings city council; said approval not necessary so long as such activities do not unreasonably interfere with ordinary travel and use of streets, alleys, public ways and the like.

The company shall confer with the city on its plans showing the location and character of poles and conduits which comprise a substantial addition or modification of its present system to be erected or laid, and the number of ducts in each conduit and the location on manholes or other openings to gain access to said conduit; and no pole, conduit, vault or anchor shall be erected, constructed or laid upon or in any street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel, until the parties mutually agree that no disturbances of ordinary traffic or the welfare of the public will be harmed, interrupted or take place.

In reference to the above provisions, if the location of any poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures, or the erection, laying or removal of the same, does not interfere unreasonably with ordinary travel and/or use of the streets, alleys, viaducts, elevated roadways, bridges and public ways or any such tunnels of the city and otherwise complies with this ordinance, the Brookings city manager shall approve the same.

**Section 3. National Electric and Safety Code standards; conformance to city standards.** Whenever the company erects its wires, cables, or electrical conductors over or above any buildings within the municipality, with the consent of the owner or owners thereof, said wires, cables or electrical conductors shall be in conformance with the National Electric and Safety Code standards above the surface of the roof of such building, except in such buildings as the wires are to enter, and except over any garages or out buildings.

The company agrees that in all cases (except as hereinafter expressly otherwise provided) where the municipality shall change the grade or width of any street, alley or other public way, the company will, promptly and at its own expenses, unless otherwise by ordinance provided, change or move its structures so as to conform thereto, and all sidewalks, parkways, or pavements disturbed by the company shall be restored by it to a good condition, and in the event that any such sidewalk, parkway or pavement shall become uneven, unsettled or otherwise require repairing because of such disturbance by the company, then the company shall promptly, upon receipt of notice from the municipality so to do, cause said sidewalk, parkway or pavement to be repaired or

restored to a good condition. The company further agrees that it will, in advance of any paving or repaving of any street, alley or other public way, and upon reasonable notice thereof given the company by the city, install and construct, at its own expense, all conduit, vaults, and manholes reasonably necessary for its future use in said street, alley, or other public way, so as to prevent, so far as possible, the disturbance by the company of any pavement.

Section 4. Restoration of facilities. When any opening is made or work done in, on or under any street, alley, viaduct, elevated roadway, bridge, or other public way, or any public tunnel under the Chetco River or its several branches and/or other rivers, any of which are under the jurisdiction of the city, for any purpose whatsoever by the company, said street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel shall be restored as promptly as possible to a condition satisfactory to the Brookings city manager at the expense of the company.

Whenever the General Telephone Company of the Northwest, Inc., a corporation, its successors, assigns, or agents shall disturb any of the streets, alleys, or public highways for the purposes aforesaid, it or they shall, without delay, put the same in as good condition as it was before it was so broken up, dug, or disturbed, and shall remove from the street all surplus earth, rubbish, or material caused thereby.

Nothing in this ordinance shall be construed in any way to prevent the proper authorities of said city from sewerage, grading, planking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, public highways, or places within said city, in or upon which the poles, wires, or other conductors of said company are or shall be placed; and said company shall, upon receiving 30 days notice, in writing, from the city manager or other official of the municipality having charge of said grading or improvement, use all due diligence to comply with the city's request in removing such pole or poles or other obstruction; and if said company, its successors and assigns, upon such notice shall refuse or neglect to remove such pole or poles or other obstruction, then the same shall be removed by the city at the expense of said company.

Whether it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant of the General Telephone Company of the Northwest, Inc., a corporation, its successors and assigns, for the passage of buildings, machinery, or other objects, the said company, its successors and assigns, shall temporarily rearrange, remove, lower, or raise its wires, cables, or other plant as the necessities of the case require; provided, however, that the person or persons desiring to move any buildings, machinery, or other objects shall pay the entire actual cost to the said company, its successors and assigns, of changing, altering, moving or replacing its wires, cables, or other plant so as to permit such passage, and shall deposit in advance with said company, its successors and assigns, a sum equal to such cost as estimated by said

company, its successors and assigns, and shall pay all damages and claims of every kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing, or replacing of said wires, cables, or other plant, except as may be occasioned through the negligence of said company, its successors and assigns, so as to permit such passage. Said company, its successors and assigns, shall be given not less than 30 days written notice by the party desiring to move such building or other object.

Said notice shall detail the route of movement of such building or other object over and along the streets and shall bear the approval of said city by the city manager or other authorized city official. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause the said company, its successors and assigns, unnecessary expense or waste of time. The provisions of this section shall be carried out in accordance with the ordinances of the said city regulating such matters.

Section 5. Indemnification of city. The company shall, at its own expense, indemnify and save harmless the municipality from any and all damages, judgments, costs and expenses of every kind, which may arise or result by reason of or in consequence of the acts or neglect of the company, its agents or servants, to fully comply with the provisions of this ordinance, and will save and keep harmless the municipality from any and all damages, judgments, costs and expenses caused by, or incident to, or in any manner resulting from, the erection of such poles, the laying of such conduit, and the stringing, constructing and operating of said cables, anchors, wires and electrical conductors, vaults, laterals, fixtures and equipment, and the maintenance thereof, provided prompt notice in writing of all claims for such damages, costs and expenses, and reasonable opportunity to defend against the same are given the company by the city, together with all information thereon in its possession.

Section 6. Franchise fee. The permission and authority herein granted are upon the express condition that the company, as consideration therefor, and as compensation for the use herein granted of city streets, alleys, viaducts, elevated roadways, bridges, and other public ways, shall pay into the municipal treasury a sum equal to 3.3% of its gross local exchange service receipts and operating revenues which are hereby defined to mean such local service revenues as defined by the Federal Communications Commission in its rules and regulations under operating revenue accounts and gross revenues as defined within the Oregon Administrative Rules relating to city fees, taxes and other assessments, for services rendered resulting from the use of its plant and properties within the city for the transmission of sound and signals or other means of communications by means of electricity. **[Section 6 as amended by Ordinance No. 90-O-383.A, effective June 11, 1990]**



The company shall file with the city a sworn statement of such gross local service receipts after the end of each calendar year and within 30 days after the close of said annual period; and further, upon the city's request, the company shall provide adequate documentation to support its statements. Payments upon said annual statements shall be made upon an annual basis and shall be paid for the preceding year on or before the 15<sup>th</sup> day of March of each and every year from the calendar year so preceding.

In consideration of the rights and privileges hereby granted, the city of Brookings shall have and the said General Telephone Company hereby grants to it the right and privilege to suspend and maintain on poles placed by said General Telephone Company in the streets and other places of said city any and all wires which said city may require exclusively for its own use for fire alarm and police telegraph purpose, or, if said wires are placed underground, the joint use of one duct in each conduit run of the underground system of the said General Telephone Company free of charge to said city, and all such wires shall be placed upon the poles or in the conduits, if space is available and the company's public service commitments are not jeopardized, so as not to interfere with telephone service and shall not carry currents of voltage dangerous to telephone plant or telephone users and all installation, maintenance and repairs shall be subject to the rules, regulations and supervision of the General Telephone company. The city also agrees, in consideration of the establishment of this service and the furnishing of these facilities to hold the said General Telephone Company entirely free and harmless from all liability from any claim or damages which may arise out of the operation of these special services. The city also agrees that the said General Telephone Company in no way guarantees the operation of any facilities utilizing any equipment supplied by the city or facilities over which the said General Telephone Company does not have full and complete control.

Section 7. Compensation requirements. Nothing in this ordinance contained shall be construed or taken as preventing the city whenever it shall be empowered by law so to do, from establishing, fixing, prescribing, or regulating of, the rates, rentals or charges of telephone companies for any service, instruments, facilities or equipment, or regulating and controlling the plant, facilities, extensions, additions, betterments, equipment, appliances, services, rules, regulations, methods or practices of telephone companies; it being the intention of the parties that the city in no way surrenders any right it may now have or may hereafter acquire to license, tax and/or regulate telephone companies; provided, however, that (except as in this ordinance expressly otherwise provided) as long as the company shall make the payments required by this ordinance, the city shall not, by any general or special ordinance, impose any license or inspection fee or license or inspection tax or any regulation requiring the payment by the company of any compensation to the city additional to that provided by Section 6 of this ordinance.

Section 8. Termination of franchise by default. In the event that the company shall make default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this ordinance, and if any such default or defaults shall continue for a period of six months (exclusive of all times during which the company may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God or the public enemy, labor strikes or the orders or judgments of any commission or court entered in any suit or proceeding brought without its connivance), after written notice thereof to the company from the city, stating the alleged default on the part of the company, then and in each and every such case, the city in addition to all other rights and remedies allowed by law shall be entitled to terminate the grant made to the company in and by this ordinance, and all rights and privileges of the company under this ordinance shall thereupon be at an end.

Section 9. Compliance with statutory provisions. Nothing herein contained shall be construed as authorizing the company, its employees or agents to violate any ordinance of the city herewith now in existence or hereafter enacted; and further, the company shall not violate any provisions of the Oregon Anti-Trust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation thereof; and further, the company shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provisions; and further, should any part hereof contravene such terms and provisions then any provisions herein contained contrary thereto shall be deemed null and void.

Section 10. City rights and remedies. Notwithstanding anything herein stated to the contrary, city shall retain all of its rights and remedies under ORS 221.420 to 221.470. The city shall retain its general municipal police powers and the exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the company in streets, alleys, and public ways; and further, such police powers shall extend to the designation of on what parts of streets, alleys and public ways there may be erected poles, lines, conduits or other apparatus or, in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decrease the obstruction of the streets, alleys or public ways or increase the safety or convenience of the public in their use; and further, said powers shall extend, although not be limited to, the regulation of the use, location, height and size of utility poles as part of the city's general planning and zoning process and powers.

Section 11. Acceptance of condition and terms. General Telephone Company of the Northwest, Inc. shall file its acceptance of this ordinance and the

11-383.11

BROOKINGS ORDINANCES

11-383.12

conditions and terms herein contained within 30 days from the date of the passage hereof; otherwise, this ordinance shall be null and void.

Section 12. [Emergency clause.]

Effective January 18, 1984.

## **ORDINANCE NO. 95-O-510**

**AN ORDINANCE GRANTING CURRY TRANSFER AND RECYCLING, INC. A FRANCHISE TO PROVIDE ALL SOLID WASTE, INFECTIOUS WASTE AND RECYCLABLE MATERIALS SERVICES WITHIN THE CITY OF BROOKINGS; AND REPEALING ORDINANCE NO. 86-0-402.**

### **Sections:**

<b>Section 1:</b>	<b>Definitions</b>
<b>Section 2:</b>	<b>Grant of Franchise</b>
<b>Section 3:</b>	<b>Franchise Fee</b>
<b>Section 4:</b>	<b>Use of Service</b>
<b>Section 5:</b>	<b>Term</b>
<b>Section 6:</b>	<b>Rates</b>
<b>Section 7:</b>	<b>Rate Review and Adjustment</b>
<b>Section 8:</b>	<b>General Franchise Terms and Conditions</b>
<b>Section 9:</b>	<b>Recycling</b>
<b>Section 10:</b>	<b>Disposal Facility</b>
<b>Section 11:</b>	<b>Insurance</b>
<b>Section 12:</b>	<b>Indemnification</b>
<b>Section 13:</b>	<b>Assignment</b>
<b>Section 14:</b>	<b>Abandonment; Performance Bond</b>
<b>Section 15:</b>	<b>Binding Arbitration</b>
<b>Section 16:</b>	<b>Default</b>
<b>Section 17:</b>	<b>Effect of Ordinance</b>
<b>Section 18:</b>	<b>Landfill Closure/Post Closure</b>
<b>Section 19:</b>	<b>Entire Agreement</b>
<b>Section 20:</b>	<b>Enforcement</b>
<b>Section 21:</b>	<b>Effect of Partial Invalidity</b>
<b>Section 22:</b>	<b>Modification of Franchisee's Services</b>
<b>Section 23:</b>	<b>Force Majeure</b>
<b>Section 24:</b>	<b>Repealing Clause</b>

