



AGENDA

CANBY CITY COUNCIL MEETING

April 5, 2017

7:30 PM

Council Chambers

222 NE 2nd Avenue, 1st Floor

Mayor Brian Hodson

Council President Tim Dale

Councilor Tracie Heidt

Councilor Traci Hensley

Councilor Greg Parker

Councilor Tyler Smith

Councilor Sarah Spoon

WORK SESSION - 6:00 PM

Willow Creek Conference Room

222 NE 2nd Avenue, 1st Floor

The City Council will be meeting in a Work Session to review telecommunications municipal code language and receive information on wireless communications technology. Pg. 1

CITY COUNCIL MEETING – 7:30 PM

1. CALL TO ORDER

A. Invocation

B. Pledge of Allegiance

C. National Library Week Proclamation

Pg. 38

D. Grange Month Proclamation

Pg. 39

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for audience members to address the City Council on items not on the agenda. Each person will be given 3 minutes to speak. You are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. For Agenda items, please fill out a testimony/comment card and give to the City Recorder noting which item you wish to speak on.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

A. Approval of Minutes of the March 4, 2017 City Council Work Session

B. Approval of Minutes of the March 15, 2017 City Council Regular Meeting

C. Appointment to the Historic Review Board

Pg. 40

D. Reappointment to the Historic Review Board

Pg. 41

E. Reappointment to the Transit Advisory Committee

Pg. 42

7. RESOLUTIONS & ORDINANCES

- A. Res. 1260, Adopting Updated City Council Values and Goals and Repealing Resolution 1171 Pg. 43
- B. Res. 1261, Adopting the City of Canby Public Works Department Integrated Pest Management (IPM) Policy and Guidelines Pg. 46
- C. Ord. 1459 Authorizing Contract with Canby Excavating, Inc. for the Mulino and Willow Creek Pumping Station Improvements; and Declaring an Emergency Pg. 61

8. NEW BUSINESS

- A. Update on Transit Master Plan

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

12. EXECUTIVE SESSION: ORS 192.660(2)(h) Litigation

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.0733. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov. City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5. For a schedule of the playback times, please call 503.263.6287.

RESOLUTION 1177

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR TELECOMMUNICATIONS PROVIDERS UNDER CANBY MUNICIPAL CODE CHAPTER 12.36

The Council of the City of Canby, Clackamas County, does hereby resolve that:

WHEREAS, the proposed registration application fees are meant to cover costs of administering and processing registration applications; and

WHEREAS, the proposed annual registration fees are meant to assure the compliance of telecommunications providers in the following of ordinances, rules, regulations, along with providing accurate and current information concerning business conducted in the City of Canby as well as aiding in the implementation and advancement of service quality and consumer protection; and

WHEREAS, the newly amended Chapter 12.36 requires the following to be set by resolution: a registration application fee, an annual registration fee, a franchise fee, and a right-of-way use fee; and

WHEREAS, the Canby City Council held a public hearing on November 20, 2013, to receive public testimony regarding the proposed fees.

NOW, THEREFORE, BE IT RESOLVED by the Canby City Council as follows:

Section 1: City of Canby fees and charges are revised to include the following:

Registration Application Fee: **\$100**

Annual Registration Fee: **4% of gross revenues*** earned in Canby, Oregon

Right-of-Way Use Fee: **7% of gross revenues*** earned in Canby, Oregon
Under the Right-of-Way Use Fee, if no revenues are earned in the City of Canby by a telecommunications provider who occupies the public Right-of-Way, then a fee of two dollars per linear foot occupied in the City of Canby shall be charged and collected.

Franchise Fee: **7% of gross revenues*** earned in Canby, Oregon
Under the Franchise Fee, if no revenues are earned in the City of Canby by a telecommunications provider who occupies the public Right-of-Way, then a fee of two dollars per linear foot occupied in the City of Canby shall be charged and collected.

***Gross Revenues** are defined as any and all revenue of any kind, nature, or form, without deduction for expense, earned in the City of Canby, minus any net uncollectibles, subject to all applicable limitations imposed by federal or state law.

Section 2: The Canby City Council hereby classifies the fees imposed herein as not being subject to the limitations imposed by Section 11 (b), Article XI of the Oregon Constitution and that the City Recorder is hereby directed to publish notice in accordance with ORS 310.145.

This resolution shall take effect on November 20, 2013.

ADOPTED this 20th November, 2013 by the Canby City Council.



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

§ 12.32.080 Interference with the city.

No person shall prevent, delay or interfere with the city, a utility or any of their agents, while engaging in the planting, cultivating, mulching, pruning, spraying or removal of any street trees, park trees or private trees as authorized by this chapter.

§ 12.32.090 Service of orders.

A. When the City Forester shall find it necessary to order the spraying with general notice, trimming, preservation or removal of trees or plants upon public or private property, as authorized in this chapter, he or she shall serve a written order to the owner, operator, occupant or other person responsible for its existence to correct the dangerous condition.

B. The order required in this section shall be served in 1 of the following ways:

1. By making personal delivery of the order to the person responsible;
 2. By leaving the order with some persons of suitable age and discretion upon the premises;
 3. By affixing a copy of the order to the door of the entrance of the premises in violation;
 4. By mailing a copy of the order to the last known address of the owner of the premises by certified mail; or
 5. By publishing a copy of the order in the Canby Herald once a week for 2 successive weeks.
- (Am. Ord. 1385, passed 10-16-2013)

§ 12.32.100 Compliance.

The order required in this chapter shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In case of immediate danger to persons or public property, the City Forester shall have the authority to require compliance upon service of the order.

§ 12.32.110 Appeal.

A person to whom an order under this chapter is directed shall have the right within 14 days of the service of the order to appeal to the City Council, which shall review the order at its next regular meeting or special meeting called for that purpose. Unless the order is revoked or modified by the City

Council, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with the order within 30 days after an appeal shall have been determined.

§ 12.32.120 Failure to comply.

When a person to whom an order is directed fails to comply within the specified time, the City Forester shall remedy the condition or contract with others for that purpose and charge the cost thereof to the person to whom the order is directed. The person remedying the condition under a contract made under this chapter shall be authorized to enter premises for that purpose.

§ 12.32.130 Special assessment.

If the cost of remedying a condition is not paid within 90 days after receipt of a statement therefor from the City Recorder, the costs shall be levied against the property upon which the hazard exists as a special assessment. The levying of the assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as provided in this chapter. This special assessment shall be certified by the City Forester to the City Recorder, and shall thereupon become and be a lien upon the property, and shall be recorded in the city lien docket by the City Recorder.

§ 12.32.140 Penalty.

Any person convicted of violating any provision of this chapter shall be punished by a fine of not more than \$500.

CHAPTER 12.36: TELECOMMUNICATIONS FACILITIES

Section

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| 12.36.010 | Jurisdiction and management of the public rights-of-way. |
| 12.36.020 | Regulatory fees and compensation not a tax. |

- 12.36.030 Definitions.
- 12.36.040 Registration of providers.
- 12.36.050 Construction standards.
- 12.36.060 Location of facilities.
- 12.36.070 Telecommunications franchise.
- 12.36.080 General franchise terms.
- 12.36.090 General provisions.

§ 12.36.010 Jurisdiction and management of the public rights-of-way.

A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the City Charter and state law.

B. Public rights-of-way include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and airspace over these areas.

C. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement or other legal interest in the right-of-way. The city has jurisdiction and regulatory management of each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

D. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits.

E. The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

F. The city retains the right and privilege to cut or move any telecommunications facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. (Ord. 1036, passed 11-3-1999)

§ 12.36.020 Regulatory fees and compensation not a tax.

A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from and in addition to any and all federal, state, local and city charges as may be levied, imposed or due from a telecommunications provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.030 Definitions.

A. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein.

1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

2. The words "shall" and "will" are mandatory and "may" is permissive.

B. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, being 47 USC §§ 201 and 521 *et seq.* as amended, the Cable Communications Policy Act of 1984, being 47 USC § 521 *et seq.*, the Cable Television Consumer Protection and Competition Act of 1992, being 47 USC §§ 201 and 521 *et seq.*, and the Telecommunications Act of 1996, being 47 USC § 151 *et seq.* If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities, see overhead facilities.

Affiliated Interest shall have the same meaning as O.R.S. 759.010.

Cable Act shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 *et seq.*, as now and hereafter amended.

Cable Service is to be defined consistent with federal laws and means the 1-way transmission to subscribers of video programming or other programming service; and subscriber interaction, if any, which is required for the selection or use of the video programming or other programming service.

City means the City of Canby, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

City Council means the elected governing body of the city.

City Property means and includes all real property owned by the city, other than public rights-of-way and utility easements as those are defined herein, and all property held in a proprietary capacity by the city, which are not subject to right-of-way franchising as provided in this chapter.

Conduit means any structure, or portion thereof, containing 1 or more ducts, conduits, manholes, handholes, bolts or other facilities used for any telegraph, telephone, cable television, electrical or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by 1 or more public utilities.

Construction means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

Control or Controlling Interest means actual working control in whatever manner exercised.

Days means calendar days unless otherwise specified.

Duct means a single enclosed raceway for conductors or cable.

Emergency has the meaning provided for in O.R.S. 401.025.

Federal Communications Commission or FCC means the federal administrative agency or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

Franchise means an agreement between the city and a grantee which grants a privilege to use public right-of-way and utility easements within the city for a dedicated purpose and for specific compensation.

Grantee means the person to whom or which a franchise is granted by the city.

Oregon Public Utilities Commission or OPUC means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in state law, or its lawful successor.

Overhead or Aboveground Facilities means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for the facilities.

Person means an individual, corporation, company, association, joint stock company or association, firm, partnership or limited liability company.

Private Telecommunications Network means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for his, her or its use and not for resale, directly or indirectly. Private Telecommunications Network includes services provided by the state pursuant to O.R.S. 190.240 and 283.140.

Public Rights-of-Way include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and airspace over these areas. This definition applies only to the extent of the city's right, title, interest or authority to grant a franchise to occupy and use the areas for telecommunications facilities. Public Rights-of-Way shall also include utility easements as defined below.

State means the State of Oregon.

Telecommunications Act means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. 151 *et seq.*) and as hereafter amended.

Telecommunications Facilities means the plant and equipment, other than customer premises equipment, used by a telecommunications provider to provide telecommunications services.

Telecommunications Provider means any provider of telecommunications services and includes, but is not limited to, every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.

Telecommunications Service means any service provided for the purpose of the transmission of information, including, but not limited to voice, video or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Telecommunication service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act; and (6) commercial mobile radio services as defined in 47 C.F.R. 20.

Telecommunications System, see telecommunications facilities above.

Telecommunications Utility has the same meaning as O.R.S. 759.005(1).

Underground Facilities means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

Usable Space means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that 6 feet of a pole is buried below ground level.

Utility Easement means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

Utility Facilities means the plant, equipment and property, including but not limited to the poles, pipes,

mains, conduits, ducts, cable, wires, plant and equipment located under, on or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1336, passed 11-3-2010; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.040 Registration of providers.

A. Purpose. The purpose of registration is:

1. To assure that all telecommunications providers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city;

2. To provide the city with accurate and current information concerning the telecommunications providers who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city; and

3. To assist the city in the enforcement of this code and the collection of any city franchise fees or charges that may be due the city.

B. Registration Required.

1. Except as provided in division D. of this section, all telecommunications providers having telecommunications facilities within the corporate limits of the city, and all telecommunications providers that offer or provide telecommunications services to any customer within the city, shall register within 45 days of the effective date of this section. Any telecommunications provider that desires to have telecommunications facilities within the corporate limits of the city or to provide telecommunications services to any customer within the city after the effective date of this section shall register prior to such installation or provision of service.

2. After registering with the city pursuant to the above section B.1., the registrant shall, by December 31st of each subsequent year, file with the city a new registration form if it intends to provide telecommunications services at any time in the following calendar year. Registrants that file an initial registration after September 30th shall not be required to file an annual registration until December 31st of the following year.

3. The appropriate application and license from either the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

a. The identity and legal status of the registrant, including the name, address and telephone number of the duly authorized officer, agent or employee responsible for the accuracy of the registration information;

b. The name, address and telephone number for the duly authorized officer, agent or employee to be contacted in case of an emergency;

c. A description of the registrant's existing or proposed telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses or institutions within the city; and

d. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

C. Registration Application Fee. Each application for registration as a telecommunications provider shall be accompanied by a nonrefundable registration application fee in the amount established by resolution of the City Council.

D. Annual Registration Fee. Every telecommunications provider shall pay an annual registration fee in an amount to be determined by resolution of the City Council. Unless otherwise agreed to in writing by the city, the fee shall be paid within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. The telecommunications provider shall pay interest at the rate of 9% per year for any payment made after the due date. The annual registration fee required by this section shall be subject to all applicable limitations imposed by federal or state law.

E. Exceptions to Registration. The following telecommunications providers are excepted from registration:

1. Telecommunications providers that are owned and operated exclusively for its own use by the state or a political subdivision of this state; and

2. A private telecommunications network, provided that the network does not occupy any public rights-of-way of the city.

F. Deductions. A registrant may deduct from the annual registration fee required herein the amount of any payments made or accrued to the city for the same respective period upon which the annual registration fee is computed, under any provision of franchise, permit, or ordinance in lieu of franchise granted by the City Council. A registrant may not deduct amounts paid to the city for application fees, interest charges, or penalties. This division shall not relieve any registrant from paying in accordance with the provisions of a franchise, temporary revocable permit, Charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the annual registration fee under this chapter. A registrant may not deduct from the annual registration fee the value of any right given to the city to use poles, conduits, or ducts to other facilities in common with the registrant. A registrant may not deduct from the annual registration fee any permit or inspection fee imposed under any code provision or ordinance of the city.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.050 Construction standards.

A. General. No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right-of-way except as provided in this code and in compliance with all applicable codes, rules and regulations.

B. Construction Codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

C. Construction Permits. No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit and paying the construction permit fee. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

1. Unless the telecommunications provider has first filed a registration statement with the city pursuant to § 12.36.040B. of this code; and, if applicable,

2. Unless the telecommunications provider has first applied for and been granted a franchise pursuant to § 12.36.070 of this code.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.060 Location of facilities.

A. Location of Facilities. All facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.

2. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.

