



AGENDA

CANBY CITY COUNCIL REGULAR MEETING

June 5, 2013

7:30 PM

Council Chambers
155 NW 2nd Avenue

Mayor Brian Hodson

Council President Tim Dale
Councilor Richard Ares
Councilor Clint Coleman

Councilor Traci Hensley
Councilor Greg Parker
Councilor Ken Rider

WORK SESSION

6:00 PM

City Hall Conference Room
182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss a proposed street cutting ordinance and privilege tax ordinance. Pg. 1

CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Canby Livability Day Proclamation

Pg. 28

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens 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.)

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 May 15, 2013 City Council Regular Meeting

7. PUBLIC HEARINGS

- A. Noise Variance Application – Doug Sprague (3500 N Maple) on July 19, 2013 Pg.29
- B. Noise Variance Application – Harefest LLC (1190 SW First) on August 2,3,16, and 17, 2013 Pg.34
- C. Transient Tax Pg.40
- D. Additional Fee for Cutting Newer Pavement and Penalty Fee Pg.96

8. RESOLUTIONS & ORDINANCES

- A. Res. 1159, Extending Workers' Comp. Coverage to Volunteers & Repealing Res. 1129 Pg.37
- B. Ord. 1374, Adding Chapter 3.50 to the Canby Municipal Code Thereby Establishing a Transient Room Tax Pg.40
- C. Ord. 1375, Auth. Contract with S-2 Contractors, Inc. in the Amount of \$671,821.10 for Construction of the 2013 Street Maintenance Program (**2nd Reading**) Pg.51
- D. Ord. 1376, Authorizing Purchase of a Case CX50B Mini Excavator from Sonsray Machinery, LLC (**2nd Reading**) Pg.60
- E. Ord. 1377, Authorizing Amended Contract with Kintechnology Inc. to Continue to Provide Computer Technical Services for the City of Canby Pg.63
- F. Ord. 1378, Granting to Clackamas County Broadband a Nonexclusive Franchise to Construct, Operate and Maintain a Telecommunications Network and Provide Telecommunications Services within the City of Canby, Oregon (**2nd Reading**) Pg.73
- G. Ord. 1379, Authorizing a Contract with C.R. Woods Trucking in the Amount of \$229,800.50 for Construction of the Northwood Park Project Pg.82
- H. Ord. 1380, Amending CMC Chapter 12 Creating Section 12.08.065 an Additional Fee for Cutting Newer Pavement and Amending Section 12.08.200 Pg.96
- I. Ord. 1381, Granting to tw telecom of oregon llc (“TWTC”) a Nonexclusive Franchise to Construct, Operate and Maintain a Telecommunications Network and Provide Telecommunications Services within the City of Canby, Oregon (**2nd Reading**) Pg.99
- J. Ord. 1382, Authorizing Contract with Heard Farms for Wastewater Sludge Removal Pg.108

9. NEW BUSINESS

10. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORTS

11. CITIZEN INPUT

12. ACTION REVIEW

13. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation

14. 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, MMC, City Recorder at 503.266.0733. A copy of this Agenda can be found on the City’s web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

MASTER COMMUNICATIONS INFRASTRUCTURE ORDINANCE

**Second Edition
Updated October 2010**

-- ADVICE FOR ADOPTION¹ --

Overview:

The Federal Telecommunications Act of 1996 protects cities' authority to manage the rights of way and receive fair and reasonable compensation for the use of those rights of way by telecommunications carriers, provided that they do so on a "competitively neutral and nondiscriminatory basis." In 2000, the Master Telecommunications Infrastructure Ordinance was drafted to help cities manage the rights of way in compliance with the terms of the Telecommunications Act.

After years of litigation, Oregon courts have determined that the original Ordinance is consistent with these requirements, and with other state and federal laws and rules. This update retains the substantive provisions of the original Ordinance, but includes new options for implementation that address recent trends in communications and right of way management, including new services and service providers that may not have been subject to the original Ordinance. As with the original Ordinance, the updated Ordinance is intended to: establish clear guidelines, standards, and requirements for all communications providers that request to operate within your community; ensure local authority to manage right of way for the health and safety of local residents; and assure adequate compensation to local taxpayers for private use of publicly-owned rights of way. The requirements it contains are designed to be limited and streamlined, while preserving municipal authority. When implementing the Ordinance, each City should evaluate how it can coordinate the roles and responsibilities of various departments that may be charged with implementing these provisions and requirements. Note that cities are expected to rely upon existing zoning and development codes in addition to this Ordinance.

Prior to adopting this Ordinance, a City should prepare information on the process that can be provided to each applying communications provider. This should include information on both the registration and franchise requirements, thereby putting the onus on providers to specify which requirements apply based on their use of the City's rights of way and the services provided in the City.

¹ The Advice for Adoption is intended to provide general guidance for all cities considering the Ordinance. It does not constitute legal advice, nor does it address the specific circumstances of any individual City nor reflect the policy choices, legislative intent or legal position of any individual City.

As cities work with communications providers for registration and/or franchising, staff should be aware that these providers often consider information on current and future facilities to be competitively sensitive and are highly attuned to anti-trust issues. Generally, most of the documents and other information that communications providers will provide to cities will be subject to the Oregon Public Records Laws (ORS Ch.192). City staff, therefore, should remind providers of these requirements and instruct them to specifically designate any materials that they regard as proprietary and request to be kept confidential, consistent with Section 67 of the Ordinance.

Additional Issues for Consideration:

- **Franchise Requirement**

City staff, with the assistance of communications providers, will need to determine whether or not the company needs to obtain a Franchise. Only those communications providers that occupy the City's public rights of way will need to obtain franchises. All other providers (e.g. wireless services, non-facilities based competitive telecommunications providers, resellers and other communications providers) will only need to register with the City. The Ordinance, at Section 29, makes clear that all persons that occupy the rights of way are subject to the terms of the Ordinance whether or not they have obtained a franchise. This language is intended to ensure that the provider complies with the Ordinance even if its franchise has lapsed or it has refused to enter into a new franchise agreement.

- **Exceptions to Registration Requirement**

Private communications networks that are not using the public rights of way should not be required to register or obtain a franchise, though they may be subject to other city regulatory requirements such as the requirement to obtain a business license. (If such a network does use the public rights of way, a City is advised to require a franchise with compensation based on a per foot charge.)

- **Construction Standards and Location Requirements**

Each City should apply its own existing construction standards, including street use permit process, standards of construction and restoration, location and relocation, to communications facilities construction. Each City should review its existing standards and consider any changes that may be needed. If existing standards are sufficient, the Construction sections in this ordinance should be omitted and replaced with a provision requiring communications providers to comply with the relevant Chapter(s) of the City code.

If a City does not have adequate construction standards and location requirements, the construction and location provisions of the Ordinance, located in Sections 9-28, may be useful. However, Cities should consider adopting construction standards and location requirements that will apply to all utilities using the right of way as an alternative to defining these requirements in individual franchises. Uniform standards for all utilities are much more easily enforced by City staff than different standards for different types of utilities. Further, some telecommunications companies have argued that construction standards that are different for telecommunications companies than

for other utilities run afoul of the Telecommunications Act.

Rate Recommendations:

Section 7. Registration Fee

The registration fee must be set by Council resolution. This could be part of a City's existing fee resolution or a separate resolution. Setting the fee by resolution provides cities with the opportunity to periodically review the fee and more easily make adjustments to reflect changes in personnel costs, technology, use of the rights of way and other relevant factors.

As noted in Section 7 of the Ordinance, cities have a policy choice to make with respect to the registration fee. At a minimum, cities should implement a registration application fee sufficient to cover the administrative costs of processing the registrations.

Cities also have the option to impose a registration fee that would operate like a privilege tax in that it would be based on the revenue companies earn from providing communications service in the City, but it would not be based on use of the rights of way. This approach would ensure that all communications providers, including wireless providers (unless expressly excluded)², are subject to the same fees for providing service in the City, regardless of whether or not they use the right of way to provide that service. (Those who use the rights of way also would be subject to a franchise fee or right of way use fee for the privilege of using the City's rights of way as discussed more fully below.)

Many cities would receive additional revenue from this approach. A right of way-based franchise fee does not capture revenue from companies that provide service in the City but do not own facilities in the right of way, including competitive telecommunications providers and wireless providers, which revenue would be captured by this approach. This approach would also allow cities to collect fees on non-exchange access revenue from incumbent telecommunications providers, which is potentially a significant portion of the providers' revenue.

For cities that implement a registration fee related to provision of service (as opposed to a nominal fee to cover the administrative costs of registration), we suggest a registration fee of between 2% and 5% of a communications provider's gross revenue derived from the provision of communications services within the City. "Gross revenue" should be defined as any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations imposed by federal or state law.

Section 31. Application / Review Fee

This fee should be sufficient to cover a City's costs of entering into the franchise agreement. We recommend a \$2,000 deposit with credit/billing for amounts under or exceeding deposit.

² Cities desiring to exclude wireless companies from these regulations should delete the phrase "and whether or not the transmission medium is wireline" from the definition of "communications services" in Section 4.

Section 36. Franchise Fee

Cities must establish the amount of the franchise fee by resolution. As with the registration fee, this could be part of a City's existing fee resolution or a separate resolution.

As noted in Section 36 of the Ordinance, cities have a policy choice to make with respect to the franchise fee. The Ordinance only requires those companies that "occupy" the rights of way to obtain a franchise and pay the franchise fee. There may be providers that use the rights of way but do not own the facilities they use and thus would not be required to pay the franchise fee. Cities should consider requiring providers that use the rights of way to pay for such use, regardless of whether or not they own the facilities they use, as they are deriving a benefit from the use of a public asset. Cities desiring to cover all users of the rights of way should include subsection 36.B of the Ordinance.³

We suggest the following franchise fee:

1. Communications Providers that Provide Communications Service to Customers within the City: [5% or 7%] of gross revenue from the provision of communications services to customers in the City. "Gross revenues" means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations imposed by federal or state law.
2. Communications Providers that do not Provide Communications Service to Customers within the City: \$_____ per lineal foot of communications facilities in the City.

Cities need to determine the appropriate percentage for communications providers. We recommend between five and seven percent. In making this determination, cities should consider applicable state laws, which in some cases limit City authority to charge certain telecommunications providers fees for use of the rights of way, as explained below.

1. Telecommunications Carriers, as defined by ORS 221.515

Cities' authority to charge telecommunications carriers for use of the rights of way is capped at seven (7) percent of franchisee's gross revenues earned within the boundaries of the City, as set forth in ORS 221.515. "Telecommunications carriers" do not include competitive providers and thus this definition is generally limited to incumbent providers (which are the local phone companies that are required to provide service in their service area). For these providers, gross revenues means those revenues derived from "exchange access services," as defined in ORS 401.710, less net uncollectibles from such revenues. The scope of services included in the

³ We strongly recommend that cities that opt not to impose a revenue-based registration fee expressly extend the franchise fee to all providers that use of the rights of way to provide service as suggested in subsection 36.B. If a revenue-based registration fee is enacted, the City will receive revenue from providers that use but do not own facilities in the rights of way. In that case, the City may choose to limit the franchise fee to owners of facilities and/or allow a provider to deduct from the registration fee any franchise fees paid.

definition of “exchange access services” to some extent depends on the providers’ tariff on file with the Oregon Public Utility Commission, but generally includes only the connection to the local telecommunications network (i.e., the dial tone), not other services commonly provided to customers such as caller ID, call waiting, and call forwarding. By referencing “applicable limitations imposed by federal and state law,” the suggested language above incorporates this limitation. We do not recommend cities adopt the limited definition in the statute so that in the event there is a change to state law, cities do not have to amend their fee resolution. It is also important to note that other revenues of these providers are not subject to this limitation.

A “telecommunications carrier” that pays seven percent (7%) of gross revenues as set forth in the statute is not required to pay any additional fee, compensation or consideration to a city for its use of public streets, alleys, or highways. “Use” includes, but is not limited to, street openings, construction and maintenance of fixtures or facilities by telecommunications carriers. To the extent that separate fees are imposed for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the franchise fee or privilege tax. Telecommunications carriers may not deduct charges and penalties imposed by the municipality for noncompliance with charter provisions, ordinances, resolutions, or permit conditions.

2. Competitive Access Providers

As stated above, ORS 221.515 does not apply to competitive access providers and thus cities are not obligated to apply the limited definition of gross revenues in ORS 221.515 to competitive providers. There is no express limit on City authority to require franchise fees from competitive providers. Many cities currently require competitive access providers to pay five percent (5%) of gross revenues, while others require seven percent (7%) to be consistent with the percentage paid by incumbent providers. Remember that no franchise fee would be required for providers that are not facilities-based providers unless the City imposes the revenue-based registration fee.

3. Long Distance Providers / Private Networks / Others Occupying the Right of Way But Not Providing Service to Customers in the City

For providers that do not provide service to customers in the City, a gross revenue-based fee would not result in any payment to the City for use of the rights of way. We recommend a per foot charge based on installation in the rights of way. Per foot charges vary based on right of way impact and value; we suggest a per foot charge between \$2.00 to \$4.00.

Finally, pursuant to ORS 294.160, cities are required to provide an opportunity for interested persons to comment on the Ordinance to the extent it prescribes a new or increased fee. The amount of the fees established by this Ordinance will be adopted by a separate Council resolution, which also is subject to this state law requirement.

MASTER COMMUNICATIONS INFRASTRUCTURE ORDINANCE

October 2010

SHORT TITLE AND INTENT

Section 1. Short Title: This Ordinance may be referred to as the “Communications Ordinance.”

Section 2. 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. 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.
- C. 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.
- D. 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.
- E. The City retains the right and privilege to cut or move any communications 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.

Section 3. Regulatory Fees and Compensation Not a Tax

- A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the public rights of way provided for in this Ordinance, are separate from, and in addition to, any and all other federal, state, local, and City charges as may be levied, imposed, or due from a communications provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of communications services.
- B. The City has determined that any fee or tax provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

These fees or taxes are not imposed on property or property owners.