**The City of Brookings (City), mindful of its duties and responsibilities to protect and maintain the public health, safety and welfare of its citizens, finds as follows:**

**A. It is necessary to regulate and control the collection, transportation and disposal of Solid Waste and Infectious Waste and the recycling, processing, transportation, marketing and sale of Recyclable Materials within the Franchise Area as defined below;**

**B. It is in the public interest to grant an exclusive Solid Waste and Infectious Waste collection and disposal and Recyclable Materials franchise within the Franchise Area;**

**C. The City is authorized to carry out the governmental functions and operations contemplated herein and the City has the power, authority and legal right to enter into and perform its obligations herein; and**

**D. Curry Transfer and Recycling, Inc., an Oregon corporation (Franchisee) has agreed to provide Solid Waste and Infectious Waste collection, transportation and disposal services, and recycling, processing, transportation and marketing of Recyclable Materials, and Franchisee has been in the businesses of providing such services, and has the capacity, personnel and technical qualifications required to perform such services.**

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

**SECTION 1: DEFINITIONS. For the purposes of this Ordinance, the following terms shall have the following meanings:**

**A. "Approval of the City", unless otherwise indicated, shall mean approval of a majority of the Council Members of the City .**

**B. "Basic Solid Waste Collection Service Component" shall mean the monthly Solid Waste collection and disposal rates, as set forth on the rate sheets, less closure/post-closure charges, surcharges and container rental charges.**

**C. "Commercial" shall mean any activity conducted for business purposes including non-profit businesses.**

**D. "Disposal Facility" shall mean a Solid Waste facility which has all applicable permits and authorizations needed to accept Solid Waste for transformation, recovery, recycling, transfer or disposal.**

**E. "Franchise Area" shall mean the incorporated limits of the City of Brookings, Oregon, including any areas annexed to the City during the term of this Ordinance. To the extent permitted by law, all state and federal agencies having facilities within, or doing business within the City limits shall be deemed to be within the Franchise Area, and shall be subject to this Franchise Ordinance.**

**F. "Generators" shall mean all individuals, businesses and other entities, including federal, state, county and local agencies as well as the City, located within the Franchise Area, or that generate Solid Waste or Recyclable Materials within the Franchise Area.**

**G. "Hazardous Waste" shall mean all Solid Waste defined or characterized as Hazardous Waste by the federal Solid Waste Disposal Act, all future amendments thereto, or regulations promulgated thereunder; all Solid Waste defined or characterized as Hazardous Waste by the principal agencies of the state having jurisdiction over such Hazardous Waste and those substances and items which are not normally disposed of by generally accepted sanitary landfill disposal methods.**

**H. "Infectious Waste" shall have the definition set forth in ORS 459.386 (2).**

**I. "Recyclable Materials" shall have the definition set forth in ORS 459.005 (19). The initial list of Recyclable Materials is set forth with particularity in Section 9 of this Ordinance.**

**J. "Residential" shall mean premises consisting of two dwelling units or less, under the same ownership.**

**K. "Self Hauler" shall mean any Residential Generator who chooses to deliver all or any part of his or her Solid Waste or Recyclable Materials to the appropriate in-county Transfer Station.**

**L. "Solid Waste" shall mean all putrescible and nonputrescible solid and semisolid wastes, including without limitation: garbage; trash; refuse; paper; cardboard; rubbish; ashes; industrial wastes; demolition and construction wastes; wood wastes; grass clippings; yard wastes; compost; tires; discarded home and industrial appliances; manure; vegetable or animal solid and semisolid Wastes; and other discarded solid and semisolid waste. Solid Waste excludes Hazardous Waste and Infectious Waste. Solid waste does not include:**

**(1) Environmentally hazardous waste as defined in ORS 466.055.**

**(2) Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.**

**(3) Reusable beverage containers as defined in ORS 459.005(18)(b).**

**This section shall not be construed to prohibit Oregon licensed contractors from collecting and transporting demolition and construction waste, wood waste, concrete rubble, manure, contaminated soils, and fill dirt incidental to such person's business or occupation; or to prohibit yard maintenance persons from collecting and transporting grass clippings and yard debris produced as part of that person's business or occupation.**

**M. "Transfer Station" shall mean any of the in-county facilities operated by Franchisee, where Solid Waste or Recyclable Materials are disposed of, recycled, or transferred for disposal or recycling.**

**SECTION 2: GRANT OF FRANCHISE. The City hereby grants to Franchisee the following rights, privileges, and franchise, subject to the terms, obligations and responsibilities on the part of Franchisee as set forth in this ordinance:**

**A. SOLID WASTE AND INFECTIOUS WASTE COLLECTION.** The exclusive right to provide all Solid Waste and Infectious Waste collection services within the Franchise Area, and the exclusive right to use the streets of the City for that purpose. For that purpose Franchisee shall provide curbside collection of Solid Waste to all Generators, including residences and business establishments, within the Franchise Area. Franchisee shall also provide Infectious Waste collection to all Infectious Waste Generators within the Franchise Area. Except as otherwise provided in this Ordinance, no other person or entity shall collect Solid Waste or Infectious Waste collection within the Franchise Area.

**B. CURBSIDE RECYCLING COLLECTION.** The exclusive right to establish curbside Recyclable Materials collection routes within the Franchise Area, including the exclusive right to use the streets of the City for that purpose, and to collect all Recyclable Materials within the Franchise Area for compensation from the Generator. However, this Subsection shall not limit Franchisee's right to collect Recyclable Materials for no compensation, nor shall it prohibit Franchisee from purchasing Recyclable Materials. Except as otherwise provided in this Ordinance, no other person or entity shall collect or recycle Recyclable Materials within the Franchise Area.

**C. TRANSPORTATION AND DISPOSAL OF COLLECTED MATERIALS.** Within Franchisee's sole and exclusive rights and obligations to collect Solid Waste, Infectious Waste and Recyclable Materials, shall be Franchisee's sole and exclusive right and obligation to transport all Solid Waste from the point of collection to any appropriate Transfer Station or to any Disposal Facility. Franchisee shall also have the sole and exclusive right and obligation to transport all collected Infectious Waste to an approved Infectious Waste disposal or treatment facility. Additionally, Franchisee shall have the sole and exclusive right and obligation to transport all Recyclable Materials collected by Franchisee to a Transfer Station, or to a storage, sorting, processing or buy back facility. Subject to the existing contract between Franchisee and Douglas County, Franchisee shall have the sole and exclusive right to determine which Disposal Facility to which it shall transport Solid Waste and Recyclable Materials. Except as otherwise provided in this Ordinance, no other person or entity shall transport or dispose of Solid Waste or Recyclable Materials within the Franchise Area.



1. Franchisee shall have available for loading, a sufficient number of top-loading trailers as may be needed to handle the throughput at the Brookings Transfer Station. Such trailers shall be of a size and design to accommodate the physical facilities of the Brookings Transfer Station and will meet all requirements of federal, state and local law with respect to weight, length, dimensions and other characteristics. Franchisee shall assure that the trailers have on-board scales or some other method of independently determining proper load/trailer weight.

2. Franchisee shall provide adequate storage of all trucks, trailers and appurtenant equipment utilized in performing the services required under this Section.

3. Franchisee shall determine and record the tonnage of Solid Waste, departure times and destination of each trailer leaving the Brookings Transfer Station. Such records shall be available to the City for inspection at all reasonable times.

**D. ADDITIONAL SERVICES.** Franchisee shall have the right of first refusal to provide any other exclusive services concerning Solid Waste, Recyclable Materials, Infectious or any other classification of wastes or Recyclable/reusable materials not granted under this Ordinance. Any request for provision of new services shall be made subject to the terms of Section 22 of this Ordinance.

**E. COLLECTION AND HAULING.** The Franchisee shall collect Solid Waste at the various residences, business establishments and other places within the Franchise Area where such service is requested promptly and with dispatch, and haul such Solid Waste from the Franchise Area upon the payment of not more than the maximum rates authorized by the most recent rate schedule and approved by the City Council.

**SECTION 3: FRANCHISE FEE.** Franchisee shall pay the City an annual fee of one-half of one percent of the Basic Solid Waste Collection Service Component, as compensation for the rights granted to Franchisee under the terms of this Ordinance.

#### **SECTION 4: USE OF SERVICE.**

**A. Each Generator, including but not limited to property owners, Commercial or Residential lessees, households and businesses in the Franchise Area, shall comply with all reasonable policies and programs with regard to Solid Waste, Infectious Waste and recycling. Franchisee shall serve each customer in the Franchise Area subject to the terms and conditions set forth in this Ordinance.**

**B. Residential Generators shall have the right to self haul the Solid Waste and Recyclable Materials generated themselves to the appropriate in-county Transfer Station. Solid Waste and Recyclable Materials produced by a tenant, lessee, licensee, occupant or person other than the owner of the premises are considered to be generated by such person and not by the Landlord or the owner of the premises.**

**C. Except as otherwise provided herein, the City shall direct all Solid Waste and Recyclable Materials generated or disposed of within the Franchise Area to the appropriate in-county Transfer Station for long-haul transportation by Franchisee to a Disposal Facility, or recycling facility, as the case may be.**

**SECTION 5: TERM. The term of this Ordinance shall be a continuing year to year term, subject to termination as follows:**

**Beginning on January 1 of each year, this Ordinance shall be considered renewed for an additional year unless at least thirty (30) days prior to January 1 of any year the City notifies Franchisee, in writing, by certified mail, return receipt requested, of its intent to terminate this Ordinance. Upon giving notice of termination, this Ordinance shall terminate ten (10) years from the date of notice, so that Franchisee may finance, amortize and depreciate its investment in the equipment it has or will use for providing services under this Ordinance. The City may then later extend the term of this Ordinance or reinstate the continuing term upon mutual agreement with Franchisee. Termination under this section may be with or without cause.**

## **SECTION 6: RATES.**

**A. As compensation for performing the services required under this Ordinance, Franchisee shall be authorized to collect from Generators reasonable fees set by the City, as required by this Ordinance, and levied upon Generators in accordance with rates duly enacted by the City. The rates established under this Agreement shall not be less than the base rate established at the commencement of this Ordinance, except in the following circumstances:**

**1. When the closure and post-closure components set forth in Section 18 of this Ordinance are no longer required, Franchisee shall no longer be entitled to collect such component.**

**2. In the event that the City modifies Franchisee's service requirements pursuant to Section 22 hereof, and such modification results in reduced operational costs to Franchisee, such savings shall be passed on to Generators in the form of reduced rates.**

**The initial rate sheets (base rates) are attached hereto as Exhibit "A", and by reference are fully incorporated herein.**

**B. All revenues received by Franchisee from the sale of Recyclable Materials collected by the Franchisee and all fees received by Franchisee from rate payers for services hereunder shall become the property of Franchisee as consideration for the performance of services hereunder.**

**C. City shall not be responsible for the payment of any federal, state or local taxes due as a result of compensation under this Ordinance.**

## **SECTION 7: RATE REVIEW AND ADJUSTMENT.**

**A. WHEN RATE ADJUSTMENTS MAY BE SOUGHT.** Requests for rate adjustments may be made once each year, at Franchisee's or City's discretion. Rate applications shall be timely filed by the Franchisee to give reasonably adequate time for consideration by the City staff and the City Council at a regular meeting, after giving notices required by law in order to go into effect at the date requested by Franchisee. Rate adjustments may be sought for all reasonable reasons, including but not limited to additional costs incurred or to be incurred by Franchisee, or a loss of revenues due to:

1. A new service or a change in service ordered or authorized by the City or a modification or renegotiation of any material term or condition of this Ordinance. Such adjustment shall be based upon Franchisee's costs and revenues incurred in providing the service, plus a rate of return of eight percent of such additional costs. The proposed cost adjustment shall be reviewed after the first year of providing such new or changed service, and the proposed costs shall be adjusted to reflect the actual costs of providing such new or changed service;

2. A change in the requirements for collection, treatment, disposal or processing of Solid Waste, or a change in requirements for collection, transfer, disposal or processing of Recyclable Materials, or any surcharges, either by action of the City or of any federal, state, or local governmental agency or other unanticipated charges or expenses incurred by Franchisee as a result of actions outside of Franchisee's control;

3. Failure of Franchisee to earn a rate of return of not less than six and one-half percent of all reasonable costs incurred by Franchisee in its provision of the services required under this Ordinance; or

4. Any portion of this Ordinance being later declared invalid.

**B. BURDEN OF PROOF.** The Franchisee shall bear the burden of justifying to the City by a preponderance of the evidence any rate increase. If the City determines that the Franchisee has not met its burden, the Franchisee may, within 60 days of City's determination, and before seeking arbitration, request another hearing to produce additional evidence. Upon request, the City shall permit said additional hearing.