B. Interference with the Public Rights-of-Way. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

C. Relocation or Removal of Facilities. Except in the case of an emergency, within 90 days following written notice from the city a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights-of-way whenever the city shall have determined that the removal, relocation, change or alteration is reasonably necessary for:

1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;

2. The operations of the city or other governmental entity in or upon the public rights-of-way; and/or

3. The public interest.

D. Removal of Unauthorized Facilities. Within 30 days following written notice from the city, any grantee, telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove the facilities or appurtenances from the public rights-of-way of the city. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

1. One year after the expiration or termination of the grantee's telecommunications franchise;

2. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service or not used for its intended and authorized purpose for a period of 90 days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced;

3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation; or

4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

E. Coordination of Construction Activities. All grantees are required to make a good-faith effort to cooperate with the city.

1. By January 1 of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights-of-way.

2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state and/or federal construction projects.

3. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.070 Telecommunications franchise.

A. Required. A telecommunications franchise shall be required of any telecommunications provider who desires to occupy public rights-of-way of the city.

B. Application. Any person that desires a telecommunications franchise must register as a telecommunications provider and shall file an application with the city which includes the following information:

1. The identity of the applicant;
2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;
3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities;
4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;
5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed; and
6. An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease.

C. Franchise Application and Review Fee.

1. Subject to applicable state law, franchise applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.

2. A franchise application and review fee of \$2,000 shall be deposited with the city as part of the application filed pursuant to division B. above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

D. Determination by the City. The city shall issue a written determination granting or denying the application, in whole or in part. If the application is denied, the written determination shall include the reasons for denial.

E. Rights Granted. No franchise granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term stated in the franchise agreement.

F. Term of Grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of 5 years.

G. Franchise Territory. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee and the public rights-of-way necessary to serve the areas, and may include the entire city.

H. Franchise Fee.

1. A telecommunications franchise granted hereunder shall require the grantee to pay the franchise fee in an amount determined by resolution of the City Council.

2. Every telecommunications provider that uses the public rights-of-way in the city to provide telecommunications services without a franchise, whether or not the provider owns the telecommunications facilities used to provide its services or whether or not the provider is required to obtain a franchise pursuant to this chapter, shall pay a right-of-way use fee in the amount determined by resolution of the City Council. The duty to provide

information set forth in this chapter shall apply to information of telecommunications providers subject to the right-of-way use fee in this division sufficient to demonstrate compliance with this division.

3. Unless otherwise agreed to in writing by the city, the fee shall be paid within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. The communications provider shall pay interest at the rate of 9% per year for any payment made after the due date.

4. The franchise fee and/or the right-of-way use fee required by this section shall be subject to all applicable limitations imposed by federal or state law.

I. Amendment of Grant. Conditions for amending a franchise:

1. A new application and grant shall be required of any telecommunications provider that desires to extend or locate its telecommunications facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter.

2. If ordered by the city to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted franchise, the city shall grant an amendment without further application.

3. A new application and grant shall be required of any telecommunications provider that desires to provide a service which was not included in a franchise previously granted under this chapter.

J. Renewal Applications. A grantee that desires to renew its franchise under this chapter shall, not less than 180 days before expiration of the current agreement, file an application with the city for renewal of its franchise which shall include the following information:

1. The information required pursuant to § 12.36.040.B of this code; and

2. Any information required pursuant to the franchise agreement between the city and the grantee.

K. Renewal Determinations. Within 90 days after receiving a complete application, the city shall issue a written determination granting or denying the

renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

1. The financial and technical ability of the applicant;

2. The legal ability of the applicant;

3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;

4. The applicant's compliance with the requirements of this code and the franchise agreement;

5. Applicable federal, state and local telecommunications laws, rules and policies; and

6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.

L. Obligation to Cure As a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this code, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.

M. Assignments or Transfers of System or Franchise. Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on reasonable conditions as may be prescribed in the consent.

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this code.

3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a

request to transfer or assign a telecommunications franchise.

4. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

N. Revocation or Termination of Franchise. A franchise to use or occupy public rights-of-way of the city may be revoked for the following reasons:

1. Construction or operation in the city or in the public rights-of-way of the city without a construction permit;

2. Construction or operation at an unauthorized location;

3. Failure to comply with division M. above with respect to sale, transfer or assignment of a telecommunications system or franchise;

4. Misrepresentation by or on behalf of a grantee in any application to the city;

5. Abandonment of telecommunications facilities in the public rights-of-way;

6. Failure to relocate or remove facilities as required in this code;

7. Failure to pay taxes, compensation, fees or costs when and as due the city under this code;

8. Insolvency or bankruptcy of the grantee;

9. Violation of material provisions of this code; and

10. Violation of the material terms of a franchise agreement.

O. Notice and Duty to Cure. In the event that the city believes that grounds exist for revocation of a franchise, the city shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence that:

1. Corrective action has been or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

2. Rebuts the alleged violation or noncompliance; and/or

3. It would be in the public interest to impose some penalty or sanction less than revocation.

P. Public Hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the city of its compliance with the franchise or with this code, the city staff shall refer the apparent violation or noncompliance to the City Council. The Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Q. Standards for Revocation or Lesser Sanctions. If persuaded that the grantee has violated or failed to comply with material provisions of this code, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by 1 or more of the following factors; whether:

1. The misconduct was egregious;

2. Substantial harm resulted;

3. The violation was intentional;

4. There is a history of prior violations of the same or other requirements;

5. There is a history of overall compliance; or

6. The violation was voluntarily disclosed, admitted or cured.

R. Other City Costs. All grantees shall, within 30 days after written demand therefor, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.080 General franchise terms.

A. Facilities. Upon request, each grantee shall provide the city with an accurate map or maps certifying the location of all of its telecommunications facilities within the public rights-of-way. Each grantee shall provide updated maps annually.

B. Damage to Grantee's Facilities. Unless directly and proximately caused by wilful, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of-way of the city as a result of or in connection with any

public works, public improvements, construction, excavation, grading, filling or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.

C. Duty to Provide Information. Within 10 business days of a written request from the city, each grantee shall furnish the city with information sufficient to demonstrate:

1. That grantee has complied with all requirements of this code; and

2. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way, shall be made available for inspection by the city at reasonable times and intervals.

D. Service to the City. If the city contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the city the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of the services may be specified in a separate agreement between the city and grantee.

E. Compensation for City Property. If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for the right and use shall be fixed by the city.

F. Cable Franchise. Telecommunication providers providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority.

G. Leased Capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the city that the lease or agreement has been granted to a customer or lessee.

H. Grantee Insurance. Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the

grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:

a. Three million dollars for bodily injury or death to each person;

b. Three million dollars for property damage resulting from any 1 accident; and

c. Three million dollars for all other types of liability.

2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident;

3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000;

4. Comprehensive form premises; operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000;

5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the city, by registered mail, of a written notice addressed to the city of the intent to cancel or not to renew."

6. Within 60 days after receipt by the city of the notice, and in no event later than 30 days prior to the cancellation, the grantee shall obtain and furnish to the city evidence that the grantee otherwise meets the requirements of this section; and

7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.

I. General Indemnification. Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the city and its officers,

employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether the acts or omissions are authorized, allowed or prohibited by this code or by a franchise agreement made or entered into pursuant to this code.

J. Performance Surety. Before a franchise granted pursuant to this code is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this code, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required for construction of facilities.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.090 General provisions.

A. Governing Law. Any franchise granted under this code is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City.

B. Written Agreement. No franchise shall be granted hereunder unless the agreement is in writing.

C. Nonexclusive Grant. No franchise granted under this code shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of telecommunications services or any other purposes.

D. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this code is for any reason held to be invalid or unenforceable

by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the code shall not be affected thereby but shall be deemed as a separate, distinct and independent provision; and the holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this code shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this code, then the provision shall be read to be preempted to the extent and/or the time required by law. In the event the federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, the provision shall thereupon return to full force and effect and shall thereafter be binding, without the requirement of further action on the part of the city, and any amendments hereto.

E. Penalties. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not less than \$100 nor more than \$1,000 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this code regulating code enforcement.

F. Other Remedies. Nothing in this code shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this code.

G. Captions. The captions to sections throughout this code are intended solely to facilitate reading and reference to the sections and provisions contained herein. These captions shall not affect the meaning or interpretation of this code.

H. Compliance with Laws. Any grantee under this code shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term any franchise granted under this

code, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

I. Consent. Wherever the consent of either the city or of the grantee is specifically required by this code or in a franchise granted, the consent will not be unreasonably withheld.

J. Application to Existing Agreements. To the extent that this code is not in conflict with and can be implemented with existing franchise agreements, this code shall apply to all existing franchise agreements for use of the public right-of-way for telecommunications.

K. Confidentiality. The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law. (Ord. 1036, passed 11-3-1999)

CHAPTER 12.40: BICYCLES, SKATEBOARDS, SCOOTERS AND ROLLER BLADES

Section

12.40.010	Regulated riding activity.
12.40.020	Definitions.
12.40.030	Prohibited riding areas.
12.40.040	Prohibited riding.
12.40.050	Duty to yield.
12.40.060	Duty to obey traffic laws and control devices.
12.40.070	Prohibited riding times.
12.40.080	Penalty.

§ 12.40.010 Regulated riding activity.

This chapter regulates the riding of bicycles, skateboards and other similar devices defined below. (Ord. 1082, passed 11-21-2001)

§ 12.40.020 Definitions.

A. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bicycles means any wheeled bicycle, unicycle or tricycle.

Riding means propelling bicycles, skateboards or similar devices by having 1 or more feet on any part of the device.

Skateboards includes roller skates, in-line skates, blades, scooters, coasters, roller-skis or any similar device.

B. Wheelchairs and similar devices used by persons with physical disabilities are excepted from this chapter.

(Ord. 1082, passed 11-21-2001)

§ 12.40.030 Prohibited riding areas.

A. Riding as described in § 12.40.010 is prohibited on any sidewalk or other city property in the area within the following boundaries:

1. North side of 3rd Street between N.W. Elm and N. Ivy;
2. South side of 1st Street between N.W. Elm and N. Ivy;
3. N. 2nd Street east of N. Ivy through to its terminus in the 300 block;
4. East side of N. Elm between 1st and 3rd Streets N.W.; and
5. East side of N. Ivy between 1st and 3rd Streets N.W.

B. The Traffic Safety Commission may designate additional prohibited riding areas. (Ord. 1082, passed 11-21-2001)

§ 12.40.040 Prohibited riding.

No person shall ride a bicycle, skateboard or similar device as defined in § 12.40.020, in any area designated as a prohibited riding area, as described in § 12.40.030A.

(Ord. 1082, passed 11-21-2001)

§ 12.40.050 Duty to yield.

Any person riding on a sidewalk shall at all times yield the right-of-way to pedestrians using the sidewalks and shall give an audible warning before overtaking and passing a pedestrian.

(Ord. 1082, passed 11-21-2001)



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: September 19, 2016		Subject: ORDINANCE NO. 797 Wireless Communications Emergency Ordinance Staff Member: Barbara Jacobson, Miranda Bateschell, & Holly Miller Department: Legal, Planning, & IT	
Action Required		Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: <input checked="" type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable	
		Comments:	
Staff Recommendation: Staff recommends Council adopt Ordinance 797 on first and second reading.			
Recommended Language for Motion: I move to adopt Ordinance 797 on first reading. 2 nd motion: I move to adopt Ordinance 797 on second reading.			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input checked="" type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Modifications to City Code to address evolving wireless communications facilities, including small cell/Distributed Antenna Systems (DAS) siting.

EXECUTIVE SUMMARY:

Recognizing the need to balance the concern over potential aesthetic issues related to the proliferation of wireless communications facilities, including the anticipated network densification of 5G small cell and DAS siting, with the benefit that these providers can offer in

enhancing cellular coverage for Wilsonville residents and visitors, staff is presenting the following proposed revisions to the Wireless Communications section of Wilsonville Code Chapter 4.

EXPECTED RESULTS:

The new code will provide flexibility for the siting of needed wireless communications facilities for enhanced signal capacity while balancing the need to preserve City aesthetics and be in compliance with our undergrounding district requirements, as well as state and federal law.

TIMELINE:

Due to anticipated applications, this ordinance is being presented for emergency enactment.

CURRENT YEAR BUDGET IMPACTS:

The City may see increased revenues from the addition of more wireless communications facilities and the potential rent for City owned poles.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 9/8/16

Ordinance approved as to form.

COMMUNITY INVOLVEMENT PROCESS: N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

Better signal coverage while preserving the aesthetic beauty of Wilsonville.

ALTERNATIVES: N/A

CITY MANAGER COMMENT:

ATTACHMENTS: Ordinance No. 797

ORDINANCE NO. 797

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 4, SECTION 4.800 BY MODIFYING SECTION 4.800 THROUGH 4.804 AND ADDING NEW SECTIONS 4.805 THROUGH 4.810 TO CLARIFY AND EXPAND CITY REGULATION AND CONTROL OF WIRELESS COMMUNICATIONS FACILITIES IN RECOGNITION OF CHANGING LAWS AND WIRELESS TECHNOLOGY.

WHEREAS, the Federal Telecommunications Act, as administered by the Federal Communications Commission (FCC), applies to all applications for personal wireless facilities but generally preserves local police powers, subject to certain procedural and substantive limits; and

WHEREAS, the City enacted a wireless communications facilities ordinance in 1997 and, thereafter, amended it in 1998 to exempt certain freestanding wireless communications facilities from height restrictions; and

WHEREAS, based on new wireless communications technologies, particularly the growing demand for more speed and data, the FCC has promulgated new rules that local governments must comply with; and

WHEREAS, based on the new rules and in balancing the citizen need and desire for faster speeds and more data capacity against the impact on the aesthetics of the landscape of the City; and

WHEREAS, new FCC regulations require that cities provide a faster expedited review of certain new wireless communications facilities applications, including the 5G network densification small cells;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. **Chapter 4 – Sections 4.800 - 4.804 Wireless Communications Facilities** is hereby amended by adding amended language to **Sections 4.800 through 4.804** and adding **Sections 4.805 through 4.814** in their entirety, all as set forth on the attached **Exhibit A**.
2. **Code Amendment.** The City Recorder is directed to amend Wilsonville Code Section 4.800 et seq., as approved above, and to make such format, style, and conforming changes to match the format and style of the Wireless Communications Facilities section of the Wilsonville Code.