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

DEFINITIONS

Section 4. Definitions: For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. 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. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act. If not defined there, the words shall be given their common and ordinary meaning.

Cable Act - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq.

Cable Service – is to be defined consistent with federal laws and means the one-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 such video programming or other programming service.

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

City Council - means the elected governing body of the City of _____, Oregon.

Control - means actual working control in whatever manner exercised.

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 Ordinance.

Communications Facilities - means the plant and equipment, other than customer premises equipment, used by a communications provider.

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

Communications Service - any service provided for the purpose of 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 and whether or not the transmission medium is wireline. Communications 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; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

Communications System - see "Communications facilities" above.

Conduit - means any structure, or portion thereof, containing one 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 one 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.

Days - means calendar days unless otherwise specified.

Duct - means a single enclosed raceway for conductors or cable.

Emergency - has the meaning provided for in ORS 401.025.

Federal Communications Commission - means the federal administrative agency, or its lawful successor, authorized to regulate and oversee communications providers, 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 which a franchise is granted by the City.

OPUC - means the statutorily created state agency in the State of Oregon responsible for licensing and regulation of certain communications providers as set forth in Oregon Law, or its lawful successor.

Overhead Facilities - means utility poles, utility facilities and communications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

Person - means an individual, corporation, company, association, joint stock company or

association, firm, partnership, or limited liability company.

Private Communications 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 their use and not for resale, directly or indirectly. "Private communications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

Public Rights of Way or Right of Way - include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland or other City property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for communications facilities. "Public rights of way" shall also include utility easements as defined below. *(Make consistent with city's definition of same.)*

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.

Underground Facilities - means utility and communications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

Utility Easement - means any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes. "Utility easement" does not include any easement dedicated solely for City facilities or where the proposed use by the communications provider is inconsistent with the terms and conditions of any easement granted to the City.

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 communications services.

REGISTRATION OF COMMUNICATIONS PROVIDERS

Section 5. Purpose: The purpose of registration is:

- A. To assure that all communications providers who have facilities and/or provide services within the City comply with the ordinances, rules and regulations of the City.
- B. To provide the City with accurate and current information concerning the communications providers who offer to provide communications services within the City, or that own or

operate communications facilities within the City.

- C. To assist the City in the enforcement of this Ordinance and the collection of any city franchise fees or charges that may be due the City.

Section 6. Registration Required:

- A. Except as provided in Section 8 hereof, all communications providers having communications facilities within the corporate limits of the City, and all communications providers that offer or provide communications services to any customer within the City, shall register within forty-five (45) days of the effective date of this Ordinance. Any communications provider that desires to have communications facilities within the corporate limits of the City or to provide communications services to any customer within the City after the effective date of this Ordinance shall register prior to such installation or provision of service.
- B. After registering with the City pursuant to subsection 6.A of this Section, the registrant shall, by December 31st of each year, file with the City a new registration form if it intends to provide communications services at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection 6.A on or after September 30th shall not be required to file an annual registration until December 31st of the following year.
- C. The appropriate application and license from: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission qualify as necessary registration information. To the extent not included in the application and license materials submitted pursuant to this subsection 6.C, applicants also shall provide the following information:
 - 1. 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.
 - 2. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency.
 - 3. A description of the registrant's existing or proposed communications facilities within the City, a description of the communications facilities that the registrant intends to construct, and a description of the communications services that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City.
 - 4. Information sufficient to determine whether the transmission, origination or receipt of the communications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to the City's business license requirements. A copy of the business license or the license number must be provided.

Section 7. Registration Application Fee: Each application for registration as a communications provider shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council. *(The dollar amount should be set at an amount sufficient to recover the City's costs of issuing and administering the registration requirement).*

OPTIONAL ADDITIONAL REGISTRATION FEE:

- A. Every communications provider shall pay an annual registration fee in an amount to be determined by resolution of the City Council.
- B. Unless otherwise agreed to in writing by the City, the fee shall be paid within thirty (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 nine percent (9%) per year for any payment made after the due date.
- C. The registration fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

Section 8. Exceptions to Registration: The following communications providers are excepted from registration:

- A. Communications facilities that are owned and operated exclusively for its own use by the State or a political subdivision of this State.
- B. A private communications network, provided that such network does not occupy any public rights of way of the City.

CONSTRUCTION STANDARDS

Section 9. General: No person shall commence or continue with the construction, installation or operation of communications facilities within a public right of way except as provided in Sections 12 through 28, and with all applicable codes, rules, and regulations.

Section 10. Construction Codes: Communications 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.

Section 11. Construction Permits: Except in the event of an emergency, no person shall construct or install any communications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in Section 15 of this Ordinance. No permit shall be issued for the construction or installation of communications facilities within a public right of way:

- A. Unless the communications provider has first filed a registration statement with the City as required by Sections 5 through 8 of this Ordinance; and if applicable,
- B. Unless the communications provider has first applied for and received a franchise pursuant to Sections 29 through 46 of this Ordinance.

In the event of an emergency, a franchisee or its contractor may perform work on its communications facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City and pays the permit fee as soon as reasonably practicable, but not more than forty eight (48) hours after commencing the emergency work. As used in this Section 11, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning communications facilities is necessary to restore lost service or prevent immediate harm to persons or property.

Section 12. Permit Applications: Applications for permits to construct communications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
- B. That the facilities will be constructed in accordance with the franchise agreement.
- C. The location and route of all facilities to be installed aboveground or on existing utility poles.
- D. The location and route of all new facilities on or in the public rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Applicant's existing facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.
- E. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

Section 13. Applicant's Verification: All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Section 14. Construction Schedule: All permit applications shall be accompanied by a written

construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by (dept/div).

Section 15. Construction Permit Fee: Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City Council. Such fees shall be designed to defray the costs of city administration of the requirements of this ordinance. *(Policy choice - permit fee to be determined by city.)*

Section 16. Issuance of Permit: If satisfied that the applications, plans and documents submitted comply with all requirements of this Ordinance and the franchise agreement, the *(list city dept/division)* shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

Section 17. Notice of Construction: Except in the case of an emergency, the permittee shall notify the *(dept/div)* not less than two (2) working days in advance of any excavation or construction in the public rights of way.

Section 18. Compliance with Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The *(dept/div)* and their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

Section 19. Noncomplying Work: Subject to the notice requirements in Section 27, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this Ordinance.

Section 20. Completion of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the appropriate city official as contemplated by Section 14.

Section 21. As-Built Drawings: If requested by the City for a necessary public purpose, as determined by the City, the permittee shall furnish the City with up to two (2) complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all communications facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within sixty (60) days after completion of construction, in a format acceptable to the City.

Section 22. Restoration of Public Rights of Way and City Property:

- A. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights of way or city property, it shall, at its own expense, promptly restore such ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or designee.
- B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.
- C. If the permittee fails to restore rights of way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.
- D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

Section 23. Performance and Completion Bond: Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of constructing permittee's communications facilities within the public rights of way of the City shall be provided before construction is commenced.

- A. The surety shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction.
- B. The surety shall guarantee, to the satisfaction of the City:
 - 1. Timely completion of construction;
 - 2. Construction in compliance with applicable plans, permits, technical codes and standards;
 - 3. Proper location of the facilities as specified by the City;
 - 4. Restoration of the public rights of way and other property affected by the

construction; and

5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

LOCATION OF COMMUNICATIONS FACILITIES

Section 24. Location of Facilities: All facilities located within the public right of way shall be constructed, installed and located in accordance with the terms of the permit and approved final plans and specifications for the facilities, the franchise, and all applicable City codes, rules and regulations. Unless otherwise specified in a franchise agreement, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a public right of way of the City, a grantee occupying the same public right of way must also locate its communications facilities underground at its own expense.

Section 25. Interference with the Public Rights of Way: No grantee may locate or maintain its communications 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.

Section 26. Relocation or Removal of Facilities:

- A. A grantee shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any communications facilities within the public rights of way, including relocation of aerial facilities underground, when requested to do so in writing by the City.
- B. Nothing in this Section 26 shall be deemed to preclude grantee from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that grantee shall timely comply with the requirements of this Section 26 regardless of whether or not it has requested or received such reimbursement or compensation.
- C. The City shall provide written notice of the time by which grantee must remove, relocate, change, alter or underground its facilities. If grantee fails to remove, relocate, alter or underground any facility as requested by the City and by the date established by the City, grantee shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause the facility to be removed, relocated, altered or undergrounded at grantee's sole expense using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations. Upon receipt of a detailed invoice from the City, grantee shall reimburse the City for the costs the City incurred within thirty (30) days.

Section 27. Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the City, any grantee, communications provider, or other person that owns, controls or maintains any unauthorized communications system, facility, or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities and/or appurtenances from the public rights of way of the City. A communications system or facility is unauthorized and subject to removal in the following circumstances:

- A. One (1) year after the expiration or termination of the grantee's communications franchise, unless the City has provided written authorization for abandonment in place.
- B. 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 ninety (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. The City shall make a reasonable attempt to contact the communications provider before concluding that a facility is abandoned. A facility may be abandoned in place and not removed if authorized in writing by the City and there is no apparent risk to the public safety, health, or welfare.
- C. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.
- D. If the system or facility was constructed or installed at a location not permitted by the grantee's communications franchise or other legally sufficient permit.

Section 28. Coordination of Construction Activities: All grantees are required to make a good faith effort to cooperate with the City.

- A. By January 1 of each year, grantees shall provide the City with a schedule of their known proposed construction activities in, around or that may affect the public rights of way.
- B. 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.
- C. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

COMMUNICATIONS FRANCHISE

Section 29. Communications Franchise:

- A. A communications franchise shall be required of any communications provider who desires to occupy public rights of way of the City.
- B. Any person whose communications facilities occupy the public right of way without a valid franchise agreement from the City must comply with the provisions of this Ordinance, including payment of the franchise fee pursuant to Section 36.

Section 30. Application:

- A. Any person that desires a communications franchise must register as a communications provider and shall file an application with *(dept/div)* which includes the following information:
 - 1. The identity of the applicant.
 - 2. A description of the communications services that are to be offered or provided by the applicant over its communications 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 communications facilities. *(City may wish to specify such maps be provided in a specific computerized format.)*
 - 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 communications services proposed.
 - 6. An accurate map showing the location of any existing communications facilities in the City that applicant intends to use or lease.
- B. Any communications provider that occupies the public rights of way of the City without a franchise as of the effective date of this Ordinance shall file an application pursuant to this Section within forty-five (45) days of the effective date of this Ordinance. Any communications provider that desires to occupy the public rights of way of the City after the effective date of this Ordinance shall register prior to installation of any communications facilities in the public rights of way.

Section 31. Application and Review Fee:

- A. Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.
- B. An application and review fee to be determined by resolution of the City Council shall be deposited with the City as part of the application filed pursuant to Section 30 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.

Section 32. 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. The application shall be evaluated based upon the continuing capacity of the rights of way to accommodate the applicant's proposed facilities and the applicant's legal, technical and financial ability to comply with the provisions of this Ordinance and applicable federal, state and local laws, rules, regulations and policies.

Section 33. Rights Granted: No franchise granted pursuant to this Ordinance 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, and upon the conditions stated in the franchise agreement. The right granted by the franchise is limited to the right to use the public rights of way for the provision of communications services as defined herein. Nothing in the franchise shall be construed to prevent the City from grading, paving, repairing and/or altering any public rights of way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of grantee's communications facilities interfere with the construction, repair, replacement, alteration or removal of any public rights of way, public work, City utility, City improvement or City facility, except those providing communications services in competition with a grantee, grantee's facilities shall be removed or relocated as provided in Section 26 and 27 of this Ordinance, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

Section 34. Term of Grant: Unless otherwise specified in a franchise agreement, a communications franchise granted hereunder shall be in effect for a term of five (5) years.

Section 35. Franchise Territory: Unless otherwise specified in a franchise agreement, a communications 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 such areas, and may include the entire city.

Section 36. Franchise Fees:

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

[OPTION: Including subsection B below in addition to subsection A will ensure payment from competitive access providers that use the right of way to provide service but do not own the facilities and thus are not required to get a franchise. It will also ensure that providers that are required to have a franchise but do not have one are subject to the fee (this is also covered by subsection 29.B). This provision would include wireless providers that use City rights of way to provide service. If a City does not want this to apply to wireless providers, they should add the following at the end of subsection B: "So long as it complies with the registration requirements in Sections 5 through 8 of this Ordinance, other applicable City codes, regulations and rules, and any agreement for use of the public rights of way, a communications provider is not required to pay the right of way fee under this Section if the communications provider's only use of the public right of way is to place wireless transmitting or receiving facilities above the ground on existing poles or similar structures in the public right of way and the operator does not install or use lines, wires or cables."]

- B. Every communications provider that uses the public rights of way in the City to provide communications services without a franchise, whether or not the provider owns the communications facilities used to provide its services and whether or not the provider is required to obtain a franchise pursuant to Section 29 of this Ordinance, shall pay a right of way use fee in the amount of the franchise fee determined by resolution of the City Council. The duty to provide information set forth in Section 49 of this Ordinance shall apply to information of communications providers subject to the right of way use fee in this subsection 26.B sufficient to demonstrate compliance with this subsection.
- C. Unless otherwise agreed to in writing by the City, the fee shall be paid within thirty (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 nine percent (9%) per year for any payment made after the due date.
- D. The franchise fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

Section 37. Amendment of Grant: Conditions for amending a franchise:

- A. A new application and grant shall be required of any communications provider that desires to extend or locate its communications facilities in public rights of way of the City which are not included in a franchise previously granted under this Ordinance.
- B. If ordered by the City to locate or relocate its communications facilities in public rights of

way not included in a previously granted franchise, the City shall grant an amendment without further application.