**C. COST OF LIVING ADJUSTMENT (COLA).** In addition to the rate adjustments described above, the portion of the rates for recycling, collection, transportation and disposal represented by specific dollar amounts listed on the rate sheets (Exhibit "A") shall be further adjusted upon written request of the Franchisee if Franchisee can demonstrate by a preponderance of the evidence, an increase in the CPI over the preceding calendar year. The adjustment shall be based upon the change in the CPI from December 31 of the current year, compared to the CPI as of December 31 of the prior year. The rates shall be subject to adjustment on or about the 1st day of April of each year thereafter (the "adjustment date") as follows:

1. The base for computing the adjustment is the CPI (U) National published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month nearest the date of the commencement of the term of this Ordinance ("Beginning Index"). If the index published for the most recent month prior to the rate application ("Extension Index") has increased over the Beginning Index, the rates for the following year (until the next adjustment) shall be set by multiplying the rates by a fraction, the numerator which is the Extension Index and the denominator of which is the Beginning Index. After request for adjustment as provided herein, the parties shall act with all diligence to adjust the rates as set forth hereunder.

2. If the CPI is changed so that the base year differs from that used as of the month immediately preceding the month in which the term commences, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

3. The COLA adjustment provided for herein shall not be granted to Franchisee in any rate hearing where Franchisee is requesting a rate adjustment pursuant to Section 7 A 3 of this Agreement.

**D. RATE DISPUTES.** If the City rejects a rate adjustment requested by the Franchisee, grants an increase less than what was requested by Franchisee, or fails to act timely upon all or any part of the Franchisee's rate adjustment application, then the Franchisee may request binding arbitration of the matter as provided in Section 15 of this Ordinance.

**E. ALTERNATE DISPOSAL FACILITY COSTS.** Subject to existing disposal contracts, Franchisee shall dispose of Solid Waste at the lowest cost Disposal Facility. If Franchisee does not use the lowest cost Disposal Facility, then Franchisee may not recover, through any rate adjustment, its disposal costs which exceed the disposal costs at the lowest cost Disposal Facility.

**F. AUDITS.** If Franchisee seeks a rate adjustment pursuant to Section 7 A. 3 hereof, then City may require Franchisee to provide a financial audit for the previous year of operations. The audit shall be completed according to generally accepted accounting procedures, and shall be at no cost to City. The auditor shall be chosen by City with the concurrence of the Franchisee. Franchisee shall be entitled to recover the reasonable costs of the audit through Franchisee's rates.

**G. UNREASONABLE COSTS.** For the purposes of Section 7 A. 3 of this Agreement, the following shall not be included within the meaning of "reasonable costs":

- 1. Contributions;**
- 2. Fines and penalties;**
- 3. Affiliated party transaction costs to the extent they exceed the fair market rate for such goods or services;**
- 4. Costs associated with future purchase of other companies including ESOP payments, goodwill, amortization of goodwill, premiums on key-person life insurance policies;**
- 5. Principal or interest payments on acquisitions of residential Solid Waste or recycling collection routes, or the purchase of equipment and facilities at a price, that would be construed to include goodwill or a premium in excess of fair market value at the time of acquisition;**
- 6. State, federal and local income taxes;**
- 7. Accruals for future unknown regulatory changes.**

**SECTION 8: GENERAL FRANCHISE TERMS AND CONDITIONS.**  
The following terms and conditions shall apply:

**A. Unless otherwise set forth in this Ordinance, Franchisee shall collect Solid Waste from each Generator throughout the Franchise Area at least once weekly. No collections need be made on legal holidays.**

**B. Subject to the conditions herein, Franchisee need not provide service to any Generator who has been billed for service and who is more than 45 days in arrears of any outstanding balance. In that event the Franchisee may terminate service to such Generator. Additionally, Franchisee need not provide service to non-owners of property, where the owner does not request and pay the charges therefor, unless payment for said service has been guaranteed in advance by the property owner, or a satisfactory cash deposit or advance payment has been made by such non-owner requesting service.**

**C. For accounts more than 90 consecutive days in arrears, or which, within the last 24 months have been more than 90 consecutive days in arrears, Franchisee shall have the authority to require a deposit from such Generators, equal to two months charges for such Generator, and shall have the authority to require the Generator to maintain such deposit, for the services performed hereunder. This requirement shall not apply to Generators in arrears as of the effective date of this Ordinance.**

**D. For Generators who terminate service, and within 60 days of such termination, resume service, Franchisee may charge each such Generator a service termination fee, and a service start up fee.**

**E. Accounts not paid in full within 30 days from payment due date may accrue interest from and after the date due at the legal rate of interest. In addition to said interest, accounts not paid in full within 60 days from payment due date may accrue a reasonable handling fee of \$25.**

**F. In the event service has been terminated for non-payment, Franchisee shall charge such Generator a \$25 fee for re-instituting service.**

**G. Franchisee shall provide the services required to be performed herein in compliance with all federal, state and local laws, statutes, ordinances and regulations, including ORS Chapters 459 and 459 A, and the regulations of the Department of Environmental Quality, the Worker's Compensation Board and the State Accident Insurance Fund. Additionally, Franchisee shall provide the services required to be performed herein in a good and workmanlike manner.**



**H. Each vehicle used by Franchisee for the collection and transportation of Solid Waste and Recyclable Materials:**

**1. Shall be maintained in a safe and legal operating condition at all times.**

**2. Shall be kept clean and sanitary, in good repair and well and uniformly painted.**

**3. Shall have the Franchisee's name, telephone number and vehicle identification number printed or painted in letters not less than 4 inches in height on both sides of the vehicle.**

**4. Shall be maintained at all times in a manner to prevent unnecessary noise during its operation.**

**5. Shall not be operated in a manner that results in undue interference with normal traffic flows.**

**6. Shall not be parked, or left unattended on the public streets when loaded.**

**I. Franchisee may temporarily suspend any service required under the terms of this Ordinance if:**

**1. The street or road access is unavoidably blocked or otherwise impassable through no fault of the Franchisee and there is no reasonable alternate route available, or the street or road access is otherwise inaccessible to Franchisee's vehicles and equipment;**

**2. Adverse weather conditions render providing service unduly hazardous.**

**J. Service to a Generator may be terminated if Franchisee, its officers, employees, agents or contractors, jointly or individually are placed at risk with regard to their physical health or welfare.**

**K. Unless otherwise specifically approved by Franchisee, no Solid Waste container shall exceed the standard size of 32 gallons in capacity or 55 pounds in weight. No Solid Waste container shall be located greater than five feet from curbside or greater than eight feet from the edge of the public roadway. Franchisee reserves the right to determine the type and style of container which any Generator shall use.**

**L. All containers shall be placed in a location readily accessible to Franchisee, outside of garages and other buildings, and outside of all fences, gates and other obstructions, unless the Generator pays the appropriate additional fee, as set forth on the rate sheets.**

**M. Once a Generator's service requirements exceed the equivalent of three 32 gallon cans per week, the Generator shall be required to utilize appropriate sized bins, carts or containers provided by Franchisee.**

**N. Any Generator utilizing a trash compactor shall insure that said compactor is reasonably compatible with the equipment owned by the Franchisee, at the time the Generator signs up for collection service, or the equipment that the Franchisee is willing to acquire. The City shall establish separate collection and disposal rates for compacted and uncompacted Solid Waste, which rates shall not be more than three times the rate of the same volume of non-compacted Solid Waste.**

**O. In the event that a Generator has an occasional item or items of Solid Waste which do not fit into said Generator's Solid Waste container, the Generator shall place the additional item or items adjacent to the Generator's container at regular collection time and the item or items shall be collected on the same route day by the Franchisee. Franchisee shall charge the Generator according to the rate sheets (Exhibit "A") for such additional collection.**

**P. Franchisee shall provide free collection and disposal service to the City in the quantities, and on the terms set forth in Exhibit "B".**

**Q. Title to Recyclable Materials shall pass to Franchisee either when placed in Franchisee's collection bins, or when delivered to Franchisee at designated locations for collection by Franchisee, whichever is applicable. Title to all other materials, including Solid Waste and Infectious Waste, shall remain with the Generator until disposal, where title shall pass to the facility owner or operator.**

**R. Service provided under the terms of this Ordinance shall be subject to the supervision of the City. The Franchisee shall, at all reasonable times, permit inspection of its facilities, equipment, personnel and records as they relate to the services to be provided under this Ordinance.**

**S. Franchisee shall comply with all federal Occupational Safety and Health Administration (OSHA) and applicable State of Oregon, Curry County and City requirements. Franchisee shall also comply with all Worker's Compensation Department requirements and all other state and local code requirements.**

**T. Franchisee shall fully comply with all requirements of ORS Chapter 279, including without limitation ORS 279.316 and ORS 279.334. Additionally, the hourly rate of wage paid by Franchisee to its workers under the terms of this Ordinance shall not be less than the minimum wage as established by the State of Oregon, unless Franchisee is exempt from such law.**

**U. Franchisee shall comply with all equal opportunity laws, orders, rules and regulations promulgated by any federal, state, county or local governmental agency.**

**V. Franchisee shall provide industrial accident insurance for all persons employed on work to be done under this Ordinance.**

**W. Franchisee shall comply with ORS 279.320 relating to liability for monies due to State Commissions.**

**X. Infectious Waste Generators shall comply with all federal, state and local laws, regulations or orders pertaining to Infectious Waste.**

**Y. In the event that Franchisee shall desire to terminate service under the terms of this Ordinance, then it shall give the City not less than 24 months notice of its intent to terminate service and the obligations of the Franchisee. In the event of such voluntary termination of service by Franchisee, the City shall have the right of first refusal to purchase all or any part of the equipment of the Franchisee at the price to be agreed upon between the parties. If the parties cannot agree upon a price, then such dispute shall be submitted to binding arbitration pursuant to Section 15 of this Ordinance.**

**Z. The Franchisee shall respond to any written complaint on service within 10 days of Franchisee's receipt of such written complaint.**

**AA. The Franchisee shall provide the opportunity to recycle in accordance with ORS Chapter 459 A.**

**BB. The Franchisee shall not give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of solid waste handled and location of customers, so long as such rates are reasonably based upon costs of the particular service and are approved by the City Council in the same manner as other rates.**

## **SECTION 9: RECYCLING.**

**A. The Franchisee shall have the following rights and obligations:**

**1. The sole and exclusive right and obligation to operate curbside Recyclable Materials collection routes as stated in Section 2 B of this Ordinance;**

**2. The sole and exclusive right and obligation to place all Recyclable Materials collection bins located within the Franchise Area;**

**3. The sole and exclusive right and obligation to collect, recycle, process, transport, market and sell all Recyclable Materials which have been deposited in Franchisee's collection bins; and**

**4. The sole and exclusive right and obligation to collect, recycle, process, transport, market and sell all Recyclable Materials collected for compensation from the Generator.**

**B. Franchisee shall provide for recycling of the following properly prepared materials: newspaper, magazines, office paper, cardboard, glass containers, tin cans, aluminum, and certain plastics. The foregoing list of Recyclable Materials may be amended from time to time upon mutual agreement of the parties. Such amendment shall be deemed a New or Changed Service.**

**C. Curbside Recyclable Materials collection shall be made not less than weekly. The charge for residential recycling services shall be included in the rates as set forth on the rate sheet.**

**D. All Recyclable Materials collected by Franchisee shall become the property of Franchisee.**

**E. Franchisee shall have the exclusive right to remove Recyclable Materials or other salvageable materials from the Solid Waste generated within the Franchise Area.**

**F. Nothing contained in this Ordinance shall prohibit any third person or any business entity from collecting Recyclable Materials within the Franchise area, so long as said third person or other business entity either:**

**1. Purchases said Recyclable Materials from Generators; or**

**2. Receives said Recyclable Materials from Generators for no compensation.**

**G. This Subsection shall not permit any third person or any business entity to:**

1. Rent or lease containers to any Generator, and to act as a recycling or Solid Waste consultant, if in conjunction with said rental, lease, or consulting agreement, such person or entity agrees to collect, recycle, process, transport, market, and/or sell Recyclable Materials for no compensation;

2. Adversely impact the City's recycling rate mandated by the state legislature and administered by the state Department of Environmental Quality; or

3. Adversely impact Franchisee's recycling revenues to a material extent.

H. Franchisee shall comply with all reasonable reporting requirements from the City regarding data concerning Solid Waste and Recyclable Materials collection, transportation and sale.