3. **Severability.** If any section, subsection, or provision of this Ordinance is found to be void, invalid, unconstitutional, or in direct conflict with any controlling state or federal law, such portion shall be deemed void but, to the greatest extent allowed by law, the remainder of the Ordinance will remain in full force and effect.
4. Except as set forth above, Chapter 4 of the Wilsonville Municipal Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 3rd day of October, 2016, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon, and scheduled for second reading on October 17, 2016.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 17th day of October, 2016, by the following votes: Yes: -4- No: -0-

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this _____ day of October, 2016.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Fitzgerald	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes

Attachments:

Exhibit A – Redlined Code Amendments to Section 4.800 et seq.

WILSONVILLE CODE
PLANNING AND LAND DEVELOPMENT
CHAPTER 4 – SECTIONS 4.800 – 4.804
WIRELESS COMMUNICATIONS FACILITIES
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WIRELESS COMMUNICATIONS FACILITIES

Section 4.800. Wireless Communications Facilities – Permitted, Conditionally Permitted, And Prohibited Uses.

Purpose:

Wireless Communications Facilities (“WCF”) play an important role in meeting the communication needs of Wilsonville citizens. This Section aims to balance the proliferation of and need for WCF with the importance of keeping Wilsonville a livable and attractive City, consistent with City regulations for undergrounding utilities to the greatest extent possible.

In accordance with the guidelines and intent of Federal law and the Telecommunications Act of 1996, these regulations are intended to: 1) protect and promote the public health, safety, and welfare of Wilsonville citizens; 2) preserve neighborhood character and overall City-wide aesthetic quality; 3) encourage siting of WCF in locations and by means that minimize visible impact through careful site selection, design, configuration, screening, and camouflaging techniques.

As used herein, reference to Wireless Communications Facilities is broadly construed to mean any facility, along with all of its ancillary equipment, used to transmit and/or receive electromagnetic waves, radio or television signals including, but not limited to, antennas, dish antennas, microwave antennas, small cells, distributed antenna systems (“DAS”), 5G, small cell sites/DAS, and any other types of equipment for transmission or receipt of signals, including telecommunication towers, poles, and similar supporting structures, equipment cabinets or buildings, parking and storage areas, and all other accessory development.

This Section does not apply to (i) amateur radio stations defined by the Federal Communication Commission and regulated pursuant to 47 C.F.R. Part 97; or (ii) WCF owned by, or operated solely for, the City of Wilsonville.

If any provision of this Code directly conflicts with State or Federal law, where State or Federal law preempts local law, then that provision of this Code shall be deemed unenforceable, to the extent of the conflict, but the balance of the Code shall remain in full force and effect.

Nothing contained in this Section shall be construed in any way to waive or limit the City’s proprietary rights over its real and personal property, including without limitation any proprietary interest in the right-of-way. Thus, if it is determined the City has authority to exert greater rights or impose additional conditions or limitations beyond those set forth in this Section, the City reserves the absolute right to do so, as it determines appropriate or necessary.

(.01) Permitted Uses.

- A. Towers, poles, and structures for WCF and ancillary facilities thereto are permitted, subject to submission of a complete City-developed and approved application, payment of all fees, and approval through the Class II Administrative Review process listed in Section 4.030.B of the Wilsonville Code, in all of the following locations:

- ~~1. Any property owned by the City of Wilsonville, including public right-of-way;~~

1. Any property owned by the City of Wilsonville, including public right-of-way;
2. Any school property owned by ~~the West Linn—Wilsonville~~ any public School District;
3. Any fire station property owned by ~~the Tualatin Valley~~ any Fire District;

~~2. Any property owned by the West Linn—Wilsonville School District;~~

~~3. Any property owned by the Tualatin Valley Fire District;~~

4. Any property within an electric utility substation.

- B. Co-locating WCF is encouraged on all existing, legally established, towers, poles, and structures in all zones and may be required on City property.
- C. Satellite communications antennas not exceeding one (1) meter in diameter shall be permitted in any zone without requiring Administrative Review. All others are subject to Class II review.

D. Camouflaged WCF antennas attached to existing light, power, or telephone poles are permitted in all zones, subject to the development standards of Section 4.803, and subject to City approval through the Class II Administrative Review process listed in Section 4.030 of the Wilsonville Code.

F. The City of Wilsonville is an underground utility City (Undergrounding District) where mandatory aesthetic design standards do not unreasonably preclude WCF by requiring undergrounding of all equipment to the maximum extent possible. Therefore, no new vertical elements will be allowed on City property if there are existing facilities available to reasonably accommodate the WCF, and all equipment other than the antennas shall be placed underground to the maximum extent possible.

(.02) Conditional Uses. Except as provided above, WCF shall be allowed in all zones, upon approval of a conditional use permit, pursuant to Section 4.184 of the Wilsonville Code, subject to the following limitations:

A. In any commercial Master Planning Area, WCF attached to existing permitted structures shall be permitted as conditional uses if WCF design review and screening criteria, as described in Wilsonville Code Sections 4.176 and 4.400, are met. All other WCF are prohibited.

(.03) Prohibited Uses. WCF are prohibited on all lands designated as Significant Resource Overlay Zone lands.

Section 4.801. Application Requirements.

Cable providers that occupy any portion of the City's right-of-way are required to enter into a Franchise Agreement with the City. Other utilities, including Competitive Local Exchange Competitor carriers are subject to the terms of the City's Privilege Tax Ordinance No. 616. In

order to be permitted, an applicant must complete: 1) a Site Development Permit Application; 2) a Public Works Permit; 3) a Building Permit; and 4) enter into a Lease Agreement with the City for use of the public Right-of-Way. In preparing the Application, the applicant should review all provisions of this Code Section, particularly the portion attached to the Development Review Standards. The WCF Application process shall include all of the following:

- (.01) Speculation. No Application for a WCF shall be approved from an applicant that constructs WCF and leases tower space to service providers that is not itself a wireless service provider, unless the applicant submits a binding written commitment or executed lease from a service provider to utilize or lease space on the WCF.
- (.02) Geographical Survey. The applicant shall identify the geographic service area for the proposed WCF, including a map showing all of the applicant's existing sites in the local service network associated with the gap that the proposed WCF is proposed to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network. Prior to the issuance of any building permits, applicants for WCF shall provide a copy of the corresponding FCC Construction Permit or license for the facility being built or relocated, if required. The applicant shall include a vicinity map clearly depicting where, within a one-half (1/2) mile radius, any portion of the proposed WCF could be visible, and a graphic simulation showing the appearance of the proposed WCF and all accessory and ancillary structures from two separate points within the impacted vicinity, accompanied by an assessment of potential mitigation and screening measures. Such points are to be mutually agreed upon by the Planning Director or the Planning Director's designee and the applicant. This Section (.02) is not applicable to applications submitted subject to the provisions of 47 U.S.C. 1455(a).
- (.03) Visual Impact, Technological Design Options, and Alternative Site Analysis. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a map showing where the photos were taken. The applicant shall include an analysis of alternative sites and technological design options for the WCF within and outside of the City that are capable of meeting the same service objectives as the preferred site with an equivalent or lesser visual impact. If a new tower or pole is proposed as a part of the proposed WCF, the applicant must demonstrate the need for a new tower and pole and why existing locations or design alternatives, such as the use of microcell technology, cannot be used to meet the identified service objectives. Documentation and depiction of all steps that will be taken to screen or camouflage the WCF to minimize the visual impact of the proposed facility must be submitted.
- (.04) Number of WCF. The Application shall include a detailed narrative of all of the equipment and components to be included with the WCF, including, but not limited to, antennas and arrays; equipment cabinets; back-up generators; air conditioning units; poles; towers; lighting; fencing; wiring, housing; and screening. The applicant must provide the number of proposed WCF at each location and include renderings of

what the WCF will look like when screened. The Application must contain a list of all equipment and cable systems to be installed, including the maximum and minimum dimensions of all proposed equipment. Wilsonville is an Undergrounding District, meaning that the City will require any utility that can be fully or partially located underground to the maximum extent possible to help preserve the aesthetic appearance of the right-of-way and community and to prevent aboveground safety hazards. Therefore, all components of the WCF must be undergrounded to the extent reasonably feasible. Those components of the WCF that must be above ground must be identified by type of facility, dimension of facility, with proposed screening to reduce to the maximum extent possible the visual impact of aboveground facilities and equipment. A written narrative of why any portion of the WCF must be above ground is required. Cost savings is not a valid reason for placing facilities and equipment above ground except where the applicant conclusively shows that this requirement would result in an effective or actual prohibition of the telecommunications service.

- (.05) Safety Hazards. Any and all known or expected safety hazards for any of the WCF facilities must be identified and the applicant who must demonstrate how all such hazards will be addressed and minimized to comply with all applicable safety codes.
- (.06) Landscaping. The Application shall provide a landscape plan, drawn to scale, that is consistent with the need for screening at the site, showing all proposed landscaping, screening and proposed irrigation (if applicable), with a discussion of how proposed landscaping, at maturity, will screen the site. Existing vegetation that is proposed to be removed must be clearly indicated and provisions for mitigation included.
- (.07) Height. The Application shall provide an engineer's diagram, drawn to scale, showing the height of the WCF and all of its above-ground components. Applicants must provide sufficient evidence that establishes that the proposed WCF is designed to the minimum height required to meet the carrier's coverage objectives. If a tower or pole height will exceed the base height restrictions of the applicable zone, this narrative shall include a discussion of the physical constraints (topographical features, etc.) making the additional height necessary. The narrative shall include consideration of design alternatives, including the use of multiple sites or designs that would avoid the need for the new WCF or over zone height WCF. The maximum height allowed in the right-of-way is fifty (50) feet.
- (.08) Construction. The Application shall describe the anticipated construction techniques and time frame for installation of the WCF.
- (.09) Maintenance. The Application shall describe the anticipated maintenance and monitoring program for the WCF, including antennas, back-up equipment, poles, paint, and landscaping.
- (.10) Noise/Acoustical Information. The Application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a

qualified Oregon-license Professional Engineer that demonstrates that the WCF will comply with intent and goals of Section 6.204 et seq. of this Code.

- (.11) Parking. The Application shall provide a site plan showing the designated parking areas for maintenance vehicles and equipment, if any. No parking of maintenance vehicles and equipment parking shall be permitted in any red curb zone, handicap parking zone, or loading zone.
- (.12) Co-Location. In the case of new multi-user towers, poles, or similar support structures, the applicant shall submit engineering feasibility data and a letter stating the applicant's willingness to allow other carriers to co-locate on the proposed WCF.
- (.13) Lease. The site plan shall show the lease area of the proposed WCF.
- (.14) FCC License and Radio Frequency Safety Compliance. The Application shall provide a copy of the applicant's FCC license and/or construction permit, if an FCC license and/or construction permit is required for the proposed facility. The applicant shall provide documentation showing that the party responsible for radio frequency transmissions is in planned or actual compliance with all FCC RF emissions safety standards and guidelines at 47 C.F.R. § 1.1307 et seq. and FCC Office of Engineering Technology Bulletin 65.
- (.15) Lighting and Marking. The Application shall describe any proposed lighting and marking of the WCF, including any required by the FAA.
- (.16) Co-Location Feasibility. A feasibility study for the co-location of any WCF as an alternative to new structures must be presented and certified by an Oregon-licensed Professional Engineer. Co-location will be required when determined to be feasible ~~on any City structures due to the desire to limit any new verticality, except where absolutely necessary~~. The feasibility study shall include:
 - A. An inventory, including the location, ownership, height, and design of existing WCF within one-half (1/2) mile of the proposed location of a new WCF. The planning director may share such information with other applicants seeking permits for WCF, but shall not, by sharing such information, in any way represent or warrant that such sites are available or suitable.
 - B. Documentation of the efforts that have been made to co-locate on existing or previously approved towers, poles, or structures. The applicant shall make a good faith effort to contact the owner(s) of all existing or approved towers, poles, or structures and shall provide a list of all owners contacted in the area, including the date, form, and content of such contact.
 - C. Documentation as to why co-location on existing or proposed towers, poles, or commercial structures within one thousand (1,000) feet of the proposed site is not practical or feasible. Co-location shall not be precluded simply because a reasonable fee for shared use is charged or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower. The Planning Director and/or Development Review Board may consider expert testimony to determine whether the fee and costs are reasonable when balanced against the market and the important aesthetic considerations of the community.

(.17) Engineering Report for New Location.

A. An Application for a new WCF, whether co-located or new, shall include, as applicable, a report from an Oregon licensed Professional Engineer documenting the following:

- ~~1. A description of the proposed~~ WCF height and design, including technical, engineering, and other pertinent factors governing selection of the proposed design. A cross-section of the proposed WCF structure shall be included. ~~If proposed WCF is intended to accommodate future co-location, the engineer shall document that the design is sufficient for the purpose whether the structure is at its maximum structural capacity and, if not, the additional weight the structure could support. If the proposed WCF is not intended to allow for future co-location, the engineer shall provide an explanation of why it is not so intended.~~
2. Documentation that the proposed WCF will have sufficient structural integrity for the proposed uses at the proposed location, in conformance with the minimum safety requirements of the State Structural Specialty Code and EIA/TIA 222 (Structural Standards for Communication and Small Wind Turbine Support Structures), latest edition at the time of the application.

B. A description of mitigation methods which will be employed to avoid ice hazards, including increased setbacks, and/or de-icing equipment, if required by any safety law, regulation, or code.

C. Evidence that the proposed WCF will comply with all applicable requirements of the Federal Aviation Administration, the Aeronautics Section of the Oregon Department of Transportation, and the Federal Communications Commission.

(.18) Maintenance. The applicant shall provide a description of anticipated maintenance needs, including frequency of service, personnel needs, equipment needs and potential safety impacts of such maintenance.

(.19) Recordation Requirements. If a new WCF is approved, the owner shall be required, as a condition of approval, to:

- A. Record the conditions of approval specified by the City with the Deeds Records Office in the Office of the County Recorder of the county in which the WCF is located;
- B. Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant;
- C. Negotiate in good faith for shared use by others; and
- D. Such conditions shall run with the land and be binding on subsequent purchasers of the WCF.

(.20) The Planning Director may request any other information deemed necessary to fully evaluate and review the information provided in the application.

Section 4.802. Co-Location.