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

Section 38. Renewal Applications: A grantee that desires to renew its franchise under this Ordinance shall, not less than one hundred eighty (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:

- A. The information required pursuant to Section 30 of this Ordinance.
- B. Any information required pursuant to the franchise agreement between the City and the grantee.

Section 39. Renewal Determinations: Within ninety (90) days after receiving a complete application under Section 38 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reasons for non-renewal. The application shall be evaluated based upon the continuing capacity of the rights of way to accommodate the applicant's proposed facilities and the applicant's legal, technical and financial ability to comply with the provisions of this Ordinance and applicable federal, state and local laws, rules, regulations and policies.

Section 40. 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 Ordinance, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

Section 41. Assignments or Transfers of System or Franchise: Ownership or control of a majority interest in a communications 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 such reasonable conditions as may be prescribed in such consent.

- A. 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.
- B. No transfer shall be approved unless the City determines the assignee or transferee has the legal, technical and financial ability to comply with the provisions of this Ordinance and applicable federal, state and local laws, rules, regulations and policies.

- C. 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 communications franchise.
- D. Any transfer or assignment of a communications franchise, system or integral part of a system without prior approval of the City under this Section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

Section 42. 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:

- A. Construction or operation in the City or in the public rights of way of the City without a construction permit.
- B. Construction or operation at an unauthorized location.
- C. Failure to comply with Section 41 herein with respect to sale, transfer or assignment of a communications system or franchise.
- D. Misrepresentation by or on behalf of a grantee in any application to the City.
- E. Abandonment of communications facilities in the public rights of way, unless the City has authorized abandonment in place pursuant to subsection 27.B.
- F. Failure to relocate or remove facilities as required in this Ordinance.
- G. Failure to pay taxes, compensation, fees or costs when and as due the City under this ordinance.
- H. Insolvency or bankruptcy of the grantee.
- I. Violation of material provisions of this Ordinance.
- J. Violation of the material terms of a franchise agreement.

Section 43. 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 thirty (30) days, to furnish evidence that:

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

- B. Rebuts the alleged violation or noncompliance; and/or
- C. It would be in the public interest to impose some penalty or sanction less than revocation.

Section 44. Public Hearing: In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 43 hereof, the City Manager may refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Section 45. Standards for Revocation or Lesser Sanctions: If persuaded that the grantee has violated or failed to comply with material provisions of this Ordinance, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, including but not limited to assessment of penalties pursuant to Section 61, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

- A. The misconduct was egregious.
- B. Substantial harm resulted.
- C. The violation was intentional.
- D. There is a history of prior violations of the same or other requirements.
- E. There is a history of overall compliance.
- F. The violation was voluntarily disclosed, admitted or cured.

Section 46. Other City Costs: All grantees shall, within thirty (30) days after written demand therefore, 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.

GENERAL FRANCHISE TERMS

Section 47. Facilities: Upon request, each grantee shall provide the City with an accurate map or maps certifying the location of all communications facilities within the public rights of way. (*City should consider whether and how they wish to receive updated maps on a periodic basis.*)

Section 48. Damage to Grantee's Facilities: Unless directly and proximately caused by negligent, careless, wrongful, willful, intentional or malicious acts by the City, and consistent with Oregon law, the City shall not be liable for any damage to or loss of any communications 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.

Section 49. Duty to Provide Information:

- A. Except in emergencies, within sixty (60) days of a written request from the City, each grantee shall furnish the City with the following:
 - 1. Information sufficient to demonstrate that grantee has complied with all requirements of this Ordinance, including but not limited to the franchise fee payments required by Section 36 and any franchise agreement.
 - 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.
- B. Such information, books, records, maps, and other documents shall be furnished at a mutually agreed upon location within the City unless the City agrees in writing to a location outside the City.
- C. If the City's audit or review of the books, records and other documents or information of the grantee demonstrate that grantee has underpaid the franchise fee by three percent (3%) or more in any one year, grantee shall reimburse the City for the cost of the audit or review, in addition to any interest owed pursuant to Section 36 of this chapter or as specified in a franchise. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to grantee of such underpayment.

Section 50. Service to the City: If the City contracts for the use of communication facilities, communication services, installation, or maintenance from the grantee, the grantee shall offer the City the grantee's most favorable rate available 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 such services may be specified in a separate agreement between the City and grantee.

Section 51. 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 communications facilities, the compensation to be paid for such right and use shall be fixed by the City. *(City should consider these provisions for property, other than rights of way, that are owned by the City.)*

Section 52. Cable Franchise: Communication providers providing cable service shall be subject to the cable franchise requirements in *(cite city ordinance or code section)*.

Section 53. 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 such lease or agreement has been granted to a customer or lessee.

Section 54. Grantee Insurance: *(NOTE: Cities may wish to consider requests from qualified companies for self insurance and negotiation of reduced insurance coverage requirements.)*

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 additional insured:

- A. Comprehensive general liability insurance with limits not less than
 - 1. Three Million Dollars (\$3,000,000) for bodily injury or death to each person;
 - 2. Three Million Dollars (\$3,000,000) for property damage resulting from any one accident; and,
 - 3. Three Million Dollars (\$3,000,000) for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- E. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the communications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its communications facilities. Each such 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 thirty (30) days after receipt by the City, by registered mail, of a written notice addressed to the *(insert appropriate City dept/div)* of such intent to cancel or not to renew."
- F. Each grantee shall maintain continuous uninterrupted coverage in the terms and amounts required in this Section. If the insurance is canceled or materially altered, the grantee shall obtain a replacement policy that complies with the terms of this Section and provide the City with a replacement certificate of insurance.

- G. 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.

Section 55. 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 communications facilities, and in providing or offering communications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a franchise agreement made or entered into pursuant to this Ordinance.

Section 56. Performance Surety: Before a franchise granted pursuant to this Ordinance 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 Ordinance, 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 by Section 23 for construction of facilities.

GENERAL PROVISIONS

Section 57. Governing Law: Any franchise granted under this Ordinance 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.

Section 58. Written Agreement: No franchise shall be granted hereunder except by a writing duly executed by the franchisee and the City.

Section 59. Nonexclusive Grant: No franchise granted under this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of communications services or any other purposes.

Section 60. Severability and Preemption: If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance 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 Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such 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 Ordinance 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 Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such 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, such 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.

Section 61. Penalties: Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance or the franchise shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. *(Penalties need to be tailored to each city's civil infraction process.)*

Section 62. Other Remedies: Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance.

Section 63. Captions: The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 64. Compliance with Laws: Any grantee under this Ordinance 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 of any franchise granted under this Ordinance, which are relevant and relate to the construction, maintenance and operation of a communications system.

Section 65. Consent: Wherever the consent of either the City or of the grantee is specifically required by this Ordinance or in a franchise granted, such consent will not be unreasonably withheld.

Section 66. Application to Existing Ordinance and Agreements: To the extent that this Ordinance is not in conflict with and can be implemented with existing ordinance and franchise agreements, this Ordinance shall apply to all existing ordinance and franchise agreements for use of the public right of way for communications services.

Section 67. 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, provided that documents are clearly marked as confidential by the grantee at the time of disclosure to the City. The City shall not be required to incur any costs to protect the confidentiality of such document, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

(Telecommunications Carriers)

221.505 Policy. The Legislative Assembly recognizes that significant changes have occurred in the regulation, technology and marketing of telecommunications carriers as defined in ORS 133.721 over the past decade. It is the intent of the Legislative Assembly in adopting the privilege tax authorized by ORS 221.505 to 221.515 and 759.219 to respond to these changes by establishing a uniform base for municipal charges for street use by telecommunications carriers. [1989 c.484 §1; 1999 c.1093 §8]

221.510 Municipal regulation of telecommunications carriers. (1) As used in this section:

(a) "Telecommunications carrier" has the meaning given that term in ORS 133.721.

(b) "Commission" means the Public Utility Commission of Oregon.

(c) "Council" means the common council, city council, commission or any other governing body of any municipality wherein the property of the telecommunications carrier is located.

(d) "Municipality" means any town, municipality or other municipal government wherein property of the telecommunications carrier is located.

(e) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities.

(2) Every municipality may:

(a) Determine by contract, or prescribe by ordinance or otherwise, the terms and conditions, including payment of a privilege tax to the extent authorized by ORS 221.515 and other charges and fees, upon which any telecommunications carrier may be permitted to occupy the streets, highways or other public property within such municipality and exclude or eject any telecommunications carrier therefrom.

(b) Require any telecommunications carrier, by ordinance or otherwise, to make such modifications, additions and extensions to its physical equipment, facilities or plant or service within such municipality as shall be reasonable or necessary in the interest of the public, and designate the location and nature of all additions and extensions, the time within which they must be completed and all conditions under which they must be constructed.

(c) Provide for a penalty for noncompliance with the provisions of any charter provision, ordinance or resolution adopted by the municipality in furtherance of the powers specified in this subsection. [1989 c.484 §4; 1999 c.1093 §9]

221.515 Privilege tax on telecommunications carriers; maximum rate; deduction of additional fees. (1) The council of every municipality in this state may levy and collect from every telecommunications carrier operating within the municipality and actually using the streets, alleys or highways, or all of them, in such municipality for other than travel, a privilege tax for the use of those streets, alleys or highways, or all of them, in such municipality in an amount which may not exceed seven percent of the gross revenues of the telecommunications carrier currently earned within the boundaries of the municipality. The privilege tax authorized in this section shall be for each year, or part of each year, that such telecommunications carrier operates within the municipality.

(2) As used in this section, "gross revenues" means those revenues derived from exchange access services, as defined in ORS 403.105, less net uncollectibles from such revenues.

(3) A telecommunications carrier paying the privilege tax authorized by this section shall not be required to pay any additional fee, compensation or consideration, including the free use or construction of telecommunications facilities and equipment, to the municipality for its use of public streets, alleys, or highways, or all of them, and shall not be required to pay any additional tax or fee on the gross revenues that are the measure of the privilege tax. As used in this subsection, "use" includes, but is not limited to, street openings, construction and maintenance of fixtures or facilities by telecommunications carriers. As used in this subsection, "additional fee, compensation or consideration" does not include commissions paid for siting public telephones on municipal property. To the extent that separate fees are imposed by the municipality on telecommunications carriers for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the privilege tax authorized by this section. However, telecommunications carriers shall not deduct charges and penalties imposed by the municipality for noncompliance with charter provisions, ordinances, resolutions or permit conditions from the privilege tax authorized by this section.

(4) For purposes of this section, "telecommunications carrier" has the meaning given that term in ORS 133.721. [1989 c.484 §5; 1999 c.1093 §10]



Office of the Mayor

Proclamation

“Canby Livability Day”

WHEREAS, The Canby Livability Coalition is dedicated to maintaining the quality of life in the community of Canby by empowering citizens through educational opportunities and by providing resources to preserve livability for future generations; and

WHEREAS, Citizens, organizations, and neighborhood associations are encouraged to select community service clean-up projects and activities that beautify the City of Canby before summer festivities.

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 last Sunday in June this year as:

Canby Livability Day

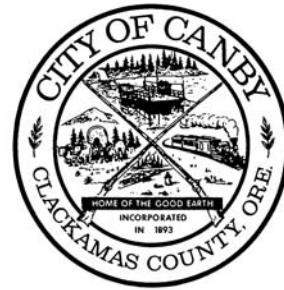
in Canby and encourage all citizens to join in this observance and volunteer on June 30, 2013 at one of the clean-up sites.

Given unto my hand this 5th day of June 2013.



Brian Hodson
Mayor

MEMORANDUM



TO: *Honorable Mayor Hodson and City Council*
FROM: *Kim Scheafer, MMC, City Recorder*
DATE: *May 29, 2013*
THROUGH: *Greg Ellis, City Administrator*

Issue: Request for Noise Variance

Synopsis: A request has been received from Doug Sprague for a noise variance to allow music outside on July 19, 2013 for a wedding that will be held at 3500 N Maple Street. The variance is being requested between the hours of 10 p.m. and 12:00 a.m.

A Noise Variance Application is attached along with a letter from Mr. Sprague. The property is owned by Elroy and Bev Knutson who have also signed the letter.

Per Canby Municipal Code Section 9.48.050B, at least 10 days prior to the public hearing a notice was mailed to property owners within 200' of the location of the variance, published in the Canby Herald, and posted in various locations around the City. Section 9.48.050B allows the Council to approve a variance after certain criteria which would apply to the facts of the requested variance are considered by the Council. In granting a variance, the Council shall consider:

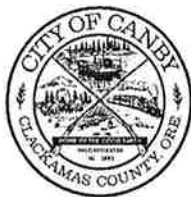
- a. The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement;
- b. The surrounding type of existing land uses;
- c. The acoustical nature of the sound emitted; and
- d. Whether variance from the provision would produce a benefit to the public.

If, after review of the evidence submitted by the applicant and hearing any testimony from the public, the Council chooses to allow the variance as requested, a motion to grant the variance would be appropriate.

Recommendation: Staff recommends Council approve the Noise Variance Application.

Recommended Motion: *I move to grant a Noise Variance to Doug Sprague on July 19, 2013 between the hours of 10 p.m. and 12:00 a.m. to allow them to provide music outside for a wedding on property located at 3500 N Maple.*

182 N Holly St
PO Box 930
Canby, OR 97013
503.266.4021
Fax: 503.266.7961



**CITY OF CANBY
NOISE VARIANCE
APPLICATION**

~~\$75.00~~ Not in effect yet

RECEIVED

MAY 13 2013

CITY OF CANBY

Receipt No:	
Date Paid:	5/10
Amount Paid:	

Please Print

Applicant Name Doug Sprague

Address 1041 NE 22ND AVE

City Canby State OR Zip 97013 Phone 503-209-4165

Address of Noise Variance Request 3500 N. Maple Street

Name of Property/Business Owner of Variance Request Elroy & Bev Knutson

Type of Event Wedding

Date(s) of Event 7/19/13 Time of Event 7pm Requested Hours of Variance 10pm-12am

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Acoustical Nature of Sound to be Emitted Music, Dancing

Will you be continually present at this activity ☒ Yes ☐ No If No is marked, who is to be the contact should the need arise? _____

Additional Comments _____

A list of property owners and their addresses within 200' of the location of the noise variance must be submitted with this application. Canby Municipal Code Chapter 9.48 requires that any person who owns, controls or operates any source which violates provisions of that chapter apply to the City Council for a noise variance.