I. In addition to the rights and obligations set forth in this Section 8, Franchisee shall have those rights and obligations as set forth in Section 2 of this Ordinance.

J. Recycling revenues received by the Franchisee for the sale of Recyclable Materials subject to this Agreement, shall be considered revenues for the purposes of rate adjustments hereunder.

K. Nothing herein shall prohibit non-profit groups located within the Franchise Area from collecting, for compensation from the Generator, cans and bottles subject to the Oregon deposit law, in effect as of the date of adoption of this Ordinance.

**SECTION 10: DISPOSAL FACILITY.** Subject to the existing contract between Franchisee and Douglas County, Franchisee shall dispose of all collected Solid Waste and Infectious Waste at permitted Disposal Facilities, selected at Franchisee's sole option.

**SECTION 11: INSURANCE.** Franchisee agrees to carry and maintain in effect at all times, at its own expense, the following:

**A. Workers' Compensation Insurance.**

**B. General liability insurance against injury or damage to person or property naming the City, its officers, employees, council members and agents as additional insureds and giving the City notice of cancellation, in an amount not less than \$2,000,000 per occurrence. Such insurance shall be primary and not excess, and shall be procured from an insurer authorized to do business in this state.**

**C. Motor vehicle liability insurance on each vehicle owned or used by Franchisee for the services required under this Ordinance insuring against injury or damage to persons or property, naming the City as an additional insured and giving the City notice of cancellation, in an amount equal to that required under Subparagraph B above.**

**D. All insurance premiums shall be paid by the Franchisee and shall be without cost to the City.**

**E. The terms of each policy shall provide that 30 days written notice of cancellation, material change in terms or of Franchisee's intent to not renew be given to the City.**

**F. The Franchisee shall provide proof of insurance coverage on the terms indicated in this Section.**

**SECTION 12: INDEMNIFICATION.** Franchisee agrees to defend, indemnify and hold free and harmless City, and its elected and appointed officials, officers, employees and agents, from any liability arising from the subject of this Ordinance, including but not limited to any and all claims, demands, losses, expenses, damages, fees, penalties, environmental contamination, personal injury, property damage, and all expenses relating to any claim or cause of action of any nature, including clean-up or remedial action sought by private or governmental bodies, arising out of Franchisee's negligence.

**SECTION 13: ASSIGNMENT.** Franchisee shall not sell, assign or otherwise transfer any rights and obligations granted under this Ordinance without first obtaining the written consent of the City by resolution. The City may attach reasonable terms and conditions to the consent as it deems necessary to maintain and guaranty the quality service under the Franchise. Consent by City will not be unreasonably withheld, provided however that City may require proof of the proposed assignee's financial responsibility, experience in providing Solid Waste disposal services and ability to perform all requirements of the franchise during the franchise term. The City shall not unreasonably withhold its consent if the Franchisee can demonstrate to the reasonable satisfaction of the City that the proposed assignee possesses good character, adequate financial capability and operational expertise, including personnel experienced in Solid Waste management systems of similar size and scope, to provide a level of service to City equal to or better than the level provided by Franchisee.

**SECTION 14: ABANDONMENT; PERFORMANCE BOND.** Franchisee shall not abandon or terminate its services within the Franchise Area during the term of this Ordinance without having first obtained the written approval of the City. Additionally, Franchisee shall, at its own cost, post a performance bond with the City, and at all times during the existence of this Franchise Ordinance shall maintain said bond in full force and effect. The bond shall be in the amount of \$100,000, shall be purchased through a reliable company licensed to do business in this state and shall guarantee Franchisee's faithful performance of its obligations under this Ordinance. If Franchisee fails to perform any of its material obligations under this Ordinance, the City may recover from the principal and surety of the bond all foreseeable damages or losses suffered.



**SECTION 15: BINDING ARBITRATION.** Except as set forth in Section 16, in the event of any dispute arising under this Ordinance, City and Franchisee shall continue performance of their respective obligations and shall attempt to resolve such dispute in a cooperative manner, including negotiating in good faith, prior to initiation of arbitration. Any unresolved dispute or claim which arises out of or relates to this Ordinance, or to the interpretation thereof, shall be resolved by binding arbitration. Arbitration shall be by a single, neutral arbitrator. If the parties are unable to agree upon an arbitrator, then either party may apply to the Circuit Court of Curry County for appointment of an arbitrator. The arbitration hearing shall be held in Brookings, Oregon unless the parties otherwise agree. The arbitrator shall have the powers described in ORS 36.335 and shall follow applicable law in reaching a decision on the controversy submitted. The arbitrator's fees and expenses shall be divided equally between the parties. Each party shall pay its own arbitration related fees and costs. Franchisees portion of the arbitrator's fees, and its portion of the arbitration related fees and costs may only be recovered through the rates in the event that Franchisee is entitled to a rate adjustment pursuant to Section 7 A 3 of this agreement. City and Franchisee shall attempt to conclude all arbitration proceedings within 30 days of the appointment of the arbitrator. Except as otherwise set forth herein, the parties shall follow the arbitration procedures set forth in ORS 36.300 et seq. The decision of the arbitrator shall be final and binding on the parties, and any judgment on the arbitration award may be entered in any court of competent jurisdiction.

**SECTION 16: DEFAULT.**

A. In the event that a party substantially fails to perform its obligations as set forth in this Ordinance, then such party shall be in default hereof. In such case, the non-defaulting party shall provide the defaulting party with written notice of default detailing the nature of the default with reasonable particularity, and the steps required to cure the default. The non-defaulting party may terminate this Ordinance, upon written notice, if the defaulting party fails to cure such default or to commence and diligently pursue a cure to completion within 30 days after receiving the default notice.

**B. In the event that the City finds an immediate and serious danger to the public creating a health hazard or serious public nuisance, the City may, after a minimum of 24 hours actual notice to Franchisee and a public meeting if Franchisee requests it, authorize another person to temporarily provide service under this Ordinance, or the City may provide such service. In either event, the Franchisee agrees as a condition of this franchise that any real property, facilities or equipment may be used to provide such emergency service. The City shall return Franchisee's property upon abatement of the health or nuisance hazard created by the general interruption of service. In the event the power under this section is exercised, the usual charges for service shall prevail and Franchisee shall be entitled to collect such usual charges, but shall reimburse the City for its actual cost, as determined by the City.**

**SECTION 17: EFFECT OF ORDINANCE.** This ordinance shall apply to all third parties within the Franchise Area. Violation of the provisions of this Ordinance shall be deemed to be a civil violation subject to jurisdiction of the municipal court of the City. Each event or each day's violation shall constitute a separate offense. The maximum penalty is and shall be a fine of \$500 for each such offense.

**SECTION 18: LANDFILL CLOSURE/POST CLOSURE.** Notwithstanding any other provision of this Ordinance, Franchisee and City agree:

**A. Franchisee shall be responsible for completing the closure and post-closure of the Wridge Creek Landfill to the satisfaction of the Department of Environmental Quality (DEQ). With respect to the City's portion of such closure/post-closure costs, Franchisee shall be entitled to recover its actual costs incurred in accomplishing satisfactory closure and post-closure at the Wridge Creek Landfill, from Franchise revenues under this Ordinance. However, Franchisee shall not be entitled to recover any "profit" on those costs. The closure and post-closure costs shall be segregated from Franchisee's other costs.**

B. Franchisee agrees to collect a surcharge for closure and post-closure for the Port Orford Landfill, in a manner and in an amount to be determined by the City, and to deposit those funds in a trust account as directed by Curry County and the DEQ. Franchisee shall not be entitled to recover any profit on such funds.

**SECTION 19: ENTIRE AGREEMENT.** This Ordinance is the entire agreement between the parties and supersedes any and all other agreements between the parties, whether written or oral.

**SECTION 20: ENFORCEMENT.** The City shall take reasonable actions to enforce compliance with the terms and conditions of this Ordinance as it may apply to any third party. To the extent permitted by law, the Franchisee may enforce any and all of its rights and privileges granted hereunder or granted by operation of law against any third party if the City fails or refuses to do so.

**SECTION 21: EFFECT OF PARTIAL INVALIDITY.** The invalidity of any portion of this Ordinance shall not be deemed to affect the validity of any other portion. In the event that any provision of this Ordinance is held to be invalid, the remaining provisions shall be deemed to be in full force and effect.

**SECTION 22: MODIFICATION OF FRANCHISEE'S SERVICES.** The City shall have the right to make reasonable modifications to the services to be provided by the Franchisee to Generators. However, this Section shall not permit the City to substantially reduce the services provided by the Franchisee to Generators. Modifications shall only be made after:

A. The City provides a written, proposed change order to Franchisee setting forth the nature of the modification with reasonable particularity, not less than 60 days prior to the proposed effective date of the modification. The proposed change order shall include any proposed change in compensation to Franchisee.

B. Upon receipt of the proposal, the Franchisee shall have 30 days in which to accept the proposed change order or submit a written response to the proposed change order with suggested modifications.

C. Following receipt of Franchisee's written response, the City shall have up to 30 days in which to accept or reject the Franchisee's suggestions and issue a final change order that may be the same as originally proposed or it may be modified to address some or all issues raised by the Franchisee. If the final change order issued by the City is not acceptable to the Franchisee, the Franchisee will be obligated to perform the work, but the Franchisee may seek relief under the rate adjustment provisions herein, or, if justified, under the arbitration provisions herein.

**SECTION 23: FORCE MAJEURE.** If the performance by either party of their respective obligations under this Ordinance is delayed or prevented in whole or in part by any legal requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged and released from performance to the extent such performance or obligation is so limited or prevented by such occurrence without liability of any kind.

**SECTION 24: REPEALING CLAUSE.** Ordinance No. 86-0-402 is repealed in its entirety and is of no further force or effect.

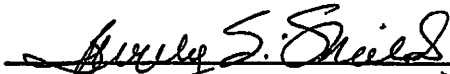
FIRST READING:	September 25, 1995
SECOND READING:	September 25, 1995
PASSAGE:	September 25, 1995
EFFECTIVE DATE:	October 24, 1995

Signed by me in authentication of its passage this 26th day of September, 1995.