In order to encourage shared use of towers, poles, or other facilities for the attachment of WCF, no conditional use permit shall be required for the addition of equipment, provided that:

- (.01) There is no change to the type of tower or pole.
- (.02) All co-located WCF shall be designed in such a way as to be visually compatible with the structures on which they are placed.
- (.03) All co-located WCF must comply with the conditions and concealment elements of the original tower, pole, or other facility upon which it is co-locating.
- (.04) Shall not disturb, or will mitigate any disturbed, existing landscaping elements.
- (.05) Does not entail excavation or deployment outside site of current facility where co-location is proposed.
- (.06) All co-located WCF, and additions to existing towers, poles, or other structures, shall meet all requirements of the State of Oregon Structural Specialty Code and EIA/TIA 222 (Structural Standards for Communication and Small Wind Turbine Support Structures), latest edition at the time of the application. A building permit shall be required for such alterations or additions. Documentation shall be provided by an Oregon-licensed Professional Engineer verifying that changes or additions to the tower structure will not adversely affect the structural integrity of the tower.
- (.07) Additional Application Requirements for Co-Location:
 - A. A copy of the site plan approved for the original tower, pole, or other base station facility to which the co-location is proposed.
 - B. A site survey delineating development on-the-ground is consistent with the approved site plan.

Section 4.803. Development Review Standards.

All WCF shall comply with the following Development Review standards, unless grandfathered under State or Federal law:

- (.01) Visual Impact.
 - A. Maximum Number of High Visibility Facilities Per Lot or Parcel. No more than one high visibility WCF is allowed on any one lot or parcel of five acres or less. The Development Review Board may approve exceeding the maximum number of high visibility WCF per lot or parcel if one of the following findings is made through a Class III review process: (1) co-location of additional high visibility WCF is consistent with neighborhood character, (2) the provider has shown that denial of an application for additional high visibility WCF would prohibit or have the effect of prohibiting service because the WCF would fill a significant gap in coverage and no alternative locations are available and technologically feasible, or (3) the provider has shown that denial of an application for additional high visibility WCF would unreasonably discriminate among providers of functionally

equivalent services. In such cases, the Development Review Board shall be the review authority for all related applications.

- B. Height. The tower or pole height of a freestanding WCF in R, PDR and RA-H zones shall not exceed fifty (50) feet, except that the RA-H zoned property occupied by the City Wastewater Treatment Plant and the PDR zoned property occupied by the Elligsen Road Water Reservoir shall be exempted from the height limitations of the subject zones, and subsection 4.803(.01)A, above, shall apply.
- C. WCF Adjacent to Residentially Designated Property. In order to ensure public safety, all WCF located adjacent to any property designated as residential in Wilsonville shall be set back from all residential property lines by a distance at least equal to the maximum height of the facility including any antennas or other appurtenances attached thereto. The setback shall be measured from that part of the WCF that is closest to the neighboring residentially designated property.
- D. Historical Buildings and Structures. No WCF shall be allowed on any building or structure, or in any district, that is listed on any Federal, State, or local historical register unless it is determined by the Development Review Board that the facility will have no adverse effect on the appearance of the building, structure, or district. No change in architecture and no high visibility facilities are permitted on any such building, any such site, or in any such district.
- E. Tower or Pole Heights. Towers or poles may exceed the height limits otherwise provided for in the Development Code with compelling justification only. Costs and cost efficiency are not compelling justifications.
- F. Accessory Building Size. Within the public right-of-way, no above-ground accessory buildings shall be permitted. Outside of the public right-of-way, all accessory buildings and structures permitted to contain equipment accessory to a WCF shall not exceed twelve (12) feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure is limited to two hundred (200) square feet, unless approved through a Conditional Use Permit.
- G. Utility Vaults and Equipment Pedestals. Within the public right-of-way, utility vaults and equipment pedestals associated with WCF must be underground to the maximum extent possible.
- H. Visual Impact. All WCF shall be designed to minimize the visual impact to the maximum extent possible by means of placement, screening, landscaping, and camouflage. All WCF shall also be designed to be compatible with existing architectural elements, building materials, and other site characteristics. All WCF shall be sited in such a manner as to cause the least detriment to the viewshed from other properties. The use of radomes and/or other camouflage techniques acceptable to the City to conceal antennas, associated equipment and wiring, and antenna supports is required.
- I. Color Schemes. For the sake of visual impact, no wooden poles are allowed. Color schemes must be approved by the City to best camouflage with the surrounding landscape.

- J. Antennas. Façade-mounted antennas shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. As appropriate, antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted antennas shall not extend more than two (2) feet out from the building face. Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.
- K. Noise. Noise from any equipment supporting the WCF shall meet the requirements of City Code Section 6.204 – Noise.
- L. Signage. No signs, striping, graphics, or other attention-getting devices are permitted on any WCF except for warning and safety signage with a surface area of no more than three (3) square feet. Except as required by law, all signs are prohibited on WCF except for one non-illuminated sign, not to exceed two (2) square feet, which shall be provided at the main entrance to the WCF, stating the owner's name, the wireless operator(s) if different from the owner, and address and a contact name and phone number for emergency purposes. WCF may be placed entirely behind existing street or building signs as one method of camouflage.
- M. Traffic Obstruction. Maintenance vehicles servicing facilities located in the public right-of-way shall not park on the traveled way or in a manner that obstructs traffic. No maintenance vehicle parking shall be permitted in red curb zones, handicap zones, or loading zones.
- N. Parking. No net loss in minimum required parking spaces shall occur as a result of the installation of any WCF.
- O. Sidewalks and Pathways. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land and shall be screened from view. Cabinets shall be undergrounded, to the maximum extent possible.
- P. Lighting. WCF shall not include any beacon lights or strobe lights, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If beacon lights or strobe lights are required, the Development Review Board shall review the available alternatives and approve the design with the least visual impact. All other site lighting for security and maintenance purposes shall be shielded and directed downward, and shall comply with the City's outdoor lighting standards in City Code Section 4.199, unless otherwise required under Federal law.
- Q. Paint and Finish.
Towers, poles, antennas, and associated equipment shall either maintain a galvanized steel finish or be painted a non-reflective, neutral color, as approved by the Planning Director or Development Review Board, to minimize visibility. Attached communication facilities shall be painted so as to be identical to or

compatible with the existing structure. Towers more than two hundred (200) feet in height shall be painted in accordance with the Oregon State Aeronautics Division and Federal Aviation Administration rules. Applicants shall attempt to seek a waiver of OSAD and FAA marking requirements. When a waiver is granted, towers shall be painted and/or camouflaged in accordance with subsection (.01), above. All ancillary facilities shall be colored or surfaced so as to blend the facilities with the surrounding natural and built environment.

- R. Use of Concealments. Concealments are customized structures engineered to cover cell towers, antennas, DAS equipment and beautify them and make them either less visible or more pleasing to have in the landscape. Applicant shall present a proposal for concealment intended to meet the foregoing goal.
- S. Public Works Standards. Additional applicable construction and design standards are as set forth in the City's 2015 Public Works Standards.
- T. Compliance With All Laws. Every WCF shall comply with all local, state, and federal laws, codes, and regulations including without limitation to the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(.02) Site Size.

The site on which a transmission tower/pole is located shall be of a sufficient shape and size to provide all required setbacks as specified in this Code Section. Towers or poles only as permitted herein may be located on sites containing other principal uses in the same buildable area as long as all of the other general requirements of this Code Section are met.

(.03) Separation and Setbacks.

- A. WCF shall be set back from any other property line by a distance at least equal to the maximum height of the facility including any antennas or other appurtenances attached thereto unless this requirement is specifically waived by the Planning Director or the Development Review Board for purposes of mitigating visual impacts or improving compatibility with other uses on the property.
- B. A guyed tower located on sites containing other principal uses must maintain a minimum distance between the tower and other principal uses of the greater of 100% breakpoint or twenty-five (25) feet, unless this requirement is specifically waived by the Planning Director or Development Review Board for purposes of mitigating visual impacts or improving compatibility with other uses on the property.
- C. WCF mounted on rooftops or City-approved alternative tower structures shall be exempt from these minimum separation requirements. However, WCF and related equipment may be required to be set back from the edge of the roof line in order to minimize their visual impact on surrounding properties and must be screened.
- D. WCF towers and poles are prohibited in the required front yard, back yard, or side yard setback of any lot in any zone, and no portion of any antenna array shall

extend beyond the property lines. For guyed towers or poles, all guy anchors shall be located outside of the setback from all abutting properties.

- (.04) Security Fencing. WCF or towers shall be enclosed by decay-resistant security fencing not less than six (6) feet in height and shall be equipped with an appropriate anti-climbing device. Fencing shall be compatible with other nearby fencing. Such requirements may be waived for attached WCF.
- (.05) Landscaping. Landscaping shall be placed around the outside perimeter of the security fencing and shall consist of fast growing vegetation that can be expected to reach a minimum height of six (6) feet and form a continuous hedge within two (2) years of planting. Drought tolerant landscaping materials shall be required and otherwise meet the landscaping standards of City Code Section 4.176. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed twenty (20) feet in height and would not affect the stability of the guys should they be uprooted. Landscaping shall be compatible with other nearby landscaping.
- (.06) Conflict with Right-of-Way. No WCF shall be located within a planned or existing public right-of-way, unless it is specifically designed for the purpose in a way that will not impede pedestrian, bicycle, or vehicular traffic and the installation of any sidewalk or path that is a planned future improvement.
- (.07) Change to Approved WCF. Any change to or expansion of a WCF that will in any way change the physical appearance of the WCF will require a new application.

Section 4.804. Review Process and Approval Standards.

- (.01) Class II Process. The following WCF are allowed with the approval of a WCF Site Plan to be reviewed by the Planning Director pursuant to a Class II process under City Code Section 4.030(.01)B:
 - A. WCF proposed in the following locations:
 - 4. Any property owned by the City of Wilsonville, including public right-of-way;
 - 5. Any school property owned by ~~the West Linn—Wilsonville~~ any public Sschool Ddistrict;
 - 6. Any fire station property owned by ~~the Tualatin Valley~~ any Ffire Ddistrict;
 - 7. Any property within an electric utility substation.
 - B. WCF attached to existing light, power, or telephone poles in all zones, subject to the development standards of Section 4.803.
 - C. WCF Co-locations meeting the criteria outlined in Wilsonville Code 4.802.
 - D. Satellite dishes larger than one (1) meter.
- (.02) Conditional Use Permit Requirements. Applications for WCF in all other locations and situations, including moderate or high visibility facilities that exceed the height limit of the applicable zone, shall also require a Conditional Use Permit to be reviewed by the Development Review Board. In addition to the approval standards in

City Code Section 4.030, the applicant shall demonstrate that the WCF Site Plan approval standards in this Section are met.

- (.03) Approval Criteria. The Development Review Board shall approve the use and WCF Site Plan for any of the WCF listed in subsections (.01) and (.01) of this Section upon a determination that the following criteria are met:
- A. The height of the proposed WCF does not exceed the height limit of the underlying zoning district, or does not increase the height of an existing facility.
 - B. The location is the least visible of other possible locations and technological design options that achieve approximately the same signal coverage objectives.
 - C. The location, size, design, and operating characteristics of the proposed WCF will be compatible with adjacent uses, residences, buildings, and structures, with consideration given to:
 - 1. Scale, bulk, coverage, and density;
 - 2. The suitability of the site for the type and intensity of the proposed WCF; and
 - 3. Any other relevant impact of the proposed use in the setting where it is proposed.
 - D. All required public facilities have adequate capacity, as determined by the City, to serve the proposed WCF; and
 - E. The proposed WCF complies with all of the general regulations contained in this Section 4.800 – 4.812.
- (.04) Conditions of Approval. The City may impose any other reasonable condition(s) deemed necessary to achieve compliance with the approval standards, including designation of an alternate location. If compliance with all of the applicable criteria cannot be achieved through the imposition of reasonable conditions, the Application shall be denied.

Section 4.805. Exemptions.

The following shall be considered exempt structures or activities under this Code Chapter:

- (.01) Antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations regardless of zone capacity.
- (.03) Cell on Wheels (COW), which are permitted as temporary uses in nonresidential zones for a period not to exceed sixty (60) days, except that such time period may be extended by the City during a period of emergency as declared by the City, County, or State.
- (.04) Replacement antennas or equipment, provided the replacement antennas and/or equipment have the same function, size, and design to the replaced antenna and/or equipment and do not exceed the overall size of the original approved antenna and/or equipment.

Section 4.806. Damage, Destruction, or Interference to Other Utilities.

In the installation of any WCF within the right-of-way, care must be taken to install in such a way that does not damage, interfere with, or disturb any of the several other utilities that may already be located in the area. Any damage done to such other utilities must be immediately reported to both the City and the owner of the damaged utility, and must be promptly repaired by the permittee or the utility owner, with the permittee being responsible for all costs of repair, including any extra charges that may be assessed for emergency repairs. Failure to notify the City and the damaged utility provider will result in revocation of the WCF. When approving the location for a WCF, the location of other utilities, or the need for the location of other utilities, within the right-of-way must be considered before approval to locate the WCF will be given in order to ensure those other services to the public are not disrupted.

Section 4.807. Maintenance.

The following maintenance requirements apply to WCF, as applicable:

- (.01) All landscaping shall be maintained at all times and shall be promptly replaced if not successful.
- (.02) If a flag pole is used for camouflaging a facility, flags must be flown and must be properly maintained at all times. If a United State Flag is flown, it shall be illuminated as required by the United States Flag Code.
- (.03) All WCF sites shall be kept clean, neat, and free of litter.
- (.04) A WCF shall be kept clean and painted in good condition at all times. Rusting, dirt, or peeling facilities are prohibited.
- (.05) All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.
- (.06) Any graffiti on a WCF must be promptly removed at Owner's expense.

Section 4.808. Permit Tracking.

The permittee of each permit issued to it by the City shall retain full and complete copies of all permits and other regulatory permits issued in connection with this facility. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails or refuses to retain or produce full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be resolved against the permittee.

Section 4.809. Inspections.

- (.01) The City or its agents shall have authority to enter onto the property upon which a WCF is located to inspect the facility for the purpose of determining whether it

complies with the Building Code and all other construction standards provided by the City and Federal and State law.

- (.02) As a condition of approval and prior to final inspection of the WCF, the applicant shall submit evidence, such as photos, to the satisfaction of the City, sufficient to prove that the WCF is in substantial conformance with photo simulations provided with the application. Nonconformance shall require modification to compliance within thirty (30) days or the WCF, or nonconforming components, must be removed.
- (.03) The City reserves the right to conduct such inspections at any time, upon reasonable notice to the WCF owner. In the event such inspection results in a determination that violation of applicable construction and maintenance standards set forth by the City has occurred, remedy of the violation may include cost recovery for all costs incurred in conforming and processing the violation.