By signing below, I acknowledge that I have read the attached Canby Municipal Code Chapter 9.48 and understand that violations of this chapter are subject to a fine of \$500. Signature of Police Chief or Designee must be obtained prior to submitting Application for Council Approval.

Doug Sprague
Signature of Applicant

[Signature]
Police Chief or Designee

Mayor

5-2-13
Date

05/08/13
Date

Date

Doug Sprague
641 N.E. 22nd Avenue
Canby, OR 97013

April 29, 2013

Mayor Hodson and City Councilors
City of Canby
P.O. Box 930
Canby, OR 97013

Dear Mayor Hodson and City Councilors:

Our family owns property at 3500 N. Maple Street located at the northern end of Maple Street (map enclosed). We plan to hold our daughter's wedding at our property this summer on Saturday July 19th. We ask that the City Council consider a noise variance to allow music past 10pm on the day of the wedding.

The property is bound by a farm fields to the west, the Logging Road Trail to the northeast and homes to the south. Although the specific layout of the wedding is not finalized, at this time we anticipate that the location of the dance floor and music will be toward the northern half of the property to minimize the impact to the adjacent neighbors. We have spoken to many of our neighbors to discuss our plans with them. Our neighbors have not expressed any concerns regarding the wedding.

We respectfully request City Council permit a noise variance at our property to allow our daughter's wedding to continue until midnight the evening of July 19, 2013.

Sincerely,



Doug Sprague
Applicant

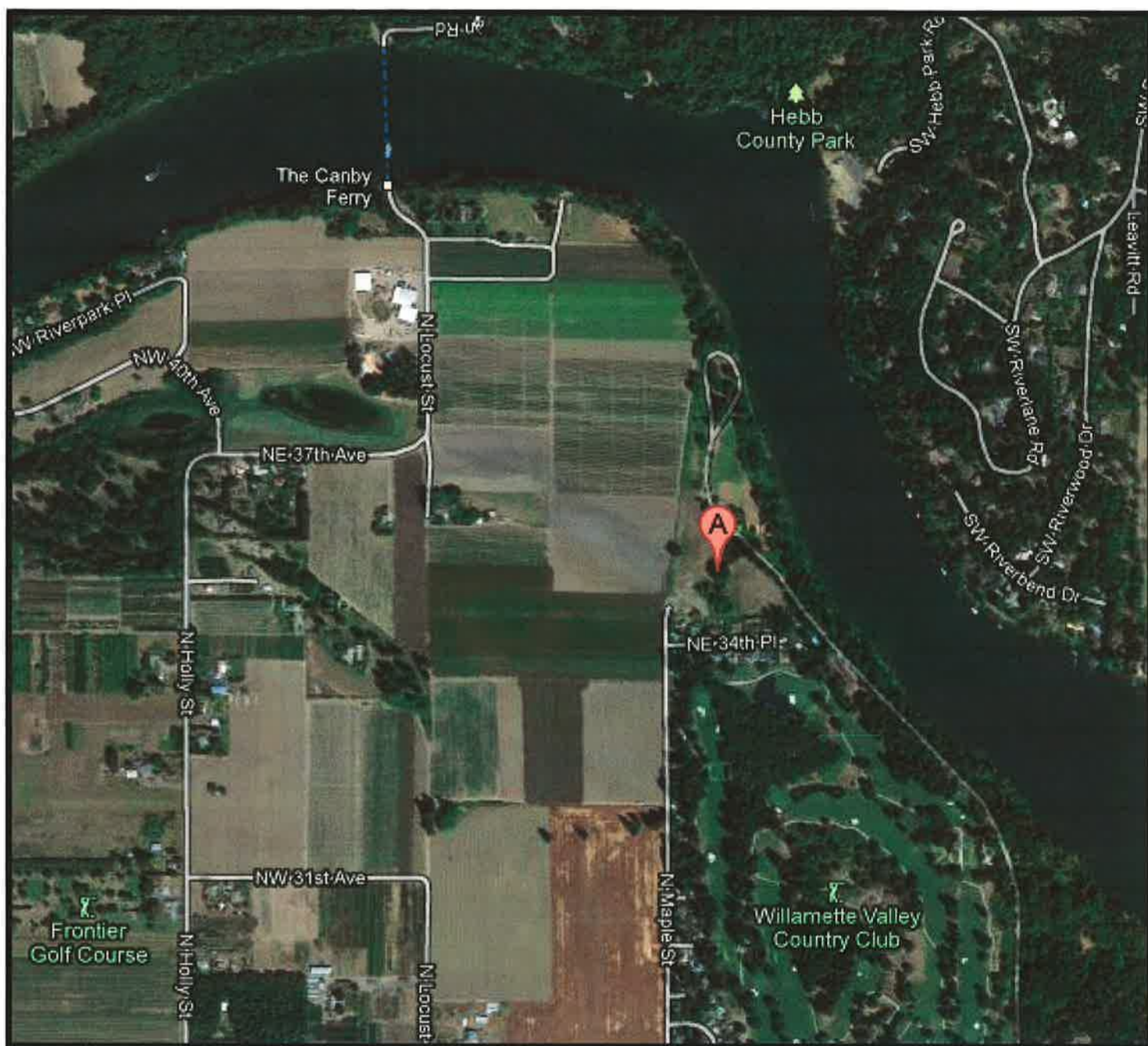


Elroy Knutson
Property Owner



Bev Knutson
Property Owner

Enclosure



CITY OF CANBY NOTICE OF PUBLIC HEARING - NOISE VARIANCE

Date and Time Requested for**Variances:**

July 19, 2013
10:00 p.m. – 12:00 a.m.

Address of Variance:

3500 N Maple, Canby, Oregon 97013

Property Owner:

Elroy and Bev Knutson

Name of Applicant:

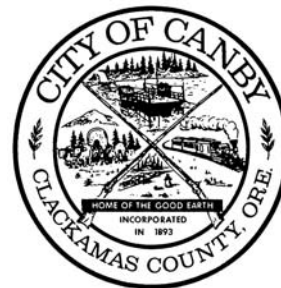
Doug Sprague

A public hearing conducted by the Canby City Council will be held on Wednesday, June 5, 2013 at 7:30 p.m. in the City Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon. The purpose of this hearing is to consider the granting of a Noise Variance to Doug Sprague to allow music at a wedding outside from 10:00 p.m. – 12:00 a.m. on July 19, 2013. The address of the variance is 3500 N Maple.

Dated this 13th day of May 2013.

Kimberly Scheafer, MMC
City Recorder

MEMORANDUM



TO: *Honorable Mayor Hodson and City Council*
FROM: *Kim Scheafer, MMC, City Recorder*
DATE: *May 29, 2013*
THROUGH: *Greg Ellis, City Administrator*

Issue: Request for Noise Variance

Synopsis: A request has been received from Harefest LLC for noise variances on August 2, 2013 from 6 p.m. – 12:30 a.m., August 3, 2013 from 6 p.m. – 1 a.m., and August 16-17, 2013 from 8 p.m. – 2 a.m. The variances are being requested for a music festival.

Last summer similar noise variances were granted. No complaints were received at City Hall or the Police Department for last year's events.

Per Canby Municipal Code Section 9.48.050B, at least 10 days prior to the public hearing a notice was mailed to property owners within 200' of the location of the variance, published in the Canby Herald, and posted in various locations around the City. Section 9.48.050B allows the Council to approve a variance after certain criteria which would apply to the facts of the requested variance are considered by the Council. In granting a variance, the Council shall consider:

- a. The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement;
- b. The surrounding type of existing land uses;
- c. The acoustical nature of the sound emitted; and
- d. Whether variance from the provision would produce a benefit to the public.

If, after review of the evidence submitted by the applicant and hearing any testimony from the public, the Council chooses to allow the variance as requested, a motion to grant the variance would be appropriate.

Recommendation: Staff recommends Council approve the Noise Variance Application.

Recommended Motion: *I move to grant Noise Variances to Harefest LLC on August 2, 2013 from 6 p.m. – 12:30 a.m., August 3, 2013 from 6 p.m. – 1 a.m., and August 16-17, 2013 from 8 p.m. – 2 a.m. for a music festival located at 1190 SW First Avenue.*

RECEIVED

MAY 14 2013

182 N Holly St
PO Box 930
Canby, OR 97013
503. 266.4021
Fax: 503.266.7961



CITY OF CANBY
NOISE VARIANCE
APPLICATION

\$75.00 — Not in effect until 7-1-13

Receipt No:	_____
Date Paid:	_____
Amount Paid:	_____

Please Print

Applicant Name Halefest LLC.Address 1109 SW First AvenueCity Canby State OR Zip 97013 Phone 503-261-2060Address of Noise Variance Request 1190 SW First AveName of Property/Business Owner of Variance Request The Wild Hale Saloon.Type of Event MUSIC FestivalDate(s) of Event 5/2/13 Time of Event 6pm-12:30 Requested Hours of Variance 7Date(s) of Event 5/3/13 Time of Event 6pm-1am Requested Hours of Variance 7Date(s) of Event 5/16-17 Time of Event 9pm-2am Requested Hours of Variance 6Acoustical Nature of Sound to be Emitted Nostalgic music, both Rock-N-Roll & CountryWill you be continually present at this activity ☒ Yes ☐ No If No is marked, who is to be the contact

should the need arise? _____

Additional Comments _____

A list of property owners and their addresses within 200' of the location of the noise variance must be submitted with this application. Canby Municipal Code Chapter 9.48 requires that any person who owns, controls or operates any source which violates provisions of that chapter apply to the City Council for a noise variance.

By signing below, I acknowledge that I have read the attached Canby Municipal Code Chapter 9.48 and understand that violations of this chapter are subject to a fine of \$500. Signature of Police Chief or Designee must be obtained prior to submitting Application for Council Approval.

Signature of Applicant

Date

Police Chief or Designee

Date

Mayor

Date

CITY OF CANBY NOTICE OF PUBLIC HEARING - NOISE VARIANCE

Date and Time Requested for

Variances:

August 2, 2013 (6:00 p.m. – 12:30 a.m.)

August 3, 2013 (6:00 p.m. – 1:00 a.m.)

August 16-17, 2013 (8 p.m. – 2 a.m.)

Address of Variance:

1190 SW First Avenue, Canby, OR 97013

Business Owner:

The Wild Hare Saloon

Name of Applicant:

Harefest LLC

A public hearing conducted by the Canby City Council will be held on Wednesday, June 5, 2013 at 7:30 p.m. in the City Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon. The purpose of this hearing is to consider the granting of four Noise Variances to Harefest LLC for a music festival.

Dated this 15th day of May 2013.

Kimberly Scheafer, MMC
City Recorder

MEMORANDUM



To: Mayor Hodson and Canby City Council
From: Amanda Zeiber, Asst City Administrator/HR Director
Date: June 5, 2013
Through: Greg Ellis, City Administrator
Re: Resolution No. 1159

Background Summary

The City provides workers compensation coverage to volunteers, elected City officials and City boards and commissions. Coverage is provided through a resolution, which should be updated annually to capture any changes from current or prior year(s). The City's insurance provider, City County Insurance Services, requires the City to have a current volunteer resolution on file. The City of Canby volunteer resolution was previously updated in June 2012.

Recommendation

Staff recommends that the Council approve Resolution 1159, authorizing workers compensation coverage for City volunteers, elected officials and boards and commissions.

Attached

Resolution No. 1159

RESOLUTION NO. 1159

A RESOLUTION EXTENDING THE CITY OF CANBY'S WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF CANBY AND REPEALING RESOLUTION 1129.

WHEREAS, the Canby City Council elects the following:

Pursuant to ORS 656.031, workers' compensation coverage will be provided to the classes of volunteer workers listed on the Volunteer Election Form.

1. An assumed monthly wage of \$800 will be used for public safety volunteers; and
2. An aggregate assumed annual wage of \$2,500 will be used per volunteer board, commission and/or council for the performance of administrative duties; and
3. As assumed monthly wage of \$800 per month will be used for public officials for their performance of manual labor above and beyond the administrative duties covered by paragraph 2 above; and
4. Non-public safety volunteers will keep track of their hours and have their assumed payroll reported in the correct class code for the type of work being performed using Oregon minimum wage; and
5. Court-mandated community service workers/inmates on work release who are sentenced by the City of Canby's municipal court will keep track of their hours and have their assumed payroll reported in Class Code 7720V using Oregon minimum wage; and
6. A roster of active volunteers will be kept monthly for reporting purposes. It is acknowledged that CIS may request copies of these rosters during year-end audit; and
7. Unanticipated volunteer projects or exposure not addressed herein will be added onto the City of Canby's coverage agreement (1) by endorsement, (2) with advance notice to CIS, and (3) allowing two weeks for processing. It is hereby acknowledged that coverage of this type cannot be backdated.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canby to provide for workers' compensation insurance coverage as indicated above. This resolution will be updated annually.

This resolution shall take effect July 1, 2013.

ADOPTED this 5th day of June 2013, by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

ORDINANCE NO. 1374

**AN ORDINANCE ADDING CHAPTER 3.50 TO THE CANBY MUNICIPAL CODE
THEREBY ESTABLISHING A TRANSIENT ROOM TAX.**

WHEREAS, the City of Canby desires to implement a transient room tax to generate some funds for tourism and tourism related facilities within the City; and

WHEREAS, the City of Canby desires to dedicate 70% of the net proceeds of this transient room tax to fund tourism promotion or tourism related facilities in accordance with Oregon Revised Statute Chapter 320;

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Canby Municipal Code is hereby amended to include Chapter 3.50 Transient Room Tax as copy of which is attached hereto as Exhibit "A".