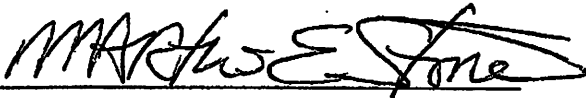
Tom Davis  
Mayor

**ATTEST:**



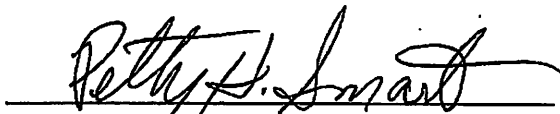
Beverly S. Shields  
Finance Director/Recorder

Approved as to form:



Martin E. Stone  
Brookings, Oregon City Attorney

**ACCEPTANCE OF FRANCHISE BY FRANCHISEE:**



By Petty H. Smart, President

10/10, 1995

franchis.bk8

**EXHIBIT "A"**

**EFFECTIVE JULY 1, 1995**  
**RATE SCHEDULE 95/96 - CITY OF BROOKINGS**

**CANS /CARTS: SET OUT (CURB SIDE) SERVICE:**

\$15.54 per month - one thirty (30) gallon can each week.  
\$31.09 per month - one sixty (60) gallon cart each week.  
\$46.63 per month - one ninety (90) gallon cart each week.  
\$11.62 per month - one twenty (20) gallon When Available-  
Recycle Only.

Residential Compactor-In Excess Of 2 Bags-1.5 Times Can Rate.

**CANS/CARTS: OTHER THAN SET OUT SERVICE:**

\$.88 per trip plus \$.88 for each additional twenty five feet from truck access. Long driveways, \$.88 for first 100 yards, over 100 yards \$.88 for each additional 200 yards or portion thereof, Per Trip. An additional \$.88 for each gate, fence, hallway and/or stairs per trip and overweight limits of cans (30 gallon - 55 lbs, 20 gallon - 37 lbs, 15 gallon - 28 lbs, 10 gallon- 18 lbs).

**COMMERCIAL/RENTAL SERVICES (Container/Carts/Cans)**

30 Gallon Cart (Including Rentals Five and up.	17.48
Container Service - Per Loose Yard - Per Pick-Up.	19.13
Container Service - Per Loose Yard - Wood (Roll Off).	9.50
Container Service - Per Loose Yard - Metal (Roll Off).	9.50
Container Service - Gate Fee (Each Gate) - Extra .	4.93
Container Rental - One-Eight Yards - Per Month.	11.01
Customer Requested - Other Than Wkly-Each Trip Minimum.	13.93
Customer Requested - Customized Pick Up (Times)-Minimum.	13.93
Container Service - Roll Out Service - Extra.	10%
Container Service - Ramp Roll Out Service - Extra.	20%
Customer Requested After Hour, Saturday or Sunday - Extra.	50%
Mechanically Compacted Waste 2.75 Times Yard Or Can Rate.	

**RECYCLING CREDITS (When Service Available):**

Container Service - Newsprint (Properly Prepared).	50%
Container Service - Waste Paper/Office Paper/Cans/Bottles/Plastics/ Glass (Properly Prepared).	25%

**OTHER RESIDENTIAL a COMMERCIAL CHARGES:**

(1) Occasional Extra In Route Pickup - Each.	4.08
(2) Customer Requested Special Pickup-Minimum.	6.16
(3) Initial One Time Set Up Charge.	4.95
(4) Monitored inactive Status - Each Time.	4.95
(5) Rental Property Owners Responsible For Sanitation Charges.	
(6) Extra Heavy Roofing/Demolition 2.75 Time Yd. Rate.	
(7) Waste in Excess Of 280 LBS Subject To The Approved Tonnage Rate.	
(8) Household Hazardous Waste.	

(As Approved)

## EXHIBIT

"B"

### Free Services for the City of Brookines (Once a week Pick-up)



City Hall	2.5 Yards
Sewer Plant	3 Yards
City Yard	4 Yards
City Yard	1.5 Yards

# CITY OF BROOKINGS

## COUNCIL WORKSHOP REPORT

Meeting Date: December 5, 2011

Originating Dept: ASD

  
Signature (submitted by)  
  
City Manager Approval

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### Subject:

Water/Wastewater Rates

### Background/Discussion:

The City initiated a study on wastewater rates with Wildan in 2007-08. The results of that study were not adopted. However, I have included a page from that study for comparison purposes.

The City Manager sent a memo to the Mayor and Council in December 2009 explaining upcoming issues with the wastewater debt service. The City was able to address some of this through the 2010-11 budget process by maximizing the General Obligation Bond tax levied, as approved previously by the voters.

The City has historically paid a portion of the debt service from SDC funds, but those funds are almost depleted. In the 2011-12 budget process a 19.9% rate increase was proposed; however, only a 5.5% rate increase was approved and adopted. We also discussed the future need to increase rates due to the reduced SDC funds available for the debt payment.

I have enclosed a summary worksheet on rates that shows the last 4 years actual rates and the next three years projected rates for both water and wastewater. When looking at rate increases, I looked at the budget with and without non-recurring capital costs. Those spreadsheets are attached. One typical side effect of deferring a rate increase is that capital projects are deferred. So making that same increase a year later, means there is an amount that is lost that will not be recovered unless you double the increase in the future. A 5% deferred rate increase in wastewater is approximately \$100,000. That is one reason we are looking at a projected three-year budget.

### Attachment(s):

- 7. Water/Wastewater Rates worksheet
- 6. Projected Budgets 2012-13 to 2014-15 (7 pages)
- C. Future Capital Projects
- C/. Adopted Budget 2011-12 for Water and Wastewater Funds
- C. Wildan Rate Analysis (Pg. 4)
- C. Memo dated December 23, 2009



City of Brookings  
Water/Wastewater Rates - Residential

	<u>Prior 2008-09</u>	<u>Prior 2009-10</u>	<u>Prior 2010-11</u>	<u>Current 2011-12</u>	<u>Future 2012-13</u>	<u>Future 2013-14</u>	<u>Future 2014-15</u>
<b><u>WATER:</u></b>							
Actual Rates	18.65	19.62	19.62	20.39			
Estimated Future Rates					22.82	23.25	23.70
Percentage (%) Increase		5.20%	0.00%	3.92%	11.92%	1.88%	1.94%

Note: Above reflects usage of 500 cubic feet

**WASTEWATER:**

Actual Rates	44.45	48.27	48.27	50.92			
Proposed Rate Study (Wildan)		48.95	50.41	51.75	53.13		
Estimated Future Rates					61.72	62.44	63.18
Percentage (%) Increase		8.59%	0.00%	5.49%	21.21%	1.17%	1.19%

Both Water and Wastewater Future rates are based on increases WITHOUT capital expenditures

City of Brookings  
Three year Budget  
Water  
2002-13 to 2014-15

	Budget	Projected		
<u>Water Fund:</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Revenues:				
Carryover	190,000	160,000	160,000	160,000
User Fees	1,265,500	1,416,111	1,443,035	1,470,691
Other revenue	14,000	14,000	14,000	14,000
<b>Total Revenues</b>	<b>1,469,500</b>	<b>1,590,111</b>	<b>1,617,035</b>	<b>1,644,691</b>
Expenditures:				
Personnel Services	421,876	434,532	447,568	460,995
Materials and Services	372,130	379,573	387,164	394,907
Capital Outlay	80,800	80,800	80,800	80,800
Transfers:				
To General Fund	195,519	201,385	207,427	213,650
To Loan Fund	235,060	321,000	321,000	321,000
To Technology Fund	12,570	12,821	13,077	13,339
Contingency	151,545	160,000	160,000	160,000
<b>Total Expenditure</b>	<b>1,469,500</b>	<b>1,590,111</b>	<b>1,617,036</b>	<b>1,644,691</b>
Water Debt				
Funded from Operations	321,000	321,000	321,000	321,000
Rate Increase included above		11.90%	1.90%	1.92%

**A - water with only recurring Capital**

City of Brookings  
Three year Budget  
Water  
2002-13 to 2014-15

	Budget	Projected		
	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
<b>Water Fund:</b>				
Revenues:				
Carryover	190,000	160,000	160,000	160,000
User Fees	1,265,500	1,689,841	1,716,765	1,744,421
Other revenue	14,000	14,000	14,000	14,000
<b>Total Revenues</b>	<b>1,469,500</b>	<b>1,863,841</b>	<b>1,890,765</b>	<b>1,918,421</b>
Expenditures:				
Personnel Services	421,876	434,532	447,568	460,995
Materials and Services	372,130	379,573	387,164	394,907
Capital Outlay	80,800	433,900	433,900	433,900
Transfers:				
To General Fund	195,519	201,385	207,427	213,650
To Loan Fund	235,060	241,630	241,630	241,630
To Technology Fund	12,570	12,821	13,077	13,339
Contingency	151,545	160,000	160,000	160,000
<b>Total Expenditure</b>	<b>1,469,500</b>	<b>1,863,841</b>	<b>1,890,766</b>	<b>1,918,421</b>
<b>Water Debt</b>				
Funded from Operations	321,000	331,000	331,000	331,000
<b>Rate Increase included above</b>		<b>33.53%</b>	<b>1.59%</b>	<b>1.61%</b>

**B - water with Capital - evenly distributed over three years.**

City of Brookings  
Three year Budget  
Water  
2002-13 to 2014-15

	Budget	Projected		
<u>Water Fund:</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Revenues:				
Carryover	190,000	160,000	160,000	160,000
User Fees	1,265,500	1,442,671	1,681,456	1,920,972
Other revenue	14,000	14,000	14,000	14,000
 Total Revenues	 1,469,500	 1,616,671	 1,855,456	 2,094,972
Expenditures:				
Personnel Services	421,876	434,532	447,568	460,995
Materials and Services	372,130	379,573	387,164	394,907
Capital Outlay	80,800	186,730	398,590	610,450
Transfers:				
To General Fund	195,519	201,385	207,427	213,650
To Loan Fund	235,060	241,630	241,630	241,630
To Technology Fund	12,570	12,821	13,077	13,339
 Contingency	 151,545	 160,000	 160,000	 160,000
 Total Expenditure	 1,469,500	 1,616,671	 1,855,456	 2,094,971
 Water Debt				
Funded from Operations	321,000	331,000	331,000	331,000

Rate Increase included above                      14.00%      16.55%      14.24%

Note: Assumes paying 27% from Water SDC Fund

**C - water with Capital - phased in over three years.**

City of Brookings  
Three year Budget  
Wastewater  
2002-13 to 2014-15

	Budget	Projected		
<u>Wastewater Fund:</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Revenues:				
Carryover	2,200,000	300,000	300,000	300,000
User Fees	2,088,900	2,530,961	2,560,644	2,591,157
HSD Revenue	342,000	414,375	419,235	424,231
Other revenue	10,000	10,000	10,000	10,000
Other - Loan Proceeds	550,000	0	0	0
<b>Total Revenues</b>	<b>5,190,900</b>	<b>3,255,337</b>	<b>3,289,880</b>	<b>3,325,388</b>
Expenditures:				
Collection:				
Personnel Services	317,604	327,132	336,946	347,054
Materials and Services	226,740	231,275	235,901	240,619
Capital Outlay	24,900			
Treatment:				
Personnel Services	371,227	382,364	393,835	405,650
Materials and Services	579,290	590,876	602,694	614,748
Capital Outlay	2,287,400			
Transfers:				
To General Fund	146,328	150,718	155,240	159,897
To Loan Fund	964,926	1,260,151	1,252,186	1,244,082
To Technology Fund	12,570	12,821	13,077	13,339
<b>Contingency</b>	<b>259,915</b>	<b>300,000</b>	<b>300,000</b>	<b>300,000</b>
<b>Total Expenditure</b>	<b>5,190,900</b>	<b>3,255,337</b>	<b>3,289,879</b>	<b>3,325,389</b>
<b>Wastewater Debt</b>				
Funded from Operations	1,268,438	1,260,151	1,252,186	1,244,082
<b>Rate Increase included above</b>		<b>21.16%</b>	<b>1.17%</b>	<b>1.19%</b>