Section 4.810. Preexisting WCF.

WCF that lawfully existed prior to the adoption of this Chapter shall be allowed to continue their use as they presently exist. This Code does not make lawful any WCF that are not fully approved on the date the ordinance codified in this Code is adopted and those pending WCF will be required to meet the requirements of this Code. Routine maintenance shall be permitted on such lawful preexisting WCF. Lawfully existing WCF may be replaced as long as the replacement is in the exact location of the WCF being replaced and is of a construction type identical in height, width, weight, lighting, and painting. Any changes or modifications to a replacement WCF shall not be considered routine maintenance, shall be treated as new construction, and shall comply with the requirements of this Chapter.

Section 4.811. Ancillary Facilities.

Unenclosed storage of materials is prohibited. Other building facilities, including offices, vehicle storage areas, or other similar uses not necessary for transmission or relay functions, are prohibited unless a separate land use application for such is submitted and approved.

Section 4.812. Abandoned Facilities; Discontinuation of Use.

The following requirements apply to the abandonment and/or discontinuation of use for all WCF:

- (.01) All WCF located on a utility pole shall be promptly removed at the operator's expense at any time a utility is scheduled to be placed underground or otherwise moved.
- (.02) All operators who intend to abandon or discontinue the use of any WCF shall notify the City of such intentions no less than sixty (60) days prior to the final day of use.
- (.03) WCF shall be considered abandoned ninety (90) days following the final day of use or operation.

- (.04) All abandoned WCF, including ancillary equipment, shall be physically removed by the facility owner no more than ninety (90) days following the final day of use or of determination that the facility has been abandoned, whichever occurs first.
- (.05) The City reserves the right to remove any WCF that are abandoned for more than ninety (90) days, at the expense of the facility owner.
- (.06) Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.

Section 4.813. Mandatory and Automatic Permit Conditions.

All WCF permits, whether issued by the City or approved by operation of law, shall be subject to the standard conditions of approval provided in this Section. The City may add, remove or modify any conditions of approval as necessary or appropriate to protect and promote the public health, safety and welfare.

- (.01) Permit Duration. The permit will automatically expire ten (10) years from the issuance date.
- (.02) Compliance with All Applicable Laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
- (.03) Inspections; Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (.04) Contact Information for Responsible Parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Director within one (1) business day of permittee's receipt of the Planning Director's written request.
- (.05) Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents,

employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (.06) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (.07) General Maintenance. Permittee must comply with Section 4.806 at all times.

Section 4.814. Mandatory and Automatic Permit Conditions of Approval for Section 6409(a).

Any Section 6409(a) Co-Location/Modification Permit approved or deemed-granted by the operation of federal law shall be automatically subject to the conditions of approval described in this Section.

- (.01) Permit Duration. The City's grant or grant by operation of law of a Section 6409(a) Co-Location/Modification Permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) Co-Location/Modification Permit will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
- (.02) Accelerated Permit Terms Due to Invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) Co-Location/Modification Permit(s), such permit(s) shall automatically expire one (1) year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409(a) Co-Location/Modification Permits. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) Co-Location/Modification Permit when it has submitted an application for either a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit for those improvements before the one (1) year period ends. The Planning Director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.

- (.03) No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) Co-Location/Modification Permit does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) Co-Location/Modification Permit.
- (.04) Compliance with All Applicable Laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
- (.05) Inspections; Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (.06) Contact Information for Responsible Parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Director upon permittee's receipt of the Planning Director's written request.
- (.07) Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (.08) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (.09) General Maintenance. Permittee must comply with Section 4.806 at all times.

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Office of the Mayor

Proclamation

National Library Week

WHEREAS, libraries everywhere play a vital role in supporting the quality of life in their communities; and

WHEREAS, our nation's school, academic, public and special libraries make a difference in the lives of millions of Americans, today, more than ever; and

WHEREAS, librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in a challenging economy; and

WHEREAS, libraries serve as crucial technology hubs for people in need of free Web access, computer training, and assistance finding job resources; and

WHEREAS, libraries are part of the American Dream – places for opportunity, education, self-help and lifelong learning; and

WHEREAS, libraries serve as community gathering spaces, encouraging civic engagement and discourse; and

WHEREAS, libraries promote early childhood education and literacy, helping parents and families prepare their children for success in school and life; and

WHEREAS, library use is up nationwide among all types of library users, continuing a decade-long trend; and

WHEREAS, libraries, librarians, library workers and supporters across America are celebrating National Library Week.

NOW, THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim April 9-15, 2017 as National Library Week and call upon individuals, schools, churches, organizations and business establishments in the City of Canby to visit the library this week to take advantage of the wonderful library resources available at your library. You belong at your library.

Given unto my hand this 5th day of April 2017 in the City of Canby, Oregon.



Brian Hodson
Mayor



Office of the Mayor

Proclamation

Grange Month

WHEREAS, the National Grange of the Order of Patrons of Husbandry is celebrating 150 years of service to America and the Oregon State Grange will celebrate 144 years of service at their State Convention this June in Florence, Oregon; and

WHEREAS, Grange programs are family oriented, beginning with Junior Grange for children of ages four through 13 for the purpose of getting children involved with their community, with agriculture, and with good citizenship, and Grange membership includes full voting rights and the right to hold office at age 14; and

WHEREAS, the service through educational efforts of the Grange and its members have aided innumerable people, both in and out of the Order, to reach their full potential as leaders and people; and

WHEREAS, the service of non-partisan legislative advocacy of the Grange through the unified efforts of its membership have immeasurably benefited local communities and our nation as a whole; and

WHEREAS, the fellowship and family atmosphere of the Grange have served millions of Americans by strengthening the social connections through a multitude of activities; and

WHEREAS, Grangers are supportive of agriculture, rural America and American Values as these form the bedrock of American society; and

WHEREAS, the Grange continues to serve every American through their hometown roots.

NOW, THEREFORE, I, Brian Hodson, by the virtue of the authority vested in me as the Mayor of the City of Canby, hereby proclaim the month of April as:

Grange Month

in the City of Canby and do urge all those in the Canby area to support and promote this observance.

Given unto my hand this 5th day of April 2017.

Brian Hodson
Mayor



**CITY OF CANBY
APPLICATION
BOARD/COMMITTEES/COMMISSIONS/COUNCIL**

Date: 3-8-17

Name: BRIAN E. MASTERSON Occupation: Retired

Home Address: _____

Employer: N/A Position: N/A

Daytime Phone: _____ Evening Phone: _____

E-Mail Address: _____

For which position are you applying? Historical Review Board

What are your community interests (committees, organizations, special activities)? many church activities at St Patricks Catholic Church

Experience and educational background: Have lived in Canby almost all my life. I am a fifth generation Canby resident.

Reason for your interest in this position: would like to see more historical preservation as well more ease of access to historical data.

List any other City or County positions on which you serve or have served: None

Information on any special membership requirements: None

Referred by (if applicable): Tony Crawford

Feel free to attach a copy of your resume and use additional sheets if necessary

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to: **City of Canby - Attn: City Recorder**
PO Box 930

222 NE 2nd Avenue

Canby, OR 97013

Phone: 503.266.0733 Fax: 503.266.7961 Email: scheuferk@canbyoregon.gov

Note: Please be advised that this information may be made available to anyone upon a public records request and may be viewable on the City's web site.

10-1-16

RECEIVED
MAR 08 2017

City of Canby - City Recorder

**CITY OF CANBY
APPLICATION
BOARD/COMMITTEES/COMMISSIONS/COUNCIL**

Date: 03-01-17
 Name: Pam Judy Occupation: Retired
 Home Address: _____ Canby
 Employer: _____ Position: _____
 Daytime Phone: _____ Evening Phone: _____
 E-Mail Address: _____
 For which position are you applying? Historic Review Board

What are your community interests (committees, organizations, special activities)?
I am currently on HRB and also on the Special Education Advisory Council.

Experience and educational background: My bachelors is in English Lit from Willamette University. I enjoy the research involved with the HRB.

Reason for your interest in this position: I appreciate the histories and stories that make up our town and the state

List any other City or County positions on which you serve or have served: Canby Parks and Rec., Friends of the Canby Library

Information on any special membership requirements: _____

Referred by (if applicable): _____

Feel free to attach a copy of your resume and use additional sheets if necessary

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to: City of Canby - Attn: City Recorder

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 Canby, OR 97013

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RECEIVED

MAR 10 2017

**CITY OF CANBY
APPLICATION
BOARD/COMMITTEES/COMMISSIONS/COUNCIL**

Date: 3-8-2017
 Name: Elizabeth Burrows Chapin Occupation: Sales
 Home Address: Canby OR 97013
 Employer: Institute of Reading Dev. Position: Enrollment Co-ordinator
 Daytime Phone: _____ Evening Phone: _____
 E-Mail Address: _____
 For which position are you applying? CAT committee

What are your community interests (committees, organizations, special activities)?
Have been member of CAT committee for 3 years
Ford Family Foundation Leadership pgm. PTA at Trost &
Baker Prairie Dist 8 years, member of Smyrna UCC Church
Book club for last 8 years
 Experience and educational background: see above but I worked
on political campaigns in Mich for 10 years, have a
B.S. in Marketing. Previous CAT committee member
Also was on principal selection committee for Trost &
Currently on site council for Baker Prairie
 Reason for your interest in this position: Have served on Committee for past 3
years and I like feeling like I make a difference
in Canby

List any other City or County positions on which you serve or have served:
Just the Bikeracks (Ford Family Leadership pgm) and PTA
for past 8 years for Trost & Baker Prairie

Information on any special membership requirements: No?

Referred by (if applicable): Julie Wehling & Francisco Zamora
Flores

Feel free to attach a copy of your resume and use additional sheets if necessary

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to: *City of Canby - Attn: City Recorder*

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 222 NE 2nd Avenue
 Canby, OR 97013

Phone: 503.266.0733 Fax: 503.266.7961 Email: scheaferk@canbyoregon.gov

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10-1-16

RECEIVED

MAR 14 2017

RESOLUTION NO. 1260

**A RESOLUTION ADOPTING THE UPDATED CITY COUNCIL VALUES AND GOALS
AND REPEALING RESOLUTION 1171**

WHEREAS, on August 21, 2013 the City Council adopted a City Council Values and Goals document; and

WHEREAS, on March 4, 2017 the City Council held a Work Session to review and update the Council Values and Goals document; and

WHEREAS, as a result of that Work Session an updated City Council Values and Goals document was produced; and

WHEREAS, the purpose of the Values and Goals is to focus efforts of the City Council and City staff on specific plans of action to achieve certain goals.

NOW THEREFORE, IT IS HEREBY RESOLVED by the City of Canby as follows:

1. The City Council Values and Goals document attached hereto as Exhibit “A” is hereby adopted.

This resolution will take effect on April 5, 2017.

ADOPTED this 5th day of April 2017 by the City of Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder



CITY OF CANBY CITY COUNCIL VALUES AND GOALS

VALUES

Fiscal Responsibility and Financial Stability – We constantly strive for the proper use of public funds and resources. We are prudent in our fiscal policies and practices as we plan for long-term financial sustainability within the City.

Honesty, Ethics, Accountability – We adhere to the highest standards of honesty, ethical conduct and accountability that inspire public confidence and trust. These are the foundations of public trust and confidence.

Livability – As a City we honor the importance of maintaining the small town feel while continuing to address economic development, housing, parks, long-term planning, public safety and transportation.

Inclusive Community – We are committed to open communication and outreach to engage all segments of the community.

Exceptional Service – We are dedicated to providing exceptional customer service and delivery of public services to our whole community.

GOALS

Community

- Maintaining a small town feel as we grow
- Manage growth in a responsible manner
- Continue to improve the quality of life of our citizens
- Continue to enhance communication between City Hall and citizens in and around the City of Canby, including use of electronic and social media
- Integrate the adopted Community Vision Plan throughout City Goals, plans, and communications

Growth and Economic Development

- Identify and implement strategies for attracting additional tenants to industrial parks
- Identify and implement strategies for improving overall health of the business community
- Collaborate with Clackamas County Tourism and Event Center to encourage increased cultural and commercial activity
- Build on strategies to improve business development in downtown and other business areas
- Plan for future housing needs and development
- Develop plan to make Main Street Program and Economic Development office self-funding by close of the Urban Renewal District

Parks and Recreation

- Refine, revise, and update Parks Master Plan to include long-term recreation plan that includes community center, aquatic center, sports facilities, and Willamette River front recreation
- Identify future park lands
- Identify funding and strategic alliances for acquisition, improvement, and maintenance of park lands

Public Services

- Maintain and improve City infrastructure – stormwater, road maintenance, Wastewater Treatment Plant (WWTP), and others
- Continue to provide quality public safety and services that enhance Canby's livability
- Develop strategy for improving and sustaining Canby Area Transit System
- Develop strategy for implementing Transportation System Plan (TSP) with emphasis on neighborhood safety and economic development
- Encourage long-term services and infrastructure plans for NE and SE development
- Develop strategy for implementing Oregon 99E Corridor and Gateway Plan

(Adopted April 5, 2017)



City of Canby

PO Box 930 Phone: 503.266.4021
222 NE 2nd Ave Fax: 503.266.7961
Canby, OR 97013 www.canbyoregon.gov

M E M O R A N D U M

TO: *Honorable Mayor Hodson and City Council*
FROM: *Jerry Nelzen, Public Works Lead*
DATE: *March 27, 2017*
THROUGH: *Rick Robinson, City Administrator*

Issue:

Oregon cities are required by the Oregon Department of Environmental Quality to have in place an approved 5 year plan to improve the overall quality of the storm water that is discharged into the environment. The City's most recent plan, referred to as the Canby 2016-2020 Total Maximum Daily Load Implementation Tracking Matrix, was approved by DEQ in March, 2016.

Canby's Total Maximum Daily Load (TMDL) Implementation and Tracking Matrix requires the City of Canby to adopt an Integrated Pest Management Policy and Guidelines. The desired outcome from following the Pest Management Policy and Guidelines is that the City will use best practices to control application of fertilizer, herbicides and pesticides on public properties.

The Adoption of the Integrated Pest Management Policy and Guidelines will fulfill one of the goals set for the City in the TMDL Implementation and Tracking Matrix.