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 5, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 19, 2013, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, 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 June 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

EXHIBIT “A”
CANBY MUNICIPAL CODE CHAPTER 3.50 TRANSIENT ROOM TAX

3.50 TRANSIENT ROOM TAX

§ 3.50.010 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

A. ACCRUAL ACCOUNTING means the operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.

B. COUNCIL means the City of Canby City Council.

C. CASH ACCOUNTING means the operator does not enter the rent due from a transient on his records until rent is paid.

D. CITY means City of Canby.

E. HOTEL means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy, for thirty (30) days or less, for dwelling, lodging, or sleeping purposes. This includes, but is not limited to, any hotel, motel, inn, bed and breakfast, space in mobile home or trailer parks, tourist home, condominium, hostel, studio hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or portions thereof so occupied.

F. OCCUPANCY means the use or possession, or the right to the use or possession, for lodging or sleeping purposes, of any room or rooms in a hotel, or space in a mobile home, or trailer park, or portion thereof.

G. OPERATOR means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter, by either the principal or the managing agent, shall be considered to be compliance by both.

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

I. RENT means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property, or any other consideration valued in money, without any deduction; but does not include the sale of any goods, services, and commodities, other than the furnishing of room accommodations and

parking space in mobile home parks or trailer parks. A guaranteed no-show charge based on the rate charged for the room is considered rent, but a cancellation fee is not rent.

J. RENT PACKAGE PLAN means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent when consideration is not a part of a package plan.

K. TAX ADMINISTRATOR means the City Recorder or other official designated by the City Administrator to carry out provisions of this chapter.

L. TAX means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

M. TRANSIENT means any person who exercises occupancy, or is entitled to occupancy, in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than thirty (30) consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter, may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

3.50.020 Tax Imposed

A. For the privilege of occupancy in any hotel, on and after the effective date of this chapter, each transient shall pay a tax in the amount of nine percent (9%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the City, which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis, and when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment.

B. Pursuant to ORS 320.350, seventy percent (70%) of the net proceeds from this transient room tax shall be used for the purposes described in ORS 320.350 (5)(a) or (c) (tourism promotion or tourism related facilities, including the financing or refinancing of tourism related facilities). Pursuant to ORS 320.350, thirty percent (30%) of the net proceeds from this transient room tax may be used to fund City services.

3.50.030 Where Tax is Imposed

The tax imposed by this chapter shall apply to all hotels located within the City of Canby.

3.50.040 Collections of Tax by Operator, Rules for Collection

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

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

3.50.050 Operator's Duties

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. Bills and invoices provided to transients shall list the City of Canby Transient Room Tax separately and must accurately state the amount of the tax. No operator of a hotel shall advertise that the tax, or any part of the tax, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that when added, any part will be refunded, except in the manner provided by this chapter.

3.50.060 Exemptions

No tax imposed under this chapter shall be imposed upon:

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

B. Any person whose rent is of a value less than \$5 per day;

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

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

E. Employees, officials or agents of the U. S. Government occupying a hotel in the course of official business.

3.50.070 Registration of Operator, Form and Contents, Execution, Certification of Authority

Every person engaging or about to engage in, business as an operator of a hotel in this City shall register with the Tax Administrator on a form provided by him or her. Operators engaged in business at the time this chapter is adopted, must not register later than thirty (30) calendar days after passage of this chapter. Operators starting business after this chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment, or collection of tax, regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his

place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The operator shall sign the registration.

The Tax Administrator shall, within ten (10) days after registration, issue without charge from the occupant, a Certificate of Authority to the registrant to collect the tax, from the occupant of the hotel, together with a duplicate thereof, for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer.

Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

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

A. The name of the operator;

B. The address of the hotel;

C. The date upon which the certificate was issued; and,

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Chapter of the Canby Municipal Code by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by the City of Canby and remitting the tax to the Tax Administrator."

3.50.80 Due Date, Returns, and Payments

A. The transient shall pay the tax imposed by this chapter to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a quarterly basis of the calendar year for periods ending on April 30, June 30, September 30, and January 31. Tax collections are due by the fifteenth (15th) day of the month following the preceding quarter and are delinquent on the last day of the month in which they are due.

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

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

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

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

F. If the operator has complied with the terms of this chapter and particularly the provisions of this section relating to prompt payment of taxes due and payable to the Tax Administrator, the operator shall be permitted to deduct as collection expense five percent (5%) of the amount of the total taxes collected for that quarter, as shown by the return mentioned in paragraph C of this section.

3.50.090 Penalties and Interest.

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

B. Continued Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of the tax due, and the ten percent (10%) penalty first imposed.

C. Fraud: If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax due shall be added thereto, in addition to the penalties stated in paragraphs (A) and (B) of this section.

D. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent (.5%) per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, for the date on which the remittance first became delinquent until paid.

E. Penalties merged with tax: Every penalty imposed and such interest as accrues under the provisions of this chapter, shall be merged with and become a part of the tax herein required to be paid.

F. Petition for waiver: Any operator who fails to remit the tax levied within the time stated, shall pay the penalties stated. However, the operator may petition the Council for waiver and refund of

the penalty or any portion thereof, and the Board may if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

G. Any penalties or interest applied under this section do not bar the application of further penalties under 3.50.180.

3.50.100 Deficiency Determinations, Fraud, Evasion, Operator Delay

A. Deficiency determination: If the Tax Administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in 3.50.090.

1. In making a Determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in 3.50.090.

2. The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by certified mail. In the case of service by mail of any notice required by this chapter, the service is complete upon receipt by the operator or his agent or employee, or if refused, the date of its refusal as shown by the United States Postal Department return receipt.

3. Except in the case of fraud or intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

B. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, he/she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice

shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade, or failure, or refusal to collect said tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

C. Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the County, will be jeopardized by delay or if any determination will be jeopardized by delay, s/he shall thereupon make a determination of the tax or amount of tax required to be collected noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof provided. However, the operator may petition after payment has been made for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

3.50.110 Re-determinations

A. Any operator against whom a determination is made under Section 8.02.100 or any person directly interested may petition for a re-determination and redemption and refund within the time required in 3.50.100, hereof. If a petition for re-determination and refund is not filed within the time required in 3.50.100, the determination becomes final at the expiration of the allowable time.

B. If a petition for re-determination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in his petition, shall grant the person an oral hearing, and shall give him ten (10) days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

C. The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.

D. The order or decision of the Tax Administrator upon a petition for re-determination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the Council within ten (10) days after service of such notice.

E. No petition for re-determination of redemption and refund or appeal there from shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

3.50.120 Security, Collection of Tax

A. The Tax Administrator, after delinquency and when he or she deems it necessary to insure compliance with this chapter, may require any operator subject thereto to deposit with him/her such security in the form of cash, bond, or other security as the Tax Administrator may

determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or Five Thousand Dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.

B. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any State, or of the United States in the name of the City to collect the amount delinquent together with penalties and interest.

3.50.130 Lien

A. The tax imposed by this chapter together with the interest and penalties herein provided and the filing fees paid to the Clerk of Clackamas County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter shall be and until paid remain a lien from the date of its recording with the Clerk of Clackamas County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator, which may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his or her deputy whenever the operator is in default in the payment of said tax, interest, and penalty and shall be recorded and a copy sent by certified mail to the delinquent operator. The personal property subject to such lien may be seized by any authorized deputy or employee of the City and may be sold at public auction after twenty- (20) days notice of sale given by two publications in a newspaper of general circulation in the City. The notices required hereunder shall be published not less than seven (7) days apart. Such seizure and sale shall be in addition to any other process to secure payment of the delinquent tax allowed by law.

B. Any lien for taxes shall upon the payment of all taxes, penalties, and interest thereon be released by the Tax Administrator, and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released.

3.50.140 Refunds

A. Operators' refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded provided a verified claim in writing therefore stating the specific reason upon which the claim is founded is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to each such operator, his administrators, executors or assignees.

B. Transient Refunds. Whenever the tax required by this chapter has been collected by the operator and deposited by the operator with the Tax Administrator and it is later determined that

the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient provided a verified claim in writing therefore, the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.

3.50.150 Administration

A. Transient Room Tax Fund. The Tax Administrator shall place all monies received pursuant to this order in the Transient Room Tax Fund.

B. Records Required from Operators. Every operator shall keep guest records of room sales and accounting books and records of room sales. The operator shall retain all records for a period of three (3) years and six (6) months after they come into being.

C. Examination of Records, Investigations. For the purpose of enforcing 3.50.100 of this chapter, if the Tax Administrator has reason to believe that the returns are incorrect or that fraud, refusal to remit, evasion or operator delay has occurred as set forth in 3.50.100 of this chapter, then the Tax Administrator or any person authorized in writing by him or her may examine during normal business hours the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

D. Confidential Character of Information Obtained, Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures, or any particular thereof set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Nothing in this subsection shall be construed to prevent:

1. The disclosure to or the examination of records and equipment by another city official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting taxes imposed hereunder;

2. The disclosure after the filing of a written request to that effect to the taxpayer himself receivers, trustees, executors, administrators' assignees, and guarantors if directly interested of information as to any paid tax, and unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the Canby City Attorney approves each such disclosure, and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his/her opinion the public interest would suffer thereby;

3. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued; or

4. The disclosure of general statistics regarding taxes collected or business done in the City.

3.50.170 Appeals to the Council

Any person aggrieved by any provisions of the Tax Administrator may appeal to the Council by filing a notice of appeal with the Tax Administrator within ten (10) days of the Tax Collector's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Council who shall fix a time and place for hearing such appeal. The Council shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter.

3.50.180 Violations

It is unlawful for any operator or other person so required, to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due, required by this chapter. Any person willfully violating any of the provisions of this chapter shall be subject to a fine not to exceed \$2,000 per violation.

ORDINANCE NO. 1375

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH S-2 CONTRACTORS, INC. IN THE AMOUNT OF \$671,821.10 FOR CONSTRUCTION OF THE 2013 STREET MAINTENANCE PROGRAM; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received seven (7) bids for the 2013 Street Maintenance Program; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on April 1, 2013; and

WHEREAS, bids were received and opened on April 18, 2013 at 2:00 pm in the City Hall Conference Room of the City of Canby and the bids were read aloud:

WHEREAS, the bidders are as listed below and a detailed tabulation of all items is attached herein as Exhibit "B" and summarized as follows:

S-2 Contractors, Inc.	\$671,821.10
Roy L. Houck Construction, LLC	\$690,330.80
Eagle-Elsner, Inc.	\$696,357.00
Eastside Paving, Inc.	\$743,740.25
North Santiam Paving Company	\$762,093.40
Knife River Corporation Northwest	\$775,703.07
Brix Paving Company	\$827,095.20

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, May 15, 2013, 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 S-2 Contractors, Inc.; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or 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 S-2 Contractors, Inc. for the 2013 Street Maintenance Program in the amount of \$671,821.10. A copy of the contract with, S-2 Contractors, 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.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 15, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 5, 2013, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, 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 5th day of June 2013, 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 2013 by and between

City of Canby

(hereinafter called OWNER) and

S-2 Contractors, 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 2013 Street Maintenance Program

The scope of work consists of the following:

- \$ Approximately 7,200 tons of asphaltic concrete pavement at 1.5", 2" and 4" thickness.
- \$ Approximately 3,215 square feet of pervious pavement (5' and 8' wide section).
- \$ Approximately 8,700 square feet of minor pavement restoration and pavement reconstruction at multiple streets.
- \$ Approximately 5,800 square yard of Petromat geotextile fabric.
- \$ Retrofit nineteen (19) ADA ramps to include approximately 425 lineal feet of concrete curbs and sidewalks and six (6) catch basin replacements.
- \$ Restore approximately 5,000 lineal feet of 4" and 8" wide stripes and approximately 1,900 square feet of stop bars, continental crosswalks including miscellaneous legends.

ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is 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 Work will be substantially completed within 45 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 days after the date when the issuance of the Certificate of Substantial Completion including punch list items.
- 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 Article 12 of 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 Six Hundred Seventy One Thousand Eight Hundred Twenty One and 10/100 Dollars (\$671,821.10) as shown in the attached Bid Proposal.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 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 14.01 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 14.02 of the General Conditions.
- 5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.07 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 14.07.

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
2013 Street Maintenance Program
- 8.9 Addenda numbers -none-.
- 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 _____, 2013.