**A - wastewater with no Capital**

City of Brookings  
Three year Budget  
Wastewater  
2002-13 to 2014-15

	Budget	Projected		
<u>Wastewater Fund:</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Revenues:				
Carryover	2,200,000	300,000	300,000	300,000
User Fees	2,088,900	2,836,304	2,865,986	2,896,500
HSD Revenue	342,000	464,367	469,226	474,222
Other revenue	10,000	10,000	10,000	10,000
Other - Loan Proceeds	550,000	0	0	0
<b>Total Revenues</b>	<b>5,190,900</b>	<b>3,610,670</b>	<b>3,645,212</b>	<b>3,680,722</b>
Expenditures:				
Collection:				
Personnel Services	317,604	327,132	336,946	347,054
Materials and Services	226,740	231,275	235,901	240,619
Capital Outlay	24,900	201,667	201,667	201,667
Treatment:				
Personnel Services	371,227	382,364	393,835	405,650
Materials and Services	579,290	590,876	602,694	614,748
Capital Outlay	2,287,400	153,667	153,667	153,667
Transfers:				
To General Fund	146,328	150,718	155,240	159,897
To Loan Fund	964,926	1,260,151	1,252,186	1,244,082
To Technology Fund	12,570	12,821	13,077	13,339
<b>Contingency</b>	<b>259,915</b>	<b>300,000</b>	<b>300,000</b>	<b>300,000</b>
<b>Total Expenditure</b>	<b>5,190,900</b>	<b>3,610,670</b>	<b>3,645,212</b>	<b>3,680,722</b>
Wastewater Debt				
Funded from Operations	1,268,438	1,260,151	1,252,186	1,244,082
Rate Increase included above		35.78%	1.05%	1.06%

**B - wastewater with Capital - evenly distributed over three years.**

City of Brookings  
Three year Budget  
Wastewater  
2002-13 to 2014-15

	Budget	Projected		
<u>Wastewater Fund:</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Revenues:				
Carryover	2,200,000	300,000	300,000	300,000
User Fees	2,088,900	2,530,962	2,865,986	3,201,842
HSD Revenue	342,000	414,375	469,226	524,214
Other revenue	10,000	10,000	10,000	10,000
Other - Loan Proceeds	550,000	0	0	0
 Total Revenues	 5,190,900	 3,255,337	 3,645,212	 4,036,056
Expenditures:				
Collection:				
Personnel Services	317,604	327,132	336,946	347,054
Materials and Services	226,740	231,275	235,901	240,619
Capital Outlay	24,900	0	201,667	403,333
Treatment:				
Personnel Services	371,227	382,364	393,835	405,650
Materials and Services	579,290	590,876	602,694	614,748
Capital Outlay	2,287,400	0	153,667	307,333
Transfers:				
To General Fund	146,328	150,718	155,240	159,897
To Loan Fund	964,926	1,260,151	1,252,186	1,244,082
To Technology Fund	12,570	12,821	13,077	13,339
 Contingency	 259,915	 300,000	 300,000	 300,000
 Total Expenditure	 5,190,900	 3,255,337	 3,645,212	 4,036,056
 Wastewater Debt				
Funded from Operations	1,268,438	1,260,151	1,252,186	1,244,082
 Rate Increase included above		21.16%	13.24%	11.72%

**C - wastewater with Capital - phased in over three years.**

2,945,337    3,335,212    3,726,056

City of Brookings  
Three year Budget  
Wastewater  
2002-13 to 2014-15

	Budget	Projected		
<u>Wastewater Fund:</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
Revenues:				
Carryover	2,200,000	300,000	300,000	300,000
User Fees	2,088,900	2,402,065	2,865,986	3,330,739
HSD Revenue	342,000	393,272	469,226	545,317
Other revenue	10,000	10,000	10,000	10,000
Other - Loan Proceeds	550,000	0	0	0
 Total Revenues	 5,190,900	 3,105,337	 3,645,212	 4,186,056
Expenditures:				
Collection:				
Personnel Services	317,604	327,132	336,946	347,054
Materials and Services	226,740	231,275	235,901	240,619
Capital Outlay	24,900	0	201,667	553,333
Treatment:				
Personnel Services	371,227	382,364	393,835	405,650
Materials and Services	579,290	590,876	602,694	614,748
Capital Outlay	2,287,400	0	153,667	307,333
Transfers:				
To General Fund	146,328	150,718	155,240	159,897
To Loan Fund	964,926	1,110,151	1,252,186	1,244,082
To Technology Fund	12,570	12,821	13,077	13,339
 Contingency	 259,915	 300,000	 300,000	 300,000
 Total Expenditure	 5,190,900	 3,105,337	 3,645,212	 4,186,056
 Wastewater Debt				
Funded from Operations	1,268,438	1,260,151	1,252,186	1,244,082
 Rate Increase included above		14.99%	19.31%	16.22%

**D - Wastewater Uses \$150,000 from SDC 2012-13, requires \$150,000 more for Capital 2014-15.**



## City of Brookings

### Future Capital Projects

<u>Project Title</u>	<u>Amount</u>
<b><u>Water:</u></b>	
Tank Maintenance Program	\$10,000
Tidewater Tank	441,000
Backflow Prevention Program	30,000
Water Main Improvements	250,000
Railroad Water Main Improvements	167,300
Water Master Plan	75,000
Tank Cathodic Protection Anode	11,000
PRV Hasset @ Kevin	40,000
Water Meters	35,000
Subtotal Water	<u>\$1,059,300</u>
<b><u>Wastewater:</u></b>	
<b><i>Collections</i></b>	
Railroad sewer interceptor	\$214,000
Pacific Street Sewer	159,000
I/I program	75,000
Lift station VFD	25,000
GIS Update	17,000
Oak St interceptor improvements	740,000
Point repairs from smoke test and TV	50,000
Mindy Street Sewer	65,000
	<u>1,345,000</u>
Less: to be paid by SDC/SRF	<u>(740,000)</u>
Subtotal - Collections	<u>\$605,000</u>
<b><i>Wastewater Treatment</i></b>	
Slide repair - Phase 2	\$313,000 *
UV Disinfection System (Controls)	75,000
UV Disinfection System (Ballasts)	19,000
UV Disinfection System (cylinders)	32,000
Methane system valve replacement	22,000
Subtotal - Treatment	<u>\$461,000</u>

\* Applied for Hazard Mitigation funds.

CITY OF BROOKINGS  
WATER FUND

RESOURCES

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2009-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION RESOURCES & REQUIREMENTS	ACCOUNT #	PROPOSED BY OFFICER	BUDGET FOR NEXT YEAR 2011-12 APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
0	0	620,000	NET WORKING CAPITAL	20-09-4910	190,000	190,000	190,000
1,207,718	1,202,807	1,218,000	UTILITY USER FEES	20-04-4160	1,449,400	1,265,500	1,265,500
14,394	7,970	7,000	UTILITY CONNECTION FEES	20-04-4165	10,000	10,000	10,000
7,318	0	4,000	INTEREST INCOME	20-06-4115	4,000	4,000	4,000
2,576,309	207,989	700,000	OTHER REVENUE	20-06-4140	0	0	0
3,805,739	1,418,785	2,549,000	SUBTOTAL		1,653,400	1,469,500	1,469,500
3,805,739	1,418,785	2,549,000	TOTAL RESOURCES		1,653,400	1,469,500	1,469,500

CITY OF BROOKINGS  
WATER FUND

WATER DISTRIBUTION  
EXPENDITURES

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2008-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION EXPENDITURES	ACCOUNT #	PROPOSED BY OFFICER	BUDGET FOR NEXT YEAR 2011-12 APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
<b>WATER DISTRIBUTION</b>							
<b>PERSONAL SERVICES:</b>							
145,042	149,756	255,597	SALARIES & WAGES	20-21-5005	281,842	244,324	244,324
7,930	8,109	8,440	OVERTIME	20-21-5010	8,735	8,435	8,435
26,456	22,430	39,838	PERS	20-21-5015	57,268	49,086	49,086
11,762	11,852	20,247	FICA	20-21-5020	22,229	19,338	19,338
43,564	43,701	84,425	HEALTH INSURANCE	20-21-5025	102,506	87,746	87,746
2,688	4,469	13,282	WORKERS' COMPENSATION	20-21-5030	14,687	12,593	12,593
649	150	372	UNEMPLOYMENT	20-21-5035	411	354	354
237,791	240,467	422,201	TOTAL PERSONAL SERVICES		487,878	421,876	421,876
<b>MATERIALS AND SERVICES:</b>							
6,948	7,609	7,300	OFFICE SUPPLIES	20-21-6005	7,300	7,300	7,300
1,455	776	4,100	UNIFORM ALLOWANCE	20-21-6025	4,100	4,100	4,100
51,782	77,614	135,000	OPERATING SUPPLIES	20-21-6030	95,000	95,000	95,000
4,479	25,954	30,000	WATER CONSERVATION PROGRAM	20-21-6031	25,000	0	0
541	183	0	MISCELLANEOUS	20-21-6035	0	0	0
0	12,395	13,500	MISC SAFETY SUPPLIES	20-21-6038	13,500	13,500	13,500
3,843	616	23,000	BUILDING MAINTENANCE	20-21-6040	5,000	5,000	5,000
0	0	0	LEGAL SERVICES	20-21-6085	15,000	15,000	15,000
13,486	40,755	60,000	ENGINEERING SERVICES	20-21-6075	57,800	57,800	57,800
51,100	60,594	70,000	CONTRACT SERVICES	20-21-6090	51,430	51,430	51,430
0	0	0	LEASE EXPENSE	20-21-6105	12,000	12,000	12,000
10,699	10,157	28,000	INSURANCE/BONDS	20-21-6115	12,000	12,000	12,000
2,406	3,117	7,000	TRAINING/TRAVEL	20-21-6120	7,000	7,000	7,000
32,731	24,170	88,000	UTILITIES	20-21-6130	80,000	80,000	80,000
6,209	5,283	13,000	COMMUNICATIONS	20-21-6135	12,000	12,000	12,000
185,690	269,223	478,900	TOTAL MATERIAL AND SERVICES		397,130	372,130	372,130
<b>CAPITAL OUTLAY:</b>							
2,875,121	240,451	780,000	IMPROVEMENTS	20-21-7005	0	0	0
22,476	22,457	28,500	VEHICLE	20-21-7015	28,500	28,500	28,500
48,935	74,910	99,000	EQUIPMENT	20-21-7020	85,000	47,500	47,500
0	1,708	7,000	COMPUTER HARDWARE/SOFTWARE	20-21-7030	0	0	0
0	2,384	4,800	TOWER LEASE	20-21-7038	4,800	4,800	4,800
2,947,531	341,911	919,300	TOTAL CAPITAL OUTLAY		118,300	80,800	80,800
3,371,012	851,600	1,820,401	TOTAL WATER DISTRIBUTION		1,003,108	874,808	874,808