Recommendation:

Staff recommends adoption of Resolution 1261, which formally adopts the City of Canby Public Works Department Integrated Pest Management (IPM) Policy and Guidelines

Fiscal Impact:

There is no fiscal impact on adoption of this resolution.

Recommended Motion:

I move to adopt Resolution 1261, A RESOLUTION ADOPTING THE CITY OF CANBY PUBLIC WORKS DEPARTMENT INTEGRATED PEST MANAGEMENT (IPM) POLICY AND GUIDELINES.

Attached:

TMDL Implementation Tracking Matrix
Resolution 1261

Canby 2016-2020 TMDL Implementation Tracking Matrix

SOURCE <i>What sources of this pollutant are under your jurisdiction?</i>	STRATEGY <i>What is being done, or what will you do, to reduce and/or control pollution from this source?</i>	HOW <i>Specifically, how will this be done?</i>	FISCAL ANALYSIS <i>What is the expected resource need? Are there existing resources budgeted? If not, where will the resources come from?</i>	MEASURE <i>How will you quantitatively or qualitatively demonstrate successful implementation or completion of this strategy?</i>	TIMELINE <i>When do you expect it to be completed?</i>	MILESTONE <i>What intermediate goals do you expect to achieve, and by when, to know progress is being made?</i>	STATUS <i>Include summary and date.</i>
1. Pet and Animal Waste	Reduce the amount of pet waste that is not properly disposed of	Install pet waste stations and educational signs when needed	Parks Department funded and mechanism in place	Check bag supply weekly	Ongoing, evaluate effectiveness through usage	Expect to see increased bag use annually	Ongoing
		Improve enforcement of existing pet waste pick-up ordinance		Monitor Number of Animal Waste Complaints.	Ongoing, evaluate effectiveness by number of complaints	Expect to see reduced complaints annually	Ongoing
2. Erosion Control	Decrease sedimentation and erosion from new construction	Enforce current Ordinance	Funding in FY 16-17 PW Budget	Monitor ESC Permit Issuance	Ongoing	Reduce number of non-permitted activities	Ongoing
		Enforce current Ordinance	Funding in FY 16-17 PW Budget	Increase staff support to .75 FTE dedicated to compliance with all stormwater regulations	September 1, 2016	Better Service and Enforcement	Ongoing
		Evaluate and update current Ordinances and Permits	Funding through Storm/Sanitary Budget	Meet with ESC enforcement staff person annually to review effectiveness	Annually	Updates to the ESC permit program	Ongoing
		Create spreadsheet of all development/building contractors	Funding through Storm/Sanitary Budget	Compile data files on all Contractor's ESC performance	Ongoing	Complete spreadsheet of contractors and ESC permits issued	Ongoing
3. Educational Outreach	Provide public education on the goals and concerns related to stormwater discharges	Newsletters, bill inserts, social media, coordination w/schools	Minimal funding required if coordinated with existing resources. Budget in FY 17-18	Assure one or more outreach program is completed quarterly	Ongoing	Track number of outreach material provided quarterly	Ongoing
4. Stormwater Discharge	Maintain Stormwater administrative framework for effective operation	Review Stormwater Master Plan, CIP, SDC and Rates	Funding through Storm/Sanitary Budget FY 16-17	Adoption of a Master Plan CIP Update, SDC and Rate Review	July 1, 2017	City authorization to proceed with reviews in-house or contracted	Ongoing

Canby 2016-2020 TMDL Implementation Tracking Matrix

SOURCE <i>What sources of this pollutant are under your jurisdiction?</i>	STRATEGY <i>What is being done, or what will you do, to reduce and/or control pollution from this source?</i>	HOW <i>Specifically, how will this be done?</i>	FISCAL ANALYSIS <i>What is the expected resource need? Are there existing resources budgeted? If not, where will the resources come from?</i>	MEASURE <i>How will you quantitatively or qualitatively demonstrate successful implementation or completion of this strategy?</i>	TIMELINE <i>When do you expect it to be completed?</i>	MILESTONE <i>What intermediate goals do you expect to achieve, and by when, to know progress is being made?</i>	STATUS <i>Include summary and date.</i>
4. Stormwater Discharge (continued)	Maintain Current Stormwater Maintenance Activities	Street Sweeping Program	Public Works Department funded and mechanism in place	Complete monthly street sweeping entire City	Monthly	Better service and fewer complaints	<i>Ongoing as Expected</i>
		Catch Basin Cleaning		Try to inspect 25% and clean 10% of the catch basins per year	Annually	Monitor number of call outs due to street flooding	<i>Ongoing as Expected</i>
		Catch Basin Marker Program		Install "Environmental Sensitive" buttons on all catch basins	Annually add to each new development	Track number of buttons installed	<i>Ongoing as Expected</i>
	Encourage LID implementation	Public Works design standards adopted by Ordinance	Public Works and Planning department budget	Establish a baseline of current LID in City and track development to establish goals and success of program	Ongoing	Quantify Annual Applications of LID Options versus Number of Developments	<i>Ongoing as Expected</i>
	Re-establish Stormwater Committee to Review Stormwater Program	City Administrator Appoint Members	Public Works, Storm/Sanitary and Planning Departments	Schedule Quarterly Committee Meetings	Reestablish Committee 2nd Quarter 2016	Maintain minutes of each quarterly meeting	<i>Table B New</i>
	Control Fertilizer, Herbicides and Pesticides Application on Public Properties	Prepare Written Policy for Integrated Pest Management and Construction Products Use	Parks Department	Adoption of a Written Policy	December 2016	Secure draft Policies from Similar Agencies by August 2016	<i>Appendix A</i>
5. Wastewater Treatment Plant	Maintain low effluent bacteria levels	Maintain Compliance with NPDES Permit	Funding in Sanitary Sewer Budget	Continual Monitoring through the NPDES permit and DMR reporting	In progress and on-going	Monthly filing of DMRs with DEQ	<i>Ongoing as Expected</i>

Canby 2016-2020 TMDL Implementation Tracking Matrix

SOURCE <i>What sources of this pollutant are under your jurisdiction?</i>	STRATEGY <i>What is being done, or what will you do, to reduce and/or control pollution from this source?</i>	HOW <i>Specifically, how will this be done?</i>	FISCAL ANALYSIS <i>What is the expected resource need? Are there existing resources budgeted? If not, where will the resources come from?</i>	MEASURE <i>How will you quantitatively or qualitatively demonstrate successful implementation or completion of this strategy?</i>	TIMELINE <i>When do you expect it to be completed?</i>	MILESTONE <i>What intermediate goals do you expect to achieve, and by when, to know progress is being made?</i>	STATUS <i>Include summary and date.</i>
1. Solar Radiation Input	Protect and Enhance Existing Riparian Vegetation	Inventory ground-cover, shade and slope stability of all Riparian Areas	Funding Available through City Planning Department or Storm/Sanitary Budget	Prepare Mapping and Spreadsheet to quantify inadequate riparian areas	July 2017	Complete field Surveys by September 2016	Table B New
		Restore Shade Vegetation along Riparian Areas		Quantify Number of Trees Planted / Lineal Feet of Frontage Restored	Ongoing	Restore 5% of Inadequate Riparian Areas Annually	Table B New
	Continue to Implement the Willamette Wayside Properties Master Plan	Restoration of Willow Creek, and Enhance Riparian Corridor	The funding strategies include donations, grants, partnerships, land trusts, volunteers and City SDCs. Projects are moved forward as funding becomes available.	As projects are completed they will be included in the yearly WQMP report. New projects will be added to the list as the Willamette Wayside Master Plan moves forward.	In progress and on-going. Estimated completion date 2025, depending on funding and volunteers.	City to work on Grant funding for projects.	Ongoing
		Interpretive Signs to Educate Visitors of the Ecological and Cultural History					
		Restoration of Fish Eddy site to Wet Prairie		Complete Preliminary Planning of Wayside Park Improvements	December 2020	Secure Funding for Planning by December 2017	Table B New
		Restoration of Native Woodlands and Protection of Native species					
2. Educational Outreach	Provide public education on the goals and concerns related to stormwater discharges	Newsletters, bill inserts, social media, coordination w/schools	Minimal funding required if coordinated with existing resources. Budget in FY 17-18	Assure one or more outreach program is completed quarterly	Ongoing	Track number of outreach material provided quarterly	Ongoing

Canby 2016-2020 TMDL Implementation Tracking Matrix

SOURCE <i>What sources of this pollutant are under your jurisdiction?</i>	STRATEGY <i>What is being done, or what will you do, to reduce and/or control pollution from this source?</i>	HOW <i>Specifically, how will this be done?</i>	FISCAL ANALYSIS <i>What is the expected resource need? Are there existing resources budgeted? If not, where will the resources come from?</i>	MEASURE <i>How will you quantitatively or qualitatively demonstrate successful implementation or completion of this strategy?</i>	TIMELINE <i>When do you expect it to be completed?</i>	MILESTONE <i>What intermediate goals do you expect to achieve, and by when, to know progress is being made?</i>	STATUS <i>Include summary and date.</i>
1. Toxic Pollutants	Reduce the amount of hazardous waste that is not properly disposed of	Hold at least one community hazardous waste pick-up event every five years	Sanitary/Industrial Pretreatment Budget	Record amount and types of hazardous waste received at pick-up event	At a minimum of every five years. Prior to July 1, 2020	Completed July 1, 2012	<i>Delete - Service provided by METRO</i>
2. Erosion Control	Decrease sedimentation and erosion from new construction	Enforce current Ordinance	Funding in FY 16-17 PW Budget	Monitor ESC Permit Issuance	Ongoing	Reduce number of non-permitted activities	<i>Ongoing</i>
		Enforce current Ordinance	Funding in FY 16-17 PW Budget	Increase staff support to .75 FTE dedicated to compliance with storm water regulations	September 1, 2016	Better Service and Enforcement	<i>Ongoing</i>
3. Stormwater Discharge	Comply With Requirements of the Stormwater Master Plan, Management Plan and Monitoring Plan	By adoption and implementation of each Plan	Funding through Grants, SDC's or Storm/Sanitary budget	Document Number of Projects Completed	Ongoing	By avoidance of any DEQ Non-compliance, violations or enforcement actions	<i>Ongoing as Expected</i>
4. Industrial Pretreatment Activities	Maintain Current Pretreatment Activities focused on Toxics Reduction	Provide BMP flyers, Grease and Dental Management Plans	Sanitary/Industrial Pretreatment Budget	Assure all Dentists comply with requirements or exemption	All in compliance but continue monitoring	Update Dental Surveys Biannually	<i>Ongoing</i>
5. Educational Outreach	Provide public education on the goals and concerns related to stormwater discharges	Newsletters, bill inserts, social media, coordination w/schools	Minimal funding required if coordinated with existing resources. Budget in FY 17-18	Assure one or more outreach program is completed quarterly	Ongoing	Track number of outreach material provided quarterly	<i>Ongoing</i>

RESOLUTION NO. 1261

**A RESOLUTION ADOPTING THE CITY OF CANBY PUBLIC WORKS
DEPARTMENT INTEGRATED PEST MANAGEMENT (IPM) POLICY AND
GUIDELINES**

WHEREAS, the City of Canby's Stormwater Master Plan requires that the City adopt an Integrated Pest Management Policy and Guidelines; and

WHEREAS, the purpose of an Integrated Pest Management Policy and Guidelines is to control structural and landscape pests and minimize exposure of staff and citizens to pesticides; and

WHEREAS, the City of Canby Public Works Department Integrated Pest Management Policy and Guidelines is based on city planning and design, manual maintenance, ecological controls and as a last resort, use of chemical pesticides.

NOW THEREFORE, IT IS HEREBY RESOLVED by the City of Canby as follows:

1. The City of Canby Public Works Department Integrated Pest Management Policy and Guidelines attached hereto as Exhibit "A" is hereby adopted.

This resolution will take effect on April 5, 2017.

ADOPTED this 5th day of April 2017 by the City of Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder



Integrated Pest Management Policy and Guidelines

City of Canby
Public Works Department

Adopted: April 5, 2017

Integrated Pest Management (IPM) Policy and Guidelines for Pest Management

City of Canby Public Works Department Policy Statement

It is the policy of the City of Canby to implement Integrated Pest Management procedures to control structural and landscape pests and minimize exposure of staff and citizens to pesticides.

Introduction to Policy

The City of Canby Public Works Department follows an Integrated Pest Management (IPM) Policy which was adopted by the Canby City Council in April of 2017.

According to Oregon Statutes (ORS 262.1), Chapter 943, an IPM is defined as follows:

“Integrated pest management means a coordinated decision-making and action process that uses the most appropriate pest control methods and strategies in an environmentally and economically sound manner to meet pest management objectives. The elements of integrated pest management include: (a) preventing pest problems; (b) monitoring for the presence of pests and pest damage; (c) establishing the density of pest population, which may be set at zero, that can be tolerated or corrected with a damage level sufficient to warrant treatment of the problem based on health, public safety, economic or aesthetic threshold; (d) treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical and pesticidal control methods and that shall consider human health, ecological impact, feasibility and cost effectiveness; and (e) evaluating the effects and efficacy of pest treatments.”

The IPM process first determines if a pest needs to be managed, and if so, how best to do it. Key elements are information gathering, decision making, management action, and monitoring of results. IPM uses effective, low-risk strategies and practices. Management actions include cultural, physical, mechanical, manual, biological and pesticidal. Licensed and trained Public Works Department professionals often select a combination of methods (pesticide applications being the method of last resort) to manage specific pest populations on a case-by-case basis, with a goal of reducing reliance on pesticides. Methods employed conform to recognized standards established and endorsed by state and federal regulation agencies, state educational institutions and organizations such as the Oregon Department of Agriculture.

Examples of IPM with the Public Works Department include:

- Mulching of planting beds to reduce establishment of weeds.
- Utilizing plants with natural resistance to pests.
- Volunteer use for hand weeding, trimming, mulching and more.

- Design features to include concrete curbs, mow strips and landscape designs.
- Proper mowing, irrigation and fertilization of turf to increase vigor and reduce weed populations.
- Application of selected herbicides to control invasive weeds before seed formation to prevent future weed infestations.
- Release of natural biological controls to control non-natives such as plants and insects.

Integrated Pest Management Policy

Canby Public Works Department's Integrated Pest Management Policy is based on city planning and design, manual maintenance, ecological controls and as a last resort, use of chemical pesticides.