OWNER:		CONTRACTOR:
City of Canby		S-2 Contractors, Inc.
P.O. Box 930		6860 S. Anderson Road
Canby, OR 97013		Aurora, OR 97002
By:_____		By:_____
Name/Title:_____		Name/Title:_____
Name/Title:_____		Attest:_____
		Address for giving notices:
		6860 S. Anderson Road
		Aurora, OR 97002

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City of Canby

Project: 2013 Street Maintenance and Resurfacing Project

Bid Date: 4/18/13

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BID TABULATION				S-2 Contractors		Roy Houck Construction		Eagle-Elsner, Inc.		Eastside Paving		North Santiam Paving		Knife River Co.		Brix Paving		
Basic Bid			Units		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total	
1	Mobilization	1	LS	\$	26,800.00	\$	62,000.00	\$	32,355.70	\$	40,375.00	\$	70,800.00	\$	68,000.00	\$	33,144.73	
				\$	26,800.00	\$	62,000.00	\$	32,355.70	\$	40,375.00	\$	70,800.00	\$	68,000.00	\$	33,144.73	
2	1/2' Dense Mix Asphalt Concrete Prelevel	100	Tons	\$	67.00	\$	71.70	\$	67.50	\$	90.00	\$	125.00	\$	85.40	\$	89.89	
				\$	6,700.00	\$	7,170.00	\$	6,750.00	\$	9,000.00	\$	12,500.00	\$	8,540.00	\$	8,989.00	
3	1.5" Lift , 1/2" Dense Mix Asphalt Concrete Pavement Overlay	3200	Tons	\$	67.00	\$	67.00	\$	67.50	\$	74.50	\$	72.00	\$	71.30	\$	84.36	
				\$	214,400.00	\$	214,400.00	\$	216,000.00	\$	238,400.00	\$	230,400.00	\$	228,160.00	\$	269,952.00	
4	2" Lift, 1/2" Dense Mix Asphalt Concrete Pavement Overlay	3500	Tons	\$	67.00	\$	67.00	\$	67.50	\$	74.50	\$	71.00	\$	66.50	\$	83.51	
				\$	234,500.00	\$	234,500.00	\$	236,250.00	\$	260,750.00	\$	248,500.00	\$	232,750.00	\$	292,285.00	
5	4" Lift, 1/2" Dense Mix Asphalt Concrete Pavement Overlay	475	Tons	\$	69.00	\$	71.70	\$	98.00	\$	74.50	\$	72.00	\$	111.25	\$	97.63	
				\$	32,775.00	\$	34,057.50	\$	46,550.00	\$	35,387.50	\$	34,200.00	\$	52,843.75	\$	46,374.25	
6	4" Lift, 1/2" Open Graded Asphalt Concrete Pavement	1	LS	\$	2,500.00	\$	1,600.00	\$	2,800.00	\$	2,500.00	\$	2,800.00	\$	6,890.00	\$	2,658.93	
				\$	2,500.00	\$	1,600.00	\$	2,800.00	\$	2,500.00	\$	2,800.00	\$	6,890.00	\$	2,658.93	
7	Grind Existing Pavement (6' Wide Panel, 2" Max. Depth)	660	LF	\$	12.00	\$	7.50	\$	7.50	\$	15.00	\$	20.00	\$	14.10	\$	18.23	
				\$	7,920.00	\$	4,950.00	\$	4,950.00	\$	9,900.00	\$	13,200.00	\$	9,306.00	\$	12,031.80	
8	Petromat Geo-Technical Fabric (12.5' Wide)	5787	SY	\$	2.80	\$	1.40	\$	2.90	\$	3.25	\$	1.70	\$	2.11	\$	2.91	
				\$	16,203.60	\$	8,101.80	\$	16,782.30	\$	18,807.75	\$	9,837.90	\$	12,210.57	\$	16,840.17	
9	Pervious Pavement Panel (5' or 8' Wide)	3215	SF	\$	6.00	\$	6.15	\$	9.90	\$	8.00	\$	8.20	\$	10.55	\$	11.30	
				\$	19,290.00	\$	19,772.25	\$	31,828.50	\$	25,720.00	\$	26,363.00	\$	33,918.25	\$	36,329.50	
10	Minor Pavement Restoration	1145	SF	\$	5.00	\$	3.25	\$	1.60	\$	3.50	\$	9.20	\$	4.70	\$	3.42	
				\$	5,725.00	\$	3,721.25	\$	1,832.00	\$	4,007.50	\$	10,534.00	\$	5,381.50	\$	3,915.90	
11	Pavement Reconstruction	7570	SF	\$	5.25	\$	4.15	\$	5.35	\$	4.25	\$	4.80	\$	4.25	\$	2.53	
				\$	39,742.50	\$	31,415.50	\$	40,499.50	\$	32,172.50	\$	36,336.00	\$	32,172.50	\$	19,152.10	
12	Truncated Dome Detectable Warning Cast-In-Place	19	Ea	\$	450.00	\$	265.00	\$	290.00	\$	420.00	\$	400.00	\$	465.00	\$	455.74	
				\$	8,550.00	\$	5,035.00	\$	5,510.00	\$	7,980.00	\$	7,600.00	\$	8,835.00	\$	8,659.06	
13	Concrete Curb Type "C"	425	LF	\$	25.00	\$	23.50	\$	25.00	\$	33.00	\$	32.00	\$	32.00	\$	45.01	
				\$	10,625.00	\$	9,987.50	\$	10,625.00	\$	14,025.00	\$	13,600.00	\$	13,600.00	\$	19,129.25	
14	4" Concrete Sidewalk	250	SY	\$	50.00	\$	105.00	\$	62.00	\$	60.00	\$	75.00	\$	108.50	\$	70.64	
				\$	12,500.00	\$	26,250.00	\$	15,500.00	\$	15,000.00	\$	18,750.00	\$	27,125.00	\$	17,660.00	
15	Type G-2 Catch Basin	6	Ea	\$	1,800.00	\$	1,650.00	\$	1,700.00	\$	1,950.00	\$	1,700.00	\$	3,115.00	\$	3,247.18	
				\$	10,800.00	\$	9,900.00	\$	10,200.00	\$	11,700.00	\$	10,200.00	\$	18,690.00	\$	19,483.08	
16	4" Wide Yellow or White Thermoplastic Stripe	4950	LF	\$	1.20	\$	1.10	\$	1.10	\$	1.10	\$	1.05	\$	1.07	\$	1.20	
				\$	5,940.00	\$	5,445.00	\$	5,445.00	\$	5,445.00	\$	5,197.50	\$	5,296.50	\$	5,940.00	
17	12" Wide White Thermoplastic Stop & Crosswalk Bars, 24" Wide x 9' Long Continental Crosswalk	1880	SF	\$	4.00	\$	4.00	\$	4.05	\$	4.00	\$	3.75	\$	3.80	\$	4.27	
				\$	7,520.00	\$	7,520.00	\$	7,614.00	\$	7,520.00	\$	7,050.00	\$	7,144.00	\$	8,027.60	
18	Bike Stencil Legend	1	Ea	\$	280.00	\$	265.00	\$	270.00	\$	350.00	\$	250.00	\$	255.00	\$	284.83	
				\$	280.00	\$	265.00	\$	270.00	\$	350.00	\$	250.00	\$	255.00	\$	284.83	
19	Rail Road Crossing Legend	1	Ea	\$	800.00	\$	800.00	\$	900.00	\$	900.00	\$	750.00	\$	755.00	\$	854.52	
				\$	800.00	\$	800.00	\$	900.00	\$	900.00	\$	750.00	\$	755.00	\$	854.52	
20	Arrows	5	Ea	\$	250.00	\$	240.00	\$	115.00	\$	120.00	\$	225.00	\$	230.00	\$	256.36	
				\$	1,250.00	\$	1,200.00	\$	575.00	\$	600.00	\$	1,125.00	\$	1,150.00	\$	1,281.80	
21	International ADA Symbols	4	Ea	\$	150.00	\$	130.00	\$	400.00	\$	400.00	\$	125.00	\$	130.00	\$	569.68	
				\$	600.00	\$	520.00	\$	1,600.00	\$	1,600.00	\$	500.00	\$	520.00	\$	2,278.72	
22	Sign Posts and V-Loc Bases	8	Ea	\$	800.00	\$	215.00	\$	190.00	\$	200.00	\$	200.00	\$	270.00	\$	227.87	
				\$	6,400.00	\$	1,720.00	\$	1,520.00	\$	1,600.00	\$	1,600.00	\$	2,160.00	\$	1,822.96	
TOTAL BASIC BID				\$	671,821.10	\$	690,330.80	\$	696,357.00	\$	743,740.25	\$	762,093.40	\$	775,703.07	\$	827,095.20	

* Bold Numbers indicate a math error

ORDINANCE NO. 1376

AN ORDINANCE AUTHORIZING THE PURCHASE OF A CASE CX50B MINI EXCAVATOR FROM SONSRAY MACHINERY, LLC

WHEREAS, the City of Canby desires to purchase a Case Mini Excavator for use by its Works Department; and

WHEREAS, the mini excavator is an essential tool for use with cleaning bioswales and catch basins, and reducing potential damages in tight utility easements; and

WHEREAS, an offer by Sonsray Machinery, LLC will result in fair trade-in value for current surplus machinery as part of the purchase of the Case Mini Excavator;

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into a contract with Sonsray Machinery to purchase a Case CX50B Mini Excavator for the purchase price of \$53,313 minus the trade-in amount of \$21,850 for a total of \$31,463. A copy of the Formal Proposal from Sonsray Machinery is attached hereto and marked as Exhibit “A” and by this reference incorporated herein.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 15, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 5, 2013, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

2nd Reading

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of June 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder



FORMAL PROPOSAL

Sonsray Machinery, LLC
1745 NE Columbia Blvd.
Portland, OR 97211
Phone: (503) 283-2461
Fax: (503) 283-2879

CUSTOMER: Chris Goetz City of Canby 1470 NE Territorial Rd, Canby, OR 97013		PHONE: FAX: MOBILE:	
EQUIPMENT:		UNIT#: CX50B2823 S/N: NCTN82823	
New Case model CX50B excavator equipped with open ROPS canopy, vinyl seat, thumb mounted controls for factory installed auxiliary hydraulic circuit, 38HP Yanmar diesel engine, self-bleeding fuel system, rubber tracks, hydraulic control pattern selector valve, cast iron wrap-around rear counterweight, hydraulic thumb, manual wedge bucket coupler, 18" & 24" HD digging buckets, 48" smoothlip bucket.			
PURCHASE PRICE:	\$52,918.00	DOC. FEE (financed sales only):	\$395.00
TRADE ALLOWANCE:	\$21,850.00	STATE SALES TAX @ 0.000%	\$0.00
+ TRADE PAYOFF = NET SALE:		TOTAL SALES PRICE:	
\$31,068.00		\$31,463.00	

Finance Example upon approval with CNH Capital Corporation

New Equipment Finance Plan: Finance principal @ 4.90% APR for 48 months.
Terms as follows:

Purchase Price (including taxes and fees):	\$53,313.00
0% + Trade 1992 Gilcrest 813RT, SN 2918	\$21,850.00
Additional Cash Down:	\$0.00
Balance to finance:	\$31,463.00 <i>Case after trade in</i>
Monthly payment on principal over 48 months:	\$723.15

Warranty & Customer Service Agreement Options: None offered.

Enhancements: Additional trade unit(s) valued above: 1992 Case 1194, SN 11040127; 1992 Sweepster RHFA, SN 881500

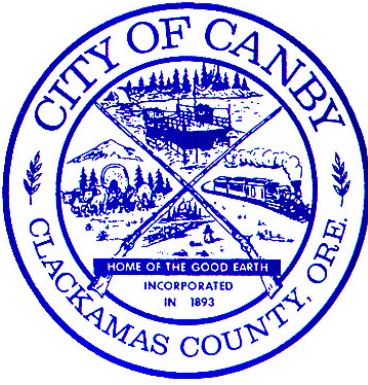
We believe the equipment as quoted will exceed your expectations. On behalf of Sonsray Machinery, LLC, thank you for the opportunity to quote Case machinery.

Sincerely,

Mark D Ten Eyck

Mark Ten Eyck
Sales Representative

503-780-7569
Good for 30 days from February 27, 2013
Machinery subject to prior sale.



City of Canby

City Attorney

MEMORANDUM

DATE: May 29, 2013
TO: CANBY CITY COUNCIL
FROM: JOSEPH LINDSAY, CITY ATTORNEY
RE: ORDINANCE NO. 1377 AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO AN AMENDED CONTRACT WITH KINTECHNOLOGY INCORPORATED TO CONTINUE TO PROVIDE COMPUTER TECHNICAL SERVICES FOR THE CITY; AND DECLARING AN EMERGENCY

Issue: Whether or not to continue contracting KinTech computer tech services at the City.

Summary: KinTech has been providing this service to the City of Canby since 2006. There was a \$10,000 change in compensation between the last agreement and the one preceding it. This agreement, however, does not seek to make any amendments. The prices charged per hour are the same as last year, and the not-to-exceed price on the total amount of services remains at \$85,000.

Attachments: *Exhibit A* Personal Services Agreement with KinTechnology, Inc.

Recommendation:

Continue contracting with KinTech under the amended contract.

Motion: "I move to approve Ordinance No. 1377: AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO AN AMENDED CONTRACT WITH KINTECHNOLOGY INCORPORATED TO CONTINUE TO PROVIDE COMPUTER TECHNICAL SERVICES FOR THE CITY; AND DECLARING AN EMERGENCY to come up for second reading on June 19, 2013."

ORDINANCE NO. 1377

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO AN AMENDED CONTRACT WITH KINTECHNOLOGY INCORPORATED TO CONTINUE TO PROVIDE COMPUTER TECHNICAL SERVICES FOR THE CITY; AND DECLARING AN EMERGENCY

WHEREAS, the City of Canby desires to continue its contract between the City and KinTechnology Incorporated to provide computer technical services for the City; and

WHEREAS, the current contract with KinTechnology Incorporated needs to be renewed and amended;

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into an amended Personal Services Agreement with KinTechnology Incorporated to continue to provide computer technical services for the City. A copy of the Personal Services Agreement is attached hereto as Exhibit "A."

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to maintain computer technical services in order to provide both essential and general services to the public, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 5, 2013, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, June 19, 2013, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, 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 of June 2013, by the following vote:

YEAS_____ NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and KinTechnology, Inc. (Contractor).

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree a Follows:

1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. Contractor agrees to obtain a Canby Business License prior to commencing work under this contract.
3. Compensation:
 - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "B" attached hereto. Contractor agrees that \$85,000.00 is the not to exceed price of this contract, without prior written approval from the City.
 - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
 - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
4. Contractor is Independent Contractor.
 - A. Contractor's services shall be provided under the general supervision of the Assistant City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.
 - B. Contractor certifies that it is either a carrier-insured employer or a self-

insured employer as provided in Chapter 656 of the Oregon Revised Statutes.

- C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

5. Subcontractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA regulations and requirements.
6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City.
7. Term.
- A. This Agreement may be terminated by:
1. Mutual written consent of the parties.
 2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
 3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.
8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.
9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

- A. For General Liability Insurance, Contractor shall provide a Certificate of

Insurance naming the City of Canby as an additional insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.).** For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.
11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.
13. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.