CITY OF BROOKINGS  
WATER FUND

WATER TREATMENT  
EXPENDITURES

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2009-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION EXPENDITURES	ACCOUNT #	PROPOSED BY OFFICER	BUDGET FOR NEXT YEAR 2011-12 APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
<b>WATER TREATMENT</b>							
<b>PERSONAL SERVICES:</b>							
115,923	118,638		0 SALARIES & WAGES	20-22-5005			0
2,281	2,327		0 OVERTIME	20-22-5010			0
20,907	17,155		0 PERS	20-22-5015			0
8,973	8,779		0 FICA	20-22-5020			0
30,216	30,744		0 HEALTH INSURANCE	20-22-5025			0
6,389	5,036		0 WORKERS' COMPENSATION	20-22-5030			0
498	113		0 UNEMPLOYMENT	20-22-5035			0
185,186	182,791		0 TOTAL PERSONAL SERVICES				0
<b>MATERIALS AND SERVICES:</b>							
140	0		0 OFFICE SUPPLIES	20-22-6005			0
1,674	1,886		0 UNIFORM ALLOWANCE	20-22-6025			0
26,055	21,471		0 OPERATING SUPPLIES	20-22-6030			0
143	0		0 WATER CONSERVATION PROGRAM	20-22-6031			0
0	492		0 SAFETY	20-22-6035			0
185	4,920		0 BUILDING MAINTENANCE	20-22-6040			0
31,746	25,494		0 CONTRACT SERVICES	20-22-6080			0
17,063	16,792		0 CHEMICALS	20-22-6110			0
14,650	15,327		0 INSURANCE/BONDS	20-22-6115			0
2,336	4,293		0 TRAINING/TRAVEL	20-22-6120			0
46,539	50,600		0 UTILITIES	20-22-6130			0
4,226	3,778		0 COMMUNICATIONS	20-22-6135			0
144,745	145,051		0 TOTAL MATERIAL AND SERVICES				0
<b>CAPITAL OUTLAY:</b>							
882	0		0 VEHICLE	20-22-7015			0
0	200,817		0 EQUIPMENT	20-22-7020			0
0	423		0 COMPUTER HARDWARE/SOFTWARE	20-22-7030			0
0	2,384		0 TOWER LEASE	20-22-7036			0
0	4,380		0 PUMP STATIONS	20-22-7050			0
882	208,004		0 TOTAL CAPITAL OUTLAY				0
<b>TRANSFERS OUT:</b>							
163,311	218,348	252,826	TRANSFER OUT-GENERAL FUND	20-22-8505	266,731	195,519	195,519
6,028	0	0	TRANSFER OUT-DAWSON BOND FUND	20-22-8540	0	0	0
20,000	20,000	20,000	TRANSFER OUT-GENERAL RESERVE	20-22-8560	15,000	0	0
0	0	322,000	TRANSFER OUT - WATER LOAN FUND	20-22-8576	235,060	235,060	235,060
0	0	0	TRANSFER OUT - TECHNOLOGY FUND	20-22-8585	12,570	12,570	12,570
189,339	238,348	594,826	TOTAL TRANSFERS OUT		529,361	443,149	443,149

CITY OF BROOKINGS  
WATER FUND

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2008-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION EXPENDITURES	ACCOUNT #	BUDGET FOR NEXT YEAR 2011-12		
					PROPOSED BY OFFICER	APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
			WATER TREATMENT EXPENDITURES				
			CONTINGENCIES & RESERVES:				
	0	0	CONTINGENCY	20-22-9200	120,931	151,545	151,545
	0	0	TOTAL CONTINGENCIES & RESERVES		120,931	151,545	151,545
520,151	774,195	728,599	TOTAL WATER TREATMENT		650,292	594,694	594,694
3,891,163	1,625,795	2,549,000	TOTAL FUND EXPENDITURES		1,653,400	1,469,500	1,469,500

CITY OF BROOKINGS  
WASTEWATER FUND

RESOURCES		BUDGET FOR NEXT YEAR 2011-12	
SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2009-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION
		RESOURCES & REQUIREMENTS	ACCOUNT #
		PROPOSED BY OFFICER	COMMITTEE
		ADOPTED BY GOVERNING BODY	
0	0	784,000	NET WORKING CAPITAL
2,105,360	2,041,320	1,980,000	UTILITY USER FEES
16,344	11,627	8,000	UTILITY CONNECTION FEES
338,519	287,897	300,000	HSD CHARGES FOR SERVICES
56,308	51,931	53,000	HSD CHARGES FOR DEBT
3,017	0	0	HSD CHARGES WW LOAN DEBT
17,703	9,552	4,000	INTEREST INCOME
0	0	1,700,000	OTHER REVENUE
2,537,251	2,402,326	4,829,000	SUBTOTAL
2,537,251	2,402,326	4,829,000	TOTAL RESOURCES

CITY OF BROOKINGS  
WASTEWATER FUND

WASTEWATER COLLECTION  
EXPENDITURES

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2009-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION EXPENDITURES	ACCOUNT #	PROPOSED BY OFFICER	BUDGET FOR NEXT YEAR 2011-12 APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
<b>WASTEWATER COLLECTION</b>							
<b>PERSONAL SERVICES:</b>							
207,982	200,171	250,664	SALARIES & WAGES	25-31-5005	221,745	173,559	173,559
3,367	1,753	7,988	OVERTIME	25-31-5010	8,000	7,879	7,879
34,549	28,810	32,834	PERS	25-31-5015	45,984	33,442	33,442
15,968	15,602	16,888	FICA	25-31-5020	17,566	13,880	13,880
62,536	60,979	77,520	HEALTH INSURANCE	25-31-5025	91,750	76,207	76,207
2,731	4,120	14,426	WORKERS' COMPENSATION	25-31-5030	16,107	12,383	12,383
885	195	311	UNEMPLOYMENT	25-31-5035	323	254	254
327,998	311,829	400,637	TOTAL PERSONAL SERVICES		401,475	317,604	317,604
<b>MATERIALS AND SERVICES:</b>							
5,482	4,926	7,500	OFFICE SUPPLIES	25-31-6005	7,500	7,500	7,500
733	778	3,000	UNIFORM ALLOWANCE	25-31-6025	3,000	3,000	3,000
21,973	30,524	50,000	OPERATING SUPPLIES	25-31-6030	45,000	45,000	45,000
0	13,097	13,000	MISC SAFETY SUPPLIES	25-31-6036	13,000	13,000	13,000
68	616	4,000	BUILDING MAINTENANCE	25-31-6040	4,000	4,000	4,000
0	385	20,000	ENGINEERING SERVICES	25-31-6075	20,000	20,000	20,000
21,547	42,911	104,000	CONTRACT SERVICES	25-31-6090	71,540	71,540	71,540
0	0	0	LEASE EXPENSE	25-31-6105	12,000	12,000	12,000
16,293	15,468	19,000	INSURANCE/BONDS	25-31-6115	19,000	19,000	19,000
4,937	979	2,500	TRAINING/TRAVEL	25-31-6120	2,500	2,500	2,500
20,557	24,864	28,000	UTILITIES	25-31-6130	28,000	28,000	28,000
1,558	1,200	1,500	COMMUNICATIONS	25-31-6135	1,200	1,200	1,200
93,149	135,546	252,500	TOTAL MATERIAL AND SERVICES		226,740	226,740	226,740
<b>CAPITAL OUTLAY:</b>							
22,476	22,457	22,500	VEHICLE	25-31-7015	22,500	22,500	22,500
0	11,185	24,000	EQUIPMENT	25-31-7020	0	0	0
0	1,708	1,500	COMPUTER HARDWARE/SOFTWARE	25-31-7030	0	0	0
0	2,384	2,400	TOWER LEASE	25-31-7036	2,400	2,400	2,400
22,476	37,735	50,400	TOTAL CAPITAL OUTLAY		24,900	24,900	24,900
443,623	484,910	703,537	TOTAL WASTEWATER COLLECTION		653,115	569,244	569,244

CITY OF BROOKINGS  
WASTEWATER FUND

WASTEWATER TREATMENT  
EXPENDITURES

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2009-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION EXPENDITURES	ACCOUNT #	PROPOSED BY OFFICER	APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
<b>WASTEWATER TREATMENT</b>							
<b>PERSONAL SERVICES:</b>							
234,593	248,847	239,228	SALARIES & WAGES	25-32-5005	252,458	221,950	221,950
5,330	5,439	4,410	OVERTIME	25-32-5010	5,740	5,040	5,040
42,231	35,623	38,182	PERS	25-32-5015	51,163	45,718	45,718
18,175	18,123	18,698	FICA	25-32-5020	19,753	17,365	17,365
63,301	67,250	75,706	HEALTH INSURANCE	25-32-5025	84,152	72,583	72,583
6,465	10,628	9,160	WORKERS' COMPENSATION	25-32-5030	9,446	8,253	8,253
1,004	235	343	UNEMPLOYMENT	25-32-5035	362	318	318
371,098	386,144	385,727	TOTAL PERSONAL SERVICES		423,074	371,227	371,227
<b>MATERIALS AND SERVICES:</b>							
( 125)	131	500	OFFICE SUPPLIES	25-32-6005	600	600	600
1,890	1,713	2,400	UNIFORM ALLOWANCE	25-32-6025	2,500	2,500	2,500
86,979	68,109	95,000	OPERATING SUPPLIES	25-32-6030	90,000	90,000	90,000
0	4,686	3,000	SAFETY	25-32-6035	3,000	3,000	3,000
2,792	11,340	10,000	BUILDING MAINTENANCE	25-32-6040	10,000	10,000	10,000
245,555	299,001	255,000	CONTRACT SERVICES	25-32-6090	257,690	257,690	257,690
0	123,633	100,000	DEWATERING ENGINEERING	25-32-6095	0	0	0
12,844	8,019	15,000	CHEMICALS	25-32-6110	15,000	15,000	15,000
20,567	19,515	21,000	INSURANCE/BONDS	25-32-6115	21,000	21,000	21,000
389	4,513	4,500	TRAINING/TRAVEL	25-32-6120	4,500	4,500	4,500
112,853	135,040	150,000	UTILITIES	25-32-6130	168,000	168,000	168,000
6,490	6,067	7,200	COMMUNICATIONS	25-32-6135	7,000	7,000	7,000
480,212	681,766	663,600	TOTAL MATERIAL AND SERVICES		579,290	579,290	579,290
<b>CAPITAL OUTLAY:</b>							
0	0	1,700,000	IMPROVEMENTS	25-32-7005	2,220,000	2,220,000	2,220,000
0	347	0	CONTROL/MONITORING	25-32-7010	0	0	0
157	0	0	VEHICLE	25-32-7015	0	0	0
14,197	3,573	0	EQUIPMENT	25-32-7020	65,000	65,000	65,000
0	1,340	1,500	COMPUTER HARDWARE/SOFTWARE	25-32-7030	0	0	0
0	2,364	2,400	TOWER LEASE	25-32-7036	2,400	2,400	2,400
0	9,861	0	PUMP STATIONS	25-32-7050	0	0	0
14,354	17,505	1,703,900	TOTAL CAPITAL OUTLAY		2,287,400	2,287,400	2,287,400



CITY OF BROOKINGS  
WASTEWATER FUND

WASTEWATER TREATMENT  
EXPENDITURES

SECOND PRECEDING YR 2008-09	FIRST PRECEDING YR 2008-10	ADOPTED BUDGET YR 2010-11	DESCRIPTION EXPENDITURES	ACCOUNT #	PROPOSED BY OFFICER	BUDGET FOR NEXT YEAR 2011-12 APPROVED BY COMMITTEE	ADOPTED BY GOVERNING BODY
365,580	228,309	231,806	TRANSFERS OUT:				
283,000	0	0	TRANSFER OUT-GENERAL FUND	25-32-8505	251,541	146,328	146,328
6,028	0	0	TRANSFER OUT-DEBT SERVICE FUND	25-32-8530	0	0	0
20,000	20,000	20,000	TRANSFER OUT-PENSION BOND FUND	25-32-8540	0	0	0
558,000	831,605	737,323	TRANSFER OUT-GENERAL RESERVE	25-32-8560	15,000	0	0
0	0	0	TRANSFER OUT-WW LOAN FUND	25-32-8575	984,928	984,928	984,928
			TRANSFER OUT - TECHNOLOGY FUND	25-32-8585	12,570	12,570	12,570
1,233,608	1,179,914	989,129	TOTAL TRANSFERS OUT		1,264,037	1,123,824	1,123,824
0	0	383,107	CONTINGENCIES & RESERVES:				
			CONTINGENCY	25-32-9200	288,084	259,915	259,915
	0	383,107	TOTAL CONTINGENCIES & RESERVES		288,084	259,915	259,915
2,109,272	2,265,328	4,125,463	TOTAL WASTEWATER TREATMENT		4,822,885	4,621,656	4,621,656
2,552,895	2,750,238	4,828,000	TOTAL FUND EXPENDITURES		5,476,000	5,190,900	5,190,900

## Wastewater Rate Recommendations

Based on the findings of this wastewater rate analysis, we recommend that the City adopt the following items:

1. The proposed wastewater rate structure (see Table E1 below). The rate structure adequately provides for ongoing costs and debt service and allows for funding of reserves for unscheduled expenses.
2. A policy of targeting an Operating Fund balance of 36 days of annual operations and maintenance expenses to ensure that funds are available for emergency purposes and to mitigate future rate shocks.
3. A policy of setting aside funds annually in a CIP reserve account to provide for funding of ongoing capital improvements projects.