Pesticide Use

Any pesticide use will be part of an IPM approach. Risk will be minimized by careful product selection and application. When developing and updating the IPM program, Public Works staff will rely on current peer-review scientific opinion about potential materials and methods, including science-based information from regulatory agencies, state university departments, university extension scientists and other experts.

- The choices to use pesticides will be based on human and ecological health and the values to be gained or preserved. Budgetary and human resource factors will also be considered.
- Only the safest, lowest toxicity products available will be used. Pesticides use will comply with all local, state and federal regulations. No "restricted use" pesticides will be used.
- The area will be posted depending on the reentry time specified on the pesticide label or SDS sheets.

Oversight and Training

- A minimum of one of Public Works employee will be trained and licensed as an Oregon Licensed Pesticide Applicator and will be designated by the department director to be responsible for overseeing and authorizing all pesticide use by Public Works staff. No pesticides will be used without a Licensed Pesticide Applicator on staff.
- No employee will use or apply any pesticide without prior training.
- No employee will use or apply any pesticide mechanically or by hand without event-specific authorization.
- Public Works employees who apply pesticides will attend an annual review of policies, procedures and reduction strategies regarding the use and applications of pesticides.

INTEGRATED PEST MANAGEMENT PROCEDURES

IPM procedures will determine when to control pests and whether to use physical, horticultural or biological means. Chemical controls should be used as a last resort. IPM practitioners should depend on current, comprehensive information on the pest and its environment and the best available pest control methods. Consideration of IPM principles should be based upon the most economical means and with the least possible hazard to people, property and the environment.

Typically, IPM programs will include the following components:

1. Monitoring and Action Thresholds – Checking for pests, damage or other evidence of infestation, which will enable selection of the most appropriate pest control procedures.
2. Safety – Incorporation of various pest control techniques to minimize the impact on occupants and other non-target organisms.
3. Education/Communication – Provide the necessary outreach and training to ensure that the staff has an understanding of the basic concepts of the IPM program and the role each plays.
4. Recordkeeping and Reporting – Provides essential information in determining the effectiveness of pest control procedures.
5. Non-Pesticidal Control – Incorporates all pest control procedures that prevent pest problems.
6. Pesticidal Control – Utilizes the judicious use of pesticides to control pest's problems.
7. Program Evaluation/Quality Assurance – Pest control programs will be reviewed periodically to determine effectiveness and to identify aspects requiring modifications.

It will be the policy of the City of Canby to utilize IPM principles to manage pest populations adequately. While the goal of this IPM program is to reduce the use of extremely toxic pesticides, use of pesticides may be necessary in certain situations.

When it is necessary to use a pesticide, than the least hazardous pesticide will be chosen. The application of such pesticides must be according to its label and is subject to the Federal Insecticide, Fungicide and Rodenticide Act, the Rhode Island Pesticide Control Act and all pertinent state and federal rules and regulations and applicable Occupational Safety and Health Administration regulations.

GUIDELINES

PESTICIDE SOLUTIONS AND RINSES

Following are elements to consider before beginning an application. These elements will help determine the proper amount of pesticide to mix.

- Weather conditions and predications. Call National Weather Service, Portland at 503-261-9246.
- Acreage/square footage of the job site.
- Calendar: special events, mowing, irrigation and so on.
- Type and size of the equipment appropriate to do the job.

When applying a pesticide, use the following procedures to reduce and safely store the rinse solution. These are secondary to label information and state and federal regulations.

- Mix only enough pesticide solution to do the job that day.
- First add measured amount of water to tank, then put in correct amount of herbicide according to the label specifications.
- Use up all pesticide, applying until the tank is empty or no more solution is coming through the nozzle.
- If pesticide mix remains, completely label the tank or sprayer with labels for the products used. Also mark the current concentration for each product, the date and the name of the applicator.
- When resuming spray applications the next time, either use the leftover material or add dilution water and circulate the mix thoroughly before adding new concentrate.
- If spray tank rinsate is created, store the rinsate as make-up water for the next day. The next day's pesticide should be compatible or the same. The same labeling requirements pertain to the rinsate mix.

Rinse the sprayer if the following conditions apply:

- It is necessary to use a pesticide incompatible with that previously used.
- It is the end of a spraying cycle.

Use the following rinse process:

1. Read the pesticide label. The following should not conflict with label information or state and federal regulations. Contact your supervisor if you see a conflict or have questions.
2. Wear protective clothing as listed on the label when handling pesticides, pesticide containers for pesticide equipment.
3. Fill the spray equipment approximately 1/4 full with clean water. Shake or agitate so that all inside surfaces are washed. If possible, use the spray hose to rinse the inside surface of the tank. These procedures should coincide with all labels.

4. Spray the rinse water out of the spray equipment onto an approved target area. Rinse water should be run through all hoses, booms, etc. Filters should be cleaned because of the dilute nature of the pesticide in the rinse water, a coarse spray can be used and is recommended to save time. Do not “pond” or saturate the soil.
5. If the tank is to be stored, repeat step 3 and 4 above until the tank is clean.

PESTICIDE SAFETY

- Containers will be triple-rinsed and then punctured to make sure they are not reused.
- Any spills will be cleaned up immediately and reported to a supervisor for proper handling of material.
- Personal protective equipment (PPE) will be worn according to label on product and SDS sheets (e.g. rubber gloves, goggles, long-sleeved shirts).
- All pesticides will be stored in a safe and labeled secure environment.

PESTICIDE REDUCTION OPTIONS

Volunteers – to be used for:

- Weeding
- Mulching
- Trimming

Mulch – reduce weed growth and labor costs; minimal budget impact.

Annuals to Perennials – Better ground cover, minimal labor, minimal budget impact.

Ground Cover – labor to establish weeding; higher initial costs but less expensive once established.

Landscape Design – Less formal, non-native; lower initial cost but higher costs to maintain until plants are established.

Equipment Use where Possible – higher cost to purchase; efficient use of labor; able to treat large areas.

Lawn Height – help shade weeds.

Irrigation Changes – initial cost of labor and materials; long-term solution; more maintenance required for smaller heads.

SPECIAL SITUATIONS

RESTRICTED AREAS

No applying pesticides near wetlands or streams areas against what a label allows.

Outside Contractors

Example: Field next to Shop Complex

Some agencies have no staff or limited staff to devote to pest management activities. Some do not have staff with expertise or appropriate licenses to carry out certain pest management activities. In these cases, agencies will want to hire outside contractors for pest management services.

Contractors differ in their skills and experience and it is important to hire a company that is reliable and knowledgeable about IPM practices and the goals of your IPM program. Performing appropriate preventive and monitoring activities may take extra time, so the lowest bidder may not always be the best company for your job. Be sure to specify needed IPM practices clearly in your contract and formalize a good communication system. Hire contractors who have appropriate pesticide application and pest control adviser licenses and training and who also have experience in IPM in situations such as yours. Ask them to provide you with their license number.

Reporting and Review

- Written record will be filled out after each application (see Attachment A).
- SDS sheets will be available to the public.

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TO: Honorable Mayor and City Council
City of Canby
ATTN: Mr. Richard Robinson, City Administrator

FROM: Curt J. McLeod, P.E.
CURRAN-McLEOD, INC.

DATE: March 29, 2017

ISSUE: CANBY WASTEWATER TREATMENT FACILITY
2017 SANITARY SEWER PUMPING STATION IMPROVEMENTS
SCHEDULE A: MULINO PUMP STATION
SCHEDULE B: WILLOW CREEK PUMP STATION
APPROVAL OF ORDINANCE 1459 FOR CONSTRUCTION

SYNOPSIS: On March 23, the City of Canby received six bids for the 2017 Sanitary Sewer Pumping Station Improvements project. This staff report is to request Council approval for award of the contract.

RECOMMENDATION:

That the Council approve Ordinance 1459 authorizing the Mayor and City Administrator to execute a contract with Canby Excavating, Inc. in the amount of \$1,124,475 for construction of both Schedule A and B; and declaring an emergency.

RATIONALE: This solicitation was advertised and completed in compliance with ORS 279C as a formal bid process. All of the six bids received were responsive with no errors. The bid from Canby Excavating, Inc. was the lowest responsive and responsible bid.

BACKGROUND:

This project includes two pumping station improvements that are listed in the City's Master Plans and System Development Charge Capital Improvements Plans. Both station improvements are in response to increased growth.

The Mulino Pumping Station is a new station that will serve the southeast quadrant of the City in response to the current subdivision construction along SE 13th Avenue. Design work was delayed on this schedule due to complication with wetlands found in the area. As a result, the bid solicitation was delayed. An emergency clause was added to the Ordinance to allow construction to begin immediately to assure the station is available to provide sewer service by the fall of 2017 for new home construction in the Timber Park subdivision.

The Willow Creek Pump Station is a reconstruction of the existing station to expand its capacity and upgrade the equipment. The original Willow Creek station was installed in 1991 to serve the Willow Creek Subdivision and the station was relocated in 1993 to also serve the Redwood Meadows Subdivision. This station is being reconstructed due to its age and need to increase the capacity to serve additional area south of Highway 99E.

Attached to this staff report is Ordinance 1459 with a bid tabulation of all six bids received. All bidders were pre-qualified for this project and correctly executed the documents.

The low bidder, Canby Excavating, Inc. is registered with the Oregon CCB without any negative entries and was deemed to be responsive and responsible. Our recommendation is to accept the bid from Canby Excavating, Inc. and execute a Contract for Construction for the basic bid and all alternative bid items in the amount of \$1,124,475.

FISCAL IMPACT:

At \$1,124,475, the bid price is 12% above the \$1,000,000 estimated cost of the work prepared last fall, and 25% over the amount budgeted in the FY 16-17 budget. The project scope was expanded to include larger wet well structures at each station, and all project costs have been noticeably higher the past year as the construction industry has become very busy.

The project is funded entirely from the Wastewater SDC in the Sewer Reserves, and the Reserve has sufficient funds available for this project. Budgeted funds in the current FY 16-17 budget can be reallocated from other uncompleted capital projects to cover all costs.

A portion of these costs will be reimbursed by benefitted users through the Advance Financing District created for the construction of the gravity sewer line on SE 13th Avenue. These revenues will reimburse the SDC fund as future development occurs.

Cc: Mr. Richard Robinson, City Administrator
Ms. Kim Scheafer, City Recorder
Ms. Julie Blums, Finance Director
Mr. Jerry Nelzen, Collections Superintendent

Enclosures: Ordinance 1459
Contract for Construction
Bid Tabulation

ORDINANCE NO. 1459

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY EXCAVATING, INC. FOR THE MULINO AND WILLOW CREEK PUMPING STATION IMPROVEMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received bids for the 2017 Sanitary Sewer Pumping Station Improvements; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on March 3, 2017; and

WHEREAS, bids were received and opened on March 23, 2017 at 2:00 PM in the City Hall Conference Room and the following six bids were read aloud:

	<i>Bidder</i>	<i>Sch. A Mulino PS</i>	<i>Sch. B Willow Cr PS</i>	<i>Total Bid</i>
1	Canby Excavating	\$ 806,715.00	\$ 317,760.00	\$1,124,475.00
2	McClure & Sons, Inc.	829,227.00	409,231.00	1,238,458.00
3	Stettler Supply Company.	886,672.00	401,111.00	1,287,783.00
4	J.W. Fowler Co.	877,738.00	415,608.00	1,293,346.00
5	R.L. Reimers Co.	915,720.00	381,715.00	1,297,435.00
6	Emery & Sons	1,099,098.00	357,880.00	1,456,978.00

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, April 5, 2017, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

WHEREAS, the Canby City Council determined that the low responsive bid was that of Canby Excavating, Inc.; and

WHEREAS, the Canby City Council on November 16, 2016 approved Resolution 1251 creating an Advance Financing District to reimburse the Sewer Reserve Fund a portion of the cost of this project for construction of the gravity sewer line on SE 13th Avenue; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Canby Excavating Inc. for the 2017 Sanitary Sewer Pumping Station Improvements, for the bid amount of \$1,124,475. A copy of a contract with Canby Excavating, Inc. is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

Section 3. Due to the need to provide prompt and continuous sanitary sewer collection to support growth and maintain the peace, health and safety of the community, an emergency is hereby declared to exist, and this ordinance shall be effective upon its passage by the Council.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, April 5, 2017 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, April 19, 2017 commencing at the hour of 7:30 PM in the Council Meeting Chambers located at 222 NE 2nd Avenue, 1st Floor, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of April 2017, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the ___ day of _____ in the year 2017, by and between the:

CITY OF CANBY

(Hereinafter called OWNER) and

CANBY EXCAVATING, INC

(Hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

CITY OF CANBY

Sanitary Sewer Pumping Station Improvements:

Sch. A: MULINO PUMP STATION

Sch. B: WILLOW CREEK PUMP STATION

The scope of work consists of construction of two pumping stations and associated controls, piping and site improvements:

Schedule A: The Mulino Road Pump Station work includes construction of approximately 1,400 lineal feet of 8" gravity sewer line, including 100 feet of a 14" casing bored under an existing railroad, a 350 gpm duplex submersible pumping station with a 10 foot diameter by 20 foot deep fiberglass wet well, CMU control building with engine generator, and approximately 2,400 lineal feet of 6" force main and utility services in a common trench.

Schedule B: The Willow Creek Pump Station includes a 350 gpm duplex submersible pumping station with a 10 foot diameter by 20 foot deep fiberglass wetwell, auxiliary generator with environmental enclosure, controls and approximately 670 lineal feet of 6" HDPE force main installed by pipe bursting an existing 4" PVC force main.

ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who are hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.1 The successful bidder agrees to be substantially complete with all work on:

**Schedule A: Mulino Pump Station within 150 days of the Notice to Proceed; and
Schedule B: Willow Creek Pump Station within 180 days of the Notice to Proceed,**

and to achieve final completion of both schedules A and B within 30 calendar days after issuance of the Notice of Substantial Completion on each phase.

3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR Four Hundred Dollars (\$400.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete AND/OR for each day of delay beyond the deadline for Final Completion.

ARTICLE 4 - CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

One Million, One Hundred Twenty Four Thousand, Four Hundred Seventy Five Dollars

(\$1,124,475.00) as shown in the Bid Proposal.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 2.03 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 15.01 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 15.06.