CITY: Amanda Zeiber, Assistant City Administrator
City of Canby
PO Box 930
182 N. Holly Street
Canby, OR 97013

CONTRACTOR: Shauna Kimble
KinTechnology, Inc.
PO Box 305
Canby, OR 97013

Please submit invoices to: **Attn: Accounts Payable**
City of Canby
PO Box 930
Canby, OR 97013
potterl@ci.canby.or.us

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR:

CITY OF CANBY

By: 

By: _____

Date: 3/27/13

Date: _____

Subcontractors will be used ☐ Yes (If Yes, please complete List of Subcontractors attached to this Agreement)
☐ No

Approved as to Form:



Joseph Lindsay
City Attorney

LIST OF SUBCONTRACTORS

As per Section 5 of the Personal Services Agreement, the following businesses will be subcontractors. Subcontractors are required to have a City of Canby Business License prior to commencing work under this contract.

[illegible]

The City hereby approves the above listed subcontractors.

City of Canby

Date _____

EXHIBIT A

Monthly Scope of Services:

- One technician for an average of 36-40 hours per week.
- Maintain network level web filtration system.
- Maintain thorough inventory documentation.
- Coordinate and consolidate all requests for support using KinTech ticketing system.
- Monitor network system status and performance.
- Create and manage users and groups.
- Manage data organization and security.
- Manage data backup and data restore systems.
- Planning, installation, and maintenance of physical network backbone.
- Manage internal and external network security.
- Planning and maintenance of email systems.
- Research and implement technology advancements.
- Plan, research, and assist with acquisitions of new hardware and software.
- Setup, configure, and maintain new and current workstations.
- Troubleshoot software and hardware issues.
- Relocate user workstation environments.
- Removal of spyware and viruses from network systems.
- Troubleshoot and maintain network printing.
- Assess user requirements and propose solutions to meet them.
- Manage hardware recycling and, or secure disposal.
- Create documentation for training purposes.
- Provide training for users on hardware and software systems.

Scope of Services does not include the following:

- All hardware needs - costs will be discussed as needed.
- Anti-Virus licensing renewals - City will be responsible for renewal fees.
- Web Filtration subscriptions - services/system available for \$150 per device per month.
- Anti-Spam filtration subscription - Service available at a cost of \$3.25 per user per month.

EXHIBIT B

Monthly Service Fee:

\$7083 set monthly fee not to exceed \$85000.00 for the 13'-14' budget year.

Other Services:

Other services not included in the above *Monthly Scope of Services* will be charged at our regular rates listed below. All charges will be approved in advance by an authorized City representative. [Authorized City representatives include Assistant City Administrator/HR Director, City Administrator, and City Recorder.]

Rates - Base hourly rates apply to services provided during normal weekday business hours Monday through Friday, 8:00am to 6:00pm in the time zone where services are performed. Holiday rates will be charged at double the base hourly rate on national holidays. Emergency rates will be charged at double that base hourly rate for non-scheduled urgent-care-response events. *Overtime* rates will be charged at one and one half times the base hourly rate during non-holiday, non-emergency and nonweekday business hours. KinTechnology reserves the right to change base hourly rates with prior notice to customers.

Base Hourly Rates

\$95/hr

\$125/hr

\$125/hr

\$95 to \$125/hr

\$95 to \$125/hr

Consulting Position

PC/MAC Tech

Networking Tech

Server Tech

Programmer

Training

ORDINANCE NO. 1378

AN ORDINANCE GRANTING TO CLACKAMAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY

WHEREAS: Clackamas County, Oregon, a political subdivision of the State of Oregon (Franchisee) desires to provide Telecommunications services within the City of CANBY, Oregon; and

WHEREAS: the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of Public Rights-of-Way; and

WHEREAS: Franchisee has applied for a Telecommunications Franchise pursuant to Canby Municipal Code (CMC) Chapter 12.36 relating to Telecommunications located in the public rights of way, and the City of CANBY "City" has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions of CMC Chapter 12.36 and stated herein:

NOW THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Definitions.

Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense, earned in the City of CANBY and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

Other definitions located in CMC Chapter 12.36

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and Franchise to erect, construct, operate, repair and maintain in, under, upon, along, and across the City's Rights-of-Way, its lines, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications network within the City. If required, franchisee agrees to obtain and maintain a business license to conduct business in the City of Canby and keep it current during the life of this Franchise. Franchisee agrees to comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including CMC Chapter 12.36, as amended from time to time.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or

different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance. Thereafter, this Franchise shall continue in full force and effect for an additional ten (10) years unless notice is given by either party ninety (90) days before expiration, of its intention to terminate or renegotiate the Franchise. Upon termination or expiration of the Franchise, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Grantee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove.

Section 5: No Limitation of City Authority.

(a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(c) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

(d) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of Telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.

Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same in accordance with Canby Municipal Code.

Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City.

Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(b) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may after reasonable attempts to contact the City provided emergency contacts immediately initiate such emergency repairs. At least two emergency contacts will be provided and kept up to date. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means before commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(c) Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

Section 8: Insurance.

(a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section. As an alternative to the insurance requirements contained herein, the County, as a government entity, may provide evidence of self-insurance subject to review and acceptance by the city.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City in accordance with policy provisions prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each person, and \$3,000,000, for each occurrence of bodily injury and \$3,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

The insurance policy limits required in section 8 may be satisfied by Provider through a combination of the underlying insurance policy and umbrella (excess) liability policy(ies) so long as said umbrella policies are, at a minimum, "follow form" and provide insurance equal to or greater than coverage afforded by the underlying liability policy(ies).

Section 9: Transfers and Change in Control.

(a) Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

(b) Any transfer of ownership affected without the prior written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.

(c) The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(d) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

(e) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City.

The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification.

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City, its councilors, officers, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees, arising out of or resulting from the acts of the County, its officers, employees, and agents in the performance of this Agreement or arising out of or resulting from the construction, operation, repair and/or maintenance of the Facilities.

Such indemnification shall not extend to independent claims of City negligence for City acts outside the scope of this contractual agreement. This indemnity shall survive the termination of this Agreement.

Section 11: Compensation.

(a) Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise area the Franchise shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services. Point to point or multi-point services include but are not limited to fiber optic connections that are leased between two or more nodes or endpoints.

(b) Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

(c) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City

in connection with the Grantee's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

(e) Late franchise fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's Fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

Section 14: Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 13, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make

such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16: Venue.

(b) Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Circuit Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Portland, Oregon, with the parties stipulating to trial in Portland, Oregon.

Section 17: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 19: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following addresses, or such other addresses as each party may specify in writing:

Notice to the City:

City Administrator
P.O. Box 930
Canby, OR 97013
Phone: 503-266-4021
Facsimile: 503-266-7961

With a copy to

City Attorney
1175 NW 3rd Avenue
Canby, OR 97013
Phone: 503-266-4027
Facsimile: 503-266-9316

Notice to the County:

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, OR 97045
Phone: 503-722-6656
Facsimile: 503-655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, OR 97045
Phone: 503-655-8322
Facsimile: 503-655-8255

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 20: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 21: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

Section 23: Emergency. The City Council of CANBY finds the health, safety and welfare of the City requires this Ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 15, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 5, 2013, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, 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 5th day of June 2013, by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

Attest:

Kimberly Scheafer, MMC
City Recorder

Approved as to form

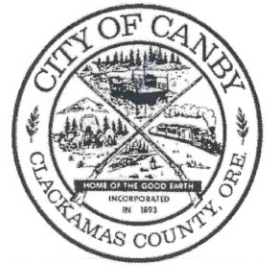
Joseph A. Lindsay
City Attorney

Accepted _____(date)

Clackamas County

By _____

City of Canby



Planning and Development Services

TO: Honorable Mayor and City Council

FROM: Matilda Deas, AICP, Senior Planner

DATE: May 16, 2013

ISSUE: BID AWARD RECOMMENDATION FOR THE NORTHWOOD PARK PROJECT
APPROVAL OF ORDINANCE 1379

THIS HAS BEEN REVIEWED
BY THE FINANCE DIRECTOR

Haley J.

SYNOPSIS: On May 8th, 2013, the City of Canby solicited and received four bids for construction of the Northwood Park Project. This staff report is to request Council approval for award of the contract to the low responsive bidder.

RECOMMENDATION:

That the Council approve Ordinance 1379 authorizing the Mayor and City Administrator to execute a contract with C.R. Trucking, Inc in the amount of \$229,97.50 for the construction of the Northwood Park Project; and declaring an emergency.

RATIONALE:

The apparent low bidder for the Canby Northwood Park project is C.R. Woods Trucking, Inc. A summary of the audited bid tabulation is shown below. Three of the four bids received were complete, and all the forms required were submitted. The bid for Columbia-Cascade Construction, Inc. was missing the First-Tier Subcontractor form. Therefore, Columbia -Cascade Construction, Inc. is disqualified.

Contractor	Base Bid
C.R. Woods Trucking, Inc.	\$229,997.50
T Edge Construction, Inc.	\$236,750.00
Columbia-Cascade Construction, Inc	\$249,000.00
Brock Construction	\$299,800.00

In order to award a contract, the winning bidder must meet the requirements of the "lowest responsible bidder", according to ORS 279C.375. The following table

summarizes those requirements and C.R. Woods Trucking, Inc's compliance with those requirements.

Has substantially complied with all prescribed public contracting procedures and requirements.	The Contractor has complied with public contracting procedures.
Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375.	The Contractor has met the requirements of ORS 279B.110, in terms of resources, expertise, record of performance, integrity, legal qualifications, etc.
Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440.	The Contractor has not been disbarred or disqualified under ORS 279B.130 or 279C.440.
If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227	The Contractor is not on the Construction Contractor Board's list of disqualified contractor's at https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/notq2bid.htm .

The bid that was provided was complete. All required paperwork was provided with the bid, and the State requirements were met. Our recommendation is that the project be awarded to C. R. Woods Trucking, Inc. in the amount of \$ 229,997.50 . The proposed contract is attached as Exhibit 'A'.

BACKGROUND:

Land for Northwood Park was dedicated as part of phase I of the Northwoods Subdivision and the park plan was developed through the discussions between the Planning Department, Planning Commission, the developers, and the Park and Recreation Advisory Board. This park has been handled differently than our other parks because it was part of a development agreement. The Parks Development Fund (park SDC's) has accrued sufficient funds to construct the improvements.

ENCLOSURES:

- Ordinance 1379
- Exhibit 'A' Construction Contract
- Exhibit 'B' Bid Tabulation

cc Greg Ellis, City Administrator
Kimberly Scheafer, MMC

ORDINANCE NO. 1379

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO AWARD A CONTRACT WITH C.R. WOODS TRUCKING, INC IN THE AMOUNT OF \$229,800.50 FOR CONSTRUCTION OF THE NORTHWOOD PARK PROJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received four (4) bids for the Northwood Park Project; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on April 12, 2013 and April 17, 2013; and

WHEREAS, bids were received and opened on May 8, 2013 at 2:00 pm in the Planning and Development Conference Room of the City of Canby and the bids were read aloud:

WHEREAS, the bidders are as listed below and a detailed tabulation of all items is attached herein as Exhibit "B" and summarized as follows:

C. R. Woods Trucking, Inc.	\$229,997.50
T Edge Construction, Inc.	\$236,750.00
Columbia -Cascade Construction, Inc.	\$249,000.00
Brock Construction	\$299,800.00

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, June 5, 2013, 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 C.R. Woods Trucking, Inc.; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or 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 C.R. Woods Trucking, Inc. for the construction of the Northwood Park Project in the amount of \$229,997.50. A copy of the contract with C.R. Woods Trucking, 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.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 5, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 19, 2013, after the hour of 7:30 p.m. at the Council Meeting Chambers located at 155 NW 2nd Avenue, 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 June 2013, by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the **City of Canby**, herein called the **Owner** and **C.R. WOODS TRUCKING, INC.**, herein called the **Contractor**.

IT IS AGREED:

ARTICLE 1. WORK

In consideration of the agreements herein made by the Owner and the sums of money to be paid to the Contractor by the Owner in the manner and form as provided in the attached Contract Documents, the Contractor agrees to furnish all labor, tools, appliances, equipment, plant and transportation, and any and all other expenses necessary or incidental to the performance of the work as specified or shown in the Contract Documents, including such alternates and additional bid items as are listed in Article 3.

The work is generally described as the Northwood Park Project (Project).

The Project consists of the following: Set up and installation of all playground equipment, including the foundation, curb, and fill required to surround the play structure, along with the construction of a concrete slab foundation, and set up and installation of a covered shelter. The project also includes the installation of a drinking fountain, two waste receptacles, and a portable restroom facility, including a concrete pad for the portable restroom to be located on. Site improvements to the project area include construction of a sidewalk access to all playground equipment, as well as landscaping involving the installation of bark mulch and 100 rose bushes.

The Contract Documents, which define the work covered by this agreement, are filed at the City of Canby, and identified by the signatures of the parties to this Agreement.

The work was designed by and the Contract Documents were prepared by Kennedy/Jenks Consultants herein referred to as the Design Engineer.

The Owner's Representative will be designated by the Owner prior to the start of construction. The Owner's Representative will assume the duties and responsibilities and will have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the work in accordance with the Contract Documents.

ARTICLE 2. CONTRACT TIME AND LIQUIDATED DAMAGES

- (a) Time of Performance. In accordance with the specifications, the Contractor further agrees to plan the work and to prosecute it with diligence and shall commence the work within ten (10) days after the date established in Notice to Proceed from the Owner, and shall Finally Complete the Work within the time allotted from date of commencement in the Notice to Proceed. The following times are allotted for Final Completion of the Work:

The time to Substantial Completion of Work shall be 150 calendar days from Notice to Proceed.

The time to Final Completion of Work shall be 180 calendar days from Notice to Proceed.

See Specification Section 01040 for additional coordination and project requirements.

- (b) Liquidated Damages: The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the times specified in paragraph (a) above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the Owner Five Hundred dollars (\$500) for each day that expires after the time specified in Article 2 (a) for Completion until the Work is fully complete and the Owner issues a notice of Final Completion.