**Table E1: Proposed Wastewater Rate Schedule**

	FY 2009/2010	FY 2010/2011	FY 2011/2012	FY 2012/2013
<b>Customer Class</b>	<b>Discharge Rate (Per Hundred Cubic Feet/Account) <sup>1</sup></b>			
Residential	\$ 48.95	\$ 50.41	\$ 51.75	\$ 53.13
Multi Family	48.95	50.41	51.75	53.13
General Commercial	7.66	7.89	8.10	8.31
Restaurant	19.38	19.96	20.49	21.04
Industrial (Mill)	9.37	9.65	9.91	10.17
Schools	6.12	6.30	6.47	6.64
Churches	6.29	6.48	6.65	6.82
HSD	2.04	2.11	2.16	2.22

1. The Residential Customer Class is charged per account and the Multi Family customer class is charged per unit. All other customer classes are charged per hundred cubic feet.

Sources: The City of Brookings; Willdan Financial Services.

# MEMORANDUM

*Office of the City Manager*



**GARY MILLIMAN**

**City Manager**

**TO:** Mayor and Council

**DATE:** December 23, 2009

**SUBJECT:** Wastewater Debt Service

The City is currently obligated to an annual debt service on two bonds.

## **1998 BONDS**

The City sold \$13.1 million in general obligation bonds for wastewater system improvements in March 1998. The authorizing Resolution (98-R-632) provides:

*"The City of Brookings will finance the wastewater system improvements from a State Revolving Fund Loan, with repayment of the loan derived from wastewater revenue and using voter approval to issue general obligation bonds only in the event that the loan repayment is not achieved through means of wastewater rates."*

Attached is a copy of the Loan Agreement between the City and the State of Oregon. Note the Sewer Rate Covenant beginning on page 8. This provision covenants that the City shall charge sewer fees sufficient to cover the loan payments.

In practice, the City has been using a combination of user fees and System Development Charges to pay the debt service on this loan. Because of the slowdown in development, a shortfall of \$438,350 is anticipated in fiscal 2009-10.

## **2003 BONDS**

The City sold \$3.19 million in general obligation bonds for wastewater system improvements in November 2003. The annual debt service on these bonds (approximately \$350,360) is paid for by a combination of user fees (\$288,500) and property tax (\$69,861). A policy was established by the City Council that the debt service would be 80 per cent user fees, 20 per cent property tax.

However, the Official Statement for the bonds (copy attached) provides as follows:

*"SECURITY – The Bonds are general obligations of the City and the full faith, credit and resources of the City are pledged for the punctual payment of the principal of and interest on the Bonds. The City has covenanted and is obligated by law to levy annually ad valorem taxes*

*(property taxes) without limitation as to rate or amount on all taxable property in the City sufficient to pay the principal of an interest on the Bonds."*

The property tax levy is authorized to continue through FY 2014-15, at which time the debt would be paid off.

## **ALTERNATIVES**

Staff has identified the following three alternatives for dealing with the anticipated SDC revenue shortfall to make the loan payment on the 1998 bonds.

### **ALTERNATIVE 1 – PROPERTY TAX INCREASE**

Consistent with the security covenant for the 2003 Bonds, the City Council could enact a property tax levy to pay the entire amount of the debt service on the 2003 Bonds. This would enable the City to divert the \$280,500 in user fee revenues currently used to pay 80 per cent of the 2003 Bond debt service to the 1998 Bond debt service.

The owner of a single family dwelling with an assessed value of \$250,000 would see their wastewater bond property tax payment increase from \$50.13 to \$164.46.

This would resolve about 64 per cent of the projected deficit.

Note again that the authorization for the tax levy expires in FY 2014-15.

Taxpayers may be able to recover a portion of the additional property tax paid through the income tax deduction provisions. This ability is not available under other Alternatives.

### **ALTERNATIVE 2 – USER FEE INCREASE**

A sewer rate increase of \$11.80 per month per residential customer would be needed to fund the projected \$438,350 shortfall.

*Note: The City has contracted for a wastewater rate study. The study will include recommendations for restructuring the current rates and a rate increase recommendation is expected. The rate recommendation in that study may differ from the rate used in this report.*

### **ALTERNATIVE 3 – GENERAL FUND SUBSIDY**

Under this alternative, current user fees and property tax rates would remain the same. The debt service deficit would be paid from transferring money from the General Fund. This would mean that the City would need to reduce General Fund expenditures by \$438,350. As there are few capital expenditures planned in the General Fund (i.e. the proposed fire apparatus payment was budgeted at \$32,000), the majority of the money would come from reductions in staff or staff hours impacting employees now paid from General Fund revenues. This includes employees working in Planning, Building, Fire, Police and Administration. The total payroll for employees paid from the General Fund is \$2,598,400 (includes police/fire). Thus, we would need to make cuts to achieve a compensation savings of 20 per cent to pay for the full amount of the wastewater debt payment shortfall (excludes police/fire employees). Other

alternatives may include contracting some existing services, or discontinuing some programs...such as swimming pool operations. Following is a discussion of General Fund budget adjustments that would make funding available under Alternative 3.

**Use Reserves.** The \$32,000 budgeted for the fire apparatus payment is actually budgeted from General Fund Reserves. As of June 30, 2008, the General Fund Reserve balance was \$665,858; about 16 per cent of the annual General Fund budget. The Council could allocate funds from General Fund reserves to make the debt service shortfall payment.

**Community Donations.** \$2,000 is budgeted but unspent for contributions to community-based organizations for a variety of programs.

**Swimming Pool.** The swimming pool is operating at a deficit. Closing the pool would reduce General Fund expenditures by about \$70,000.

**Summer Youth Program.** \$12,000 is budgeted for the summer youth program. The City began contracting with KASPER to conduct the summer youth program last year. It was anticipated that the City would continue this practice. The \$12,000 supplements fundraising and volunteerism secured by the non-profit to conduct the program.

**9-1-1 Funds.** \$128,000 is budgeted as a contribution to reserves for future improvements to the public safety communications system. These funds could, instead, be used to pay for communications operator compensation, supplanting \$128,000 in General Fund revenues now budgeted for that purpose.

**Close City Hall on Fridays.** This would result in a compensation reduction of 20 per cent for all non-public works/police/fire employees, making \$75,000 available. This would also significantly impact productivity.

## **FUND ACCOUNTING**

Municipalities operate on a "fund accounting" system. Essentially what this means is that City functions as a collection of small business enterprises. Utility operations are the best examples of "enterprise" funds. Municipal-owned utilities are operated as non-profit enterprises, and are typically funded entirely from revenues directly related to utility operations...user fees, connection fees, SDCs. Utility enterprise debt service is typically secured through a property tax levy or a pledge of user fees and a promise (covenant) to increase user fees as needed to pay the debt service.

Just as the cities charge the telephone company, cable TV and electric utility a "franchise fee" for the privilege of using city-owned streets to install and maintain utility poles and transmission lines, it is equally appropriate for cities to charge a privilege fee to its own utility enterprises, in addition to charging fees sufficient to cover the cost of managing the utility operations. Thus, water and wastewater municipal utilities become a source of General Fund revenue.

Providing a subsidy of any fee-based business or "enterprise" fund, from the General Fund is not considered a good business practice. General Fund subsidies of municipal utilities sometimes does occur as a result of neglect in keeping user fees up to date, or through political

decisions to keep utility rates artificially low. Some cities with extraordinarily high property or transient occupancy tax revenues subsidize utility rates.

Revenues derived from water user fees, 9-1-1 or Urban Development cannot be used to pay for the current wastewater debt service. These and some other revenues are restricted for specific use.

## **IMPACT OF COVENANT NON-COMPLIANCE**

**In issuing the above referenced financings, the City has pledged property taxes and/or wastewater revenues as security for repayment of the debt. While bond holders probably don't care where the money comes from to make the debt payments, noncompliance with these covenants will become problematic when the City seeks to issue debt in the future. Future bond buyers may be concerned that the City has not fulfilled its promises to levy taxes and fees sufficient to make debt payments.**

## **RECOMMENDED ALTERNATIVE**

Staff recommends the following approach to dealing with the projected 1998 Bond payment shortfall.

1. Increase the property tax to the maximum allowable for the 2003 Bonds, and use the resultant "savings" of \$280,500 in user fees to contribute to the \$438,350 shortfall. This would reduce the shortfall to \$157,850.
2. Increase the basic sewer use fee by \$4.20\* . This would generate sufficient revenues to cover the \$157,850 shortfall remaining after increasing the property tax.
3. When development recovers and the City begins receiving new SDC revenues, review the situation annually and reduce sewer user fees as DC revenues improve.

While use of General Fund revenues is not recommended as a part of the solution to this issue, if the Council does chose to consider General Fund revenues, such revenues should be used as a "one time" payment or interfund loan to be repaid from wastewater utility revenues as a future date.

\*Subject to further revision after review of the sewer rate study now in development.

## **CITY OF BROOKINGS WASTEWATER DEBT SHORTFALL**

The City of Brookings issued bonds in 1998 and 2003 to finance improvements to the City wastewater treatment plant. The total amount of bonds issued was \$16.29 million. The term "issuing bonds" essentially means that the City took out a long term loan.

### **1998 BONDS**

The 1998 bonds or "loan," which totaled \$13.1 million, was approved by the voters of the City of Brookings. Funds were used to make wastewater treatment plant improvements mandated by the Oregon Department of Environmental Quality. The voters of the City promised to repay the bond/loan from either a property tax levied specifically to make the loan payment or sewer use fees.

The City never levied a property tax for the 1998 bond repayment. Instead, the City has been using a combination of sewer use fees and fees paid by new development to make the payments. New development fees has paid about 49 per cent of the debt payment.

### **2003 BONDS**

The 2003 bonds totaled \$3.19 million. Again, the City promised to repay the bond/loan from either property taxes or sewer use fees. In this instance, the City did levy a property tax which is used to pay about 26 per cent of the annual debt payment. The remaining 74 per cent has been paid from sewer user fees.

### **CURRENT SITUATION**

The total amount of the annual payment on both bonds is \$1,408,598. New development has substantially slowed as a result of the international economic downturn. This means that the City is no longer receiving substantial amounts of money in new development fees to contribute toward the wastewater bond debt payments.

The City Council is now faced with making up a \$439,000 shortfall in new development fees by finding an alternative means of making the bond/loan payments. Alternatives include raising property taxes, raising sewer user fees or transferring money from other City services...such as parks, fire and police.

### **WASTEWATER IS A BUSINESS ENTERPRISE**

Both the wastewater and water systems operated by the City function as separate businesses, often referred to as "enterprises." Fees paid by the users of water pay for the operation of the water system. Fees paid by the users of sewer for the operation of the wastewater system. Water fees and sewer fees cannot...and are not...used to pay for other City services such as police, fire, parks and street maintenance. Similarly, general property tax and other general taxes and fees collected by the City are not used to pay for water and sewer operations.

# CITY OF BROOKINGS

## COUNCIL WORKSHOP REPORT

Meeting Date: December 5, 2011

Originating Dept: City Manager

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

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**Subject:** Railroad Street Improvements

**Background/Discussion:**

At a previous workshop where the Railroad Street widening/channelization project (Center Street to Fern Street) was discussed, the Council expressed interest in reviewing a more detailed plan on the affect of the project on on-street parking. The Public Works Department has gathered information on existing parking and parking that would become available on the street after completion of the project and will go over this information with the Council at the workshop.

Staff will provide a drawing depicting the current and proposed on-street parking spaces in this area.