ARTICLE 6 - INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279C.570.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract

Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8 - CONTRACT DOCUMENTS

8.1 This Agreement

8.2 Exhibits to this Agreement.

8.3 Performance and other Bonds

8.4 Notice of Award.

8.5 General Conditions of the Construction Contract

8.6 Supplementary Conditions

8.7 Technical Specifications as listed in the Table of Contents.

8.8 Specifications bearing the following general title:

CITY OF CANBY
Sanitary Sewer Pumping Station Improvements:
Sch. A: MULINO PUMP STATION
Sch. B: WILLOW CREEK PUMP STATION

8.9 Addenda number(s) .

8.10 CONTRACTOR'S Bid

8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed three counterparts of this Agreement.

This Agreement will be effective on _____.

OWNER:

**CITY OF CANBY
222 NE 2nd Ave
P.O. Box 930
Canby, OR 97013**

CONTRACTOR:

**CANBY EXCAVATING, INC
P.O. Box 848
Canby, OR 97013**

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Attest: _____

CITY OF CANBY

Project: Sanitary Sewer Pumping Station Improvements: Sch. A: Mulino Pump Station and Sch. B: Willow Creek Pump Station

Bid Date: Thursday, March 23, 2017

1 2 3 4 5 6

BID TABULATION: SCHEDULE A: MULINO PUMPING STATION			Canby Excavating	McClure & Sons	Stettler Supply Company	J.W. Fowler Co.	R.L. Reimers Co.	Emery & Sons
1. Wastewater Pump Station		Units	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total
1.1	Mobilization, Bond, Insurance, Temporary Traffic Control and Erosion & Sediment Control	1 LS	\$ 15,000.00	\$ 18,000.00	\$ 50,452.00	\$ 55,000.00	\$ 27,875.00	\$ 155,000.00
			\$ 15,000.00	\$ 18,000.00	\$ 50,452.00	\$ 55,000.00	\$ 27,875.00	\$ 155,000.00
1.2	Site Improvements, Grading, Surfacing, Fencing, Landscape Restoration	1 LS	\$ 36,000.00	\$ 35,000.00	\$ 38,889.00	\$ 60,000.00	\$ 30,950.00	\$ 45,000.00
			\$ 36,000.00	\$ 35,000.00	\$ 38,889.00	\$ 60,000.00	\$ 30,950.00	\$ 45,000.00
1.3	Pump Station Wet Well and Valve Vault, Pumping Equipment and Controls	1 LS	\$ 192,000.00	\$ 232,000.00	\$ 211,000.00	\$ 210,000.00	\$ 209,300.00	\$ 225,000.00
			\$ 192,000.00	\$ 232,000.00	\$ 211,000.00	\$ 210,000.00	\$ 209,300.00	\$ 225,000.00
1.4	Building Improvements including Building Structure, Electrical, Engine Generator, and all Miscellaneous Work	1 LS	\$ 170,000.00	\$ 142,470.00	\$ 171,000.00	\$ 108,000.00	\$ 154,550.00	\$ 180,000.00
			\$ 170,000.00	\$ 142,470.00	\$ 171,000.00	\$ 108,000.00	\$ 154,550.00	\$ 180,000.00
1.5	Site Piping, including all mechanical piping, 8" gravity sewer, MHs, 6" Force Main, Utility Trenching and Electrical Vault Preparation	1 LS	\$ 53,000.00	\$ 57,000.00	\$ 47,671.00	\$ 55,000.00	\$ 34,425.00	\$ 38,000.00
			\$ 53,000.00	\$ 57,000.00	\$ 47,671.00	\$ 55,000.00	\$ 34,425.00	\$ 38,000.00
Subtotal Wastewater Pumping Station			\$ 466,000.00	\$ 484,470.00	\$ 519,012.00	\$ 488,000.00	\$ 457,100.00	\$ 643,000.00
2. Force Main & Private Utilities		Units	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total
2.1	Mobilization, Bond, Insurance, Temporary Traffic Control and Erosion & Sediment Control	1 LS	\$ 7,000.00	\$ 10,000.00	\$ 5,275.00	\$ 25,000.00	\$ 33,325.00	\$ 28,000.00
			\$ 7,000.00	\$ 10,000.00	\$ 5,275.00	\$ 25,000.00	\$ 33,325.00	\$ 28,000.00
2.2	6" HDPE SDR 17 Force Main w/ Native Backfill (Common Trench w/Utilities)	1775 LF	\$ 20.00	\$ 32.00	\$ 20.00	\$ 26.00	\$ 76.00	\$ 26.00
			\$ 35,500.00	\$ 56,800.00	\$ 35,500.00	\$ 46,150.00	\$ 134,900.00	\$ 46,150.00
2.3	6" HDPE SDR 17 Force Main w/ Native Backfill (Single trench for Force Main Only)	410 LF	\$ 15.00	\$ 30.00	\$ 20.00	\$ 33.00	\$ 63.50	\$ 25.00
			\$ 6,150.00	\$ 12,300.00	\$ 8,200.00	\$ 13,530.00	\$ 26,035.00	\$ 10,250.00
2.4	6" - 45 Degree MJ Elbow with 2 HDPE MJ Adapters	1 Ea	\$ 500.00	\$ 750.00	\$ 634.00	\$ 760.00	\$ 1,400.00	\$ 1,225.00
			\$ 500.00	\$ 750.00	\$ 634.00	\$ 760.00	\$ 1,400.00	\$ 1,225.00
2.5	48" Diameter Manhole Over Existing 8" Pipe Sta 23+69	1 LS	\$ 6,000.00	\$ 4,500.00	\$ 4,968.00	\$ 12,275.00	\$ 6,125.00	\$ 6,650.00
			\$ 6,000.00	\$ 4,500.00	\$ 4,968.00	\$ 12,275.00	\$ 6,125.00	\$ 6,650.00
2.6	Electrical Vault Prep Excavation and Backfill	3 Ea	\$ 1,500.00	\$ 650.00	\$ 541.00	\$ 2,200.00	\$ 1,075.00	\$ 2,100.00
			\$ 4,500.00	\$ 1,950.00	\$ 1,623.00	\$ 6,600.00	\$ 3,225.00	\$ 6,300.00
Subtotal Force Main & Private Utilities			\$ 59,650.00	\$ 86,300.00	\$ 56,200.00	\$ 104,315.00	\$ 205,010.00	\$ 98,575.00
3. SE 13th Avenue Gravity Sewer Line		Units	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total
3.1	Mobilization, Bond, Insurance, Temporary Traffic Control and Erosion & Sediment Control	1 LS	\$ 14,000.00	\$ 20,000.00	\$ 25,251.00	\$ 23,000.00	\$ 26,875.00	\$ 85,000.00
			\$ 14,000.00	\$ 20,000.00	\$ 25,251.00	\$ 23,000.00	\$ 26,875.00	\$ 85,000.00
3.2	8" PVC 3034 SDR 35 Gravity Sewer with Select Backfill	1021 LF	\$ 140.00	\$ 135.00	\$ 114.00	\$ 127.00	\$ 95.00	\$ 153.00
			\$ 142,940.00	\$ 137,835.00	\$ 116,394.00	\$ 129,667.00	\$ 96,995.00	\$ 156,213.00
3.3	8" PVC 3034 SDR 35 Gravity Sewer with CDF or CDF Alternative Backfill	93 LF	\$ 375.00	\$ 254.00	\$ 350.00	\$ 253.00	\$ 230.00	\$ 220.00
			\$ 34,875.00	\$ 23,622.00	\$ 32,550.00	\$ 23,529.00	\$ 21,390.00	\$ 20,460.00
3.4	48" Manhole, All Depths	4 Ea	\$ 5,000.00	\$ 3,200.00	\$ 5,152.00	\$ 6,000.00	\$ 5,700.00	\$ 6,300.00
			\$ 20,000.00	\$ 12,800.00	\$ 20,608.00	\$ 24,000.00	\$ 22,800.00	\$ 25,200.00
3.5	Remove Existing Cleanout and Connect to Existing Sta 13+90	1 LS	\$ 3,000.00	\$ 1,500.00	\$ 5,947.00	\$ 4,287.00	\$ 1,150.00	\$ 950.00
			\$ 3,000.00	\$ 1,500.00	\$ 5,947.00	\$ 4,287.00	\$ 1,150.00	\$ 950.00
3.6	Sawcut Existing AC for T Cut AC Repair	220 LF	\$ 2.50	\$ 5.00	\$ 2.50	\$ 4.00	\$ 11.00	\$ 2.50
			\$ 550.00	\$ 1,100.00	\$ 550.00	\$ 880.00	\$ 2,420.00	\$ 550.00
3.7	1/2" Dense Mix AC Trench Repairs	100 LF	\$ 25.00	\$ 10.00	\$ 27.00	\$ 43.00	\$ 55.00	\$ 19.50
			\$ 2,500.00	\$ 1,000.00	\$ 2,700.00	\$ 4,300.00	\$ 5,500.00	\$ 1,950.00
3.8	Rock Excavation	20 CY	\$ 225.00	\$ 440.00	\$ 278.00	\$ 188.00	\$ 194.00	\$ 360.00
			\$ 4,500.00	\$ 8,800.00	\$ 5,560.00	\$ 3,760.00	\$ 3,880.00	\$ 7,200.00
Subtotal SE 13th Avenue Gravity Sewer Line			\$ 222,365.00	\$ 206,657.00	\$ 209,560.00	\$ 213,423.00	\$ 181,010.00	\$ 297,523.00
4. Railroad Boring		Units	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total
4.1	8" PVC 3034 SDR 35 Gravity Sewer, including 14" Steel Casing, Mobilization, Bonding & Insurance, Temporary Traffic Control, Railroad Coordination, and Erosion & Sediment Control	100 LF	\$ 587.00	\$ 518.00	\$ 1,019.00	\$ 720.00	\$ 726.00	\$ 600.00
			\$ 58,700.00	\$ 51,800.00	\$ 101,900.00	\$ 72,000.00	\$ 72,600.00	\$ 60,000.00
Subtotal Railroad Boring			\$ 58,700.00	\$ 51,800.00	\$ 101,900.00	\$ 72,000.00	\$ 72,600.00	\$ 60,000.00
TOTAL SCHEDULE A: Mulino Pump Station Basic Bid			\$ 806,715.00	\$ 829,227.00	\$ 886,672.00	\$ 877,738.00	\$ 915,720.00	\$ 1,099,098.00
BID TABULATION: SCHEDULE B: WILLOW CREEK PUMPING STATION			Canby Excavating	McClure & Sons	Stettler Supply Company	J.W. Fowler Co.	R.L. Reimers Co.	Emery & Sons
1. Wastewater Pump Station		Units	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total
1.1	Mobilization, Bond, Insurance, Temporary Traffic Control and Erosion & Sediment Control	1 LS	\$ 6,000.00	\$ 18,000.00	\$ 40,445.00	\$ 39,000.00	\$ 27,175.00	\$ 51,500.00
			\$ 6,000.00	\$ 18,000.00	\$ 40,445.00	\$ 39,000.00	\$ 27,175.00	\$ 51,500.00
1.2	Pump Station Site Improvements, Surfacing, Landscape Restoration	1 LS	\$ 25,000.00	\$ 30,000.00	\$ 57,819.00	\$ 48,000.00	\$ 16,600.00	\$ 12,000.00
			\$ 25,000.00	\$ 30,000.00	\$ 57,819.00	\$ 48,000.00	\$ 16,600.00	\$ 12,000.00
1.3	Pump Station Wet Well and Valve Vault, Pumping Equipment, Controls and all Piping to Limits of the 6" HDPE Pipe Bursting	1 LS	\$ 188,000.00	\$ 267,651.00	\$ 215,659.00	\$ 223,000.00	\$ 220,825.00	\$ 195,000.00
			\$ 188,000.00	\$ 267,651.00	\$ 215,659.00	\$ 223,000.00	\$ 220,825.00	\$ 195,000.00
1.4	Electrical Improvements including Engine Generator	1 LS	\$ 75,000.00	\$ 76,000.00	\$ 67,670.00	\$ 63,500.00	\$ 69,250.00	\$ 62,150.00
			\$ 75,000.00	\$ 76,000.00	\$ 67,670.00	\$ 63,500.00	\$ 69,250.00	\$ 62,150.00
Subtotal Wastewater Pump Station			\$ 294,000.00	\$ 391,651.00	\$ 381,593.00	\$ 373,500.00	\$ 333,850.00	\$ 320,650.00
2. HDPE Force Main		Units	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total	Unit / Total
2.1	6" HDPE, Including all Labor, Materials and Equipment to Pipe Burst Existing 4" PVC and Install 6" HDPE Force Main	660 LF	\$ 31.00	\$ 23.00	\$ 27.50	\$ 60.00	\$ 66.50	\$ 54.75
			\$ 20,460.00	\$ 15,180.00	\$ 18,150.00	\$ 39,600.00	\$ 43,890.00	\$ 36,135.00
2.2	6" x 4" MJ Reducer with 6" HDPE MJ Adapter	1 Ea	\$ 900.00	\$ 850.00	\$ 424.00	\$ 700.00	\$ 1,300.00	\$ 650.00
			\$ 900.00	\$ 850.00	\$ 424.00	\$ 700.00	\$ 1,300.00	\$ 650.00
2.3	4" PVC C-900 Force Main	5 LF	\$ 300.00	\$ 180.00	\$ 68.00	\$ 250.00	\$ 275.00	\$ 19.00
			\$ 1,500.00	\$ 900.00	\$ 340.00	\$ 1,250.00	\$ 1,375.00	\$ 95.00
2.4	4" Compression Coupling	1 Ea	\$ 900.00	\$ 650.00	\$ 604.00	\$ 558.00	\$ 1,300.00	\$ 350.00
			\$ 900.00	\$ 650.00	\$ 604.00	\$ 558.00	\$ 1,300.00	\$ 350.00
Subtotal Utilities			\$ 23,760.00	\$ 17,580.00	\$ 19,518.00	\$ 42,108.00	\$ 47,865.00	\$ 37,230.00
TOTAL SCHEDULE A: Willow Creek Pump Station Basic Bid			\$ 317,760.00	\$ 409,231.00	\$ 401,111.00	\$ 415,608.00	\$ 381,715.00	\$ 357,880.00
TOTAL BASIC BID: SCHEDULE A & SCHEDULE B			\$ 1,124,475.00	\$ 1,238,458.00	\$ 1,287,783.00	\$ 1,293,346.00	\$ 1,297,435.00	\$ 1,456,978.00