ARTICLE 3. CONTRACT PRICE

The Owner shall pay the Contractor for completion of the work in accordance with the Contract Documents in current funds as follows:

The total Contract Price for work awarded is:

Two hundred twenty nine thousand nine hundred ninety seven dollars and fifty cents
(\$229,997.50)

ARTICLE 4. RETAINAGE

- (a) The Owner will withhold 5% as retainage from each progress payment due to the Contractor. Retainage shall be paid to the Contractor at the time of Final Payment as set forth in paragraph 13.13 of the General Conditions.
- (b) In lieu of retainage, provisions may be made as provided in ORS 279C.560 for depositing with the Owner, approved bonds or securities of value equal to the retainage.

ARTICLE 5. PAYMENTS

- (a) Payments will be made to the Contractor for work performed at the times and in the manner provided in the Contract Documents, Article 13 of the General Conditions. Payment will be made at bid prices for awarded Bid Items, plus amounts of approved Change Orders.
- (b) The Owner shall retain a minimum of 5% of the amount of each progress payment as specified in Article 13 of the General Conditions. If recommended by the Engineer, payments may include 95% of the invoiced value of major equipment items that have been delivered, stored, and protected at the site and that meet other requirements of the General Conditions, Article 13, paragraph 13.3.
- (c) The period covered by each Application for Payment shall be one calendar month ending on the 25th day of each calendar month. On average, the Owner will make payment within 30 days after the Engineer issues a Recommendation for Payment.

ARTICLE 6. COMPONENT PARTS

This Contract shall consist of the following documents, each of which is on file in the office of the Owner and all of which are incorporated herein and made a part hereof by reference thereto:

- (a) This Agreement
- (b) Performance Bond
- (c) Payment Bond
- (d) Notice of Award
- (e) General Conditions
- (f) Supplementary Conditions
- (g) Addenda Numbered _____ through _____ inclusive
- (h) General Requirements
- (i) Contractors Bid and Instructions to Bidders
- (j) Documentation submitted by the Contractor with Bid
- (k) Prevailing Wage Rate Forms
- (l) First-Tier Subcontractor Disclosure Form
- (m) Technical Specifications
- (n) Drawings
- (o) Executed Change Orders, if any, which may be effective after the date of this Agreement
- (p) Required Insurance
- (q) Notice to Proceed
- (r) Non-Collusion Affidavit
- (s) Addendum to Agreement for Oregon Public Contracting requirements

There are no Contract Documents other than those listed above.

ARTICLE 7. CONTRACT REPRESENTATIONS

In consideration of the Owner entering into this Agreement, the Contractor makes the following representations:

- (a) The Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
- (b) The Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions, which are identified in the Information Available to Bidders, and accepts the limitations set forth in the General Conditions as to the extent to which the Contractor may rely on the information contained in such reports and drawings or otherwise provided by the Owner, the Design Engineer, or the Engineer.
- (c) The Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7 (b) above, which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance, or

furnishing of the work as the Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 3 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by the Contractor for such purposes.

- (d) The Contractor has reviewed and checked all information and data shown, or indicated on the Contract Documents with respect to existing facilities, existing utilities, existing underground or concealed utilities, and existing underground facilities at or contiguous to the site and accepts the limitations set forth in the General Conditions as to the extent to which the Contractor may rely on such information or on other information provided by the Owner, the Design Engineer, or the Engineer. No additional examinations, investigations, explorations, tests, reports, studies, or similar information or data in respect to said existing facilities, existing utilities, existing underground or concealed utilities, and underground facilities are or will be required by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 3 of the General Conditions.
- (e) The Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- (f) The Contractor has given the Engineer written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the written resolution therefore by the Engineer is acceptable to the Contractor.

ARTICLE 8. CONTRACTOR DECLARATIONS

The Contractor declares the work will be conducted pursuant to the following requirements of the State of Oregon:

- (a) Prevailing Wage Rates

The contract is for public work subject to ORS 279C.800 through 279C.870, relating to minimum wage and compensation levels for employees, and the Contractor certified that all provisions shall be complied with, and certifies that employees shall be paid the BOLI or Davis-Bacon prevailing wage rate as determined by the Oregon Labor Commissioner or the Secretary of the United States Department of Labor, whichever is greater, and further agrees to pay such wages not less than once per week. Wage rate certifications shall be submitted as required by the statutes. The prevailing wage rate determinations are available on the Oregon Bureau of Labor and Industries website at: www.oregon.gov/BOLI/WHD/PWR/index.shtml. A hard copy of the prevailing wage rate determination may be obtained by calling BOLI at: 971-673-0761

- (b) Labor Regulations and Hours of Labor

Pursuant to ORS 279C.520, Contractor may not employ a person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay: (a) for all overtime in excess of eight hours in

any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) for all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(c) First-Tier Subcontractor Disclosure Form

This form must be submitted, in a separate envelope, to the address receiving the Bid Document within (2) two working hours after the deadline when bids are due in accordance with ORS 279C.370. The First-Tier Subcontractor Disclosure Form may be submitted, in its own envelope, at the same time the Bid is submitted if desired.

(d) Pursuant to ORS 279C.505, which is hereby incorporated herein, the Contractor hereby agrees to: 1) Make payment promptly, as due, to all persons supplying contract labor or material for the prosecution of the work provided for in the contract; 2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract; 3) Not permit any lien or claim to be field or prosecuted against the state county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished; and 4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(e) Deleted

(f) Deleted

(g) Contractor License

The Contractor declares that it possesses a valid State of Oregon Construction Contractors Board License in accordance with relevant OARs, at the time of signing this Agreement. The Contractor shall affirm its license numbers and expiration dates on this Agreement.

(h) Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the contracting agency may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

(i) Pursuant to ORS 279C.515, if Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or Contractor, Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the

contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- (j) Pursuant to ORS 279C.515, if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- (k) Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (l) Pursuant to ORS 279C.530, all subject employers working under this Contract must be either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (m) Contractor must include in each subcontract for property or services entered into by Contractor, including a material supplier, for the purpose of performing this contract:
 - 1. a payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the contracting agency under the contract; and
 - 2. an interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under subparagraph (a) of this paragraph.

Contractor may not be obligated to pay an interest penalty if the only reason that Contractor did not make payment when payment was due is that Contractor did not receive payment from the contracting agency when payment was due.

The interest penalty shall be: (A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and (B) Computed at the rate specified in ORS 279C.515(2).

Contractor must include in each of Contractor's subcontracts a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580(3) in each of the first-tier subcontractor's subcontracts and must require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

- (n) Contractor's obligation to pay a late payment interest penalty to a subcontractor under the payment terms of this Contract is not an obligation of the contracting agency. A contract modification will not be made for the purpose of providing reimbursement of such late payment interest penalty. Contractor will not include any amount for reimbursement of such late payment interest penalty in any cost reimbursement claim.

- (o) This Contract represents the entire agreement of the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral and written agreements with respect to such subject matter. No amendment, modification, or variation of the terms and conditions of this Contract shall be valid unless it is in writing and signed by all parties hereto.
- (p) If there is a conflict between the express terms of this Agreement and any other document or agreements which are a part of the Contract Documents, the terms of this Contract shall prevail.

ARTICLE 9. LIMITATION OF LIABILITY

The Contractor stipulates that it has carefully reviewed the Contract Documents and finds them fit and sufficient for preparation of its bid and for construction of the work. The Contractor agrees that neither the Contractor nor any of its subcontractors or suppliers will make a claim against the Owner, the Design Engineer, or any of their agents, consultants, officers, employees, or shareholders for damages in excess of that allowed per article 10 of Section 00700.

ARTICLE 10. MISCELLANEOUS

- (a) Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.
- (b) 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, but 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.

The Owner and the Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the Owner has caused these presents to be executed in triplicate by its officers, thereunto duly authorized, and the Contractor has subscribed same, all on the day and year first above written. One counterpart each has been delivered to the Owner, the Contractor, and the Design Engineer.

City of Canby

By _____
(Signature)

Name _____
(Type or Print)

Title _____

Address for giving notices: PO Box 930, Canby, OR 97013.

CONTRACTOR:

By _____
(Signature)

Name _____
(Type or Print)

Title _____

Address _____

(Federal Employer Identification Number)

Oregon Construction Contractors Board License
Number and License Expiration Date
Telephone Number (____) _____

(SEAL)

If the Contractor is a corporation, attach evidence of authority to sign.

ATTEST:

By _____
(Signature)

Name _____

Title _____
(Type or Print)

Address for giving notices _____

ACKNOWLEDGMENT

By a Corporation:

State of (_____))
County of (_____))

On this _____ day of _____, 20____, before me, a Notary Public in and for the County of _____, State of _____, personally appeared _____, known to me to be the _____ of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and he or she acknowledged to me that such corporation executed the same, pursuant to its by-laws or a resolution of its board of directors.

(SEAL) _____

Notary Public in and for the County of

State of _____

END OF AGREEMENT

8-May-13

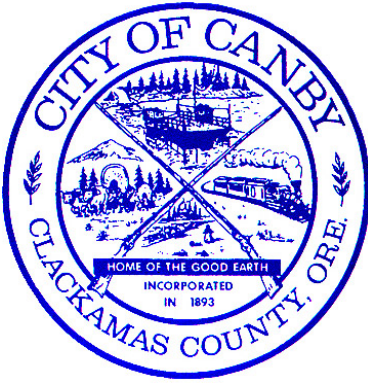
EXHIBIT 'B'

**City of Canby
Northwood Park Project**

Bid Opening

Bid List

Company	Time Stamp	Required bid documents							Bid Amount
		00300 -- Bid Form	00410 -- Bid Security	00416 -- Bidder's References	00420 -- Bidder's Qualifications	00440 -- First-Tier Subcontractor and Supplier Disclosure Form	00480 -- Noncollusion Affidavit	Acknowledgement of Addendum receipt	
C.R. Woods Trucking, Inc.	1:57: PM	X	X	X	X	X	X	X	\$229,997.50
Columbia-Cascade Const.,Inc	1:54: PM	X	X	X	X	0	X	X	\$249,000.00
T Edge Construction, Inc	1:51:PM	X	X	X	X	X	X	X	\$236,750.00
Brock Construction	1:50: PM	X	X	X	X	X	X	X	\$299,800.00
The apparent low bid is CR Woods Trucking, Inc at \$229,997,50									



City of Canby

City Attorney

MEMORANDUM

DATE: June 5, 2013
TO: CANBY CITY COUNCIL
FROM: JOSEPH LINDSAY, CITY ATTORNEY
RE: ORDINANCE NO. 1380: AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 12 CREATING SECTION 12.08.065 AN ADDITIONAL FEE FOR CUTTING NEWER PAVEMENT AND AMENDING SECTION 12.08.200 .

Issue: Whether or not to amend the penalty section of the street cutting chapter of the code along with creating a new section that creates a stepped-down fee structure when permittees want to cut into newer streets.

Summary: Canby Municipal Code Chapter 12, Section 12.08.200 Penalty currently reads as follows:

“Any person violating the provisions of this chapter, upon conviction, shall be punished by a fine not to exceed \$500.”

First, the proposed amendment takes out the mandatory “shall,” replacing it with the permissive “may.” This gives the sentencing Court discretion in sentencing. The current language required that the fine could not exceed \$500, disallowing a potentially higher sentence in any cases where a stiffer penalty might be merited. Moreover, a greater potential penalty comports with inflation, coincides with increased penalties statewide for statutory violations, and demonstrates a greater desire on the part of the city to hold violators accountable for violations of this Chapter of the Code.

The new section looks to address the desire of the City to safeguard the integrity of its newly paved streets by charging an increased fee for cutting into them. It is a stepped-down fee structure over a three year period to reflect the reality that pavement doesn’t stay new forever.

Recommendation:

Adopt the ordinance to increase potential penalties and to protect newer paved streets with increased fees for cutting into them.

Motion: “I move to approve Ordinance 1380, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 12 CREATING SECTION 12.08.065 AN ADDITIONAL FEE FOR CUTTING NEWER PAVEMENT AND AMENDING SECTION 12.08.200 to come up for second reading on June 19, 2013.

ORDINANCE NO. 1380

AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 12 CREATING SECTION 12.08.065 AN ADDITIONAL FEE FOR CUTTING NEWER PAVEMENT AND AMENDING SECTION 12.08.200

WHEREAS, the City of Canby desires to preserve the integrity of its newly paved streets; and

WHEREAS, the Canby Municipal Code is currently silent regarding fees that would reflect the above desire by encouraging better pre-planning of street cutting; and

WHEREAS, an increased potential maximum penalty will better deter violations of the Street Excavations Chapter of the Code;

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

1. Section 12.08.065 is added to the Canby Municipal Code to read:

12.08.065 Additional Fee For Cutting Newer Pavement.

In addition to the fee mentioned in CMC 12.08.060, the following fees will be paid prior to gaining any construction permit to deconstruct, excavate, cut, or otherwise alter newly paved streets. For pavement that is less than one year old, there is an additional fee of \$5000. For pavement less than two years old but more than one year old, there is an additional fee of \$2000. For pavement less than three years old but more than two years old, there is an additional fee of \$1000. Payment of these additional fees does not absolve payer from the duties imposed by the rest of this Chapter

2. Section 12.08.200 is amended to read as follows:

12.08.200 Penalty. Any person violating the provisions of this chapter, upon conviction, ~~shall be punished by a fine not to exceed \$500.~~ could be required to pay a fine up to \$2,000 for each calendar day that they are out of compliance.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 5, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 19, 2013, after the hour of 7:30 p.m. at the Council Meeting Chambers located at 155 NW 2nd Avenue, 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 June 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

ORDINANCE NO. 1381

AN ORDINANCE GRANTING TO TW TELECOM OF OREGON LLC ("TWTC"), A DELAWARE LIMITED LIABILITY COMPANY, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY

WHEREAS: tw telecom of oregon llc ("TWTC"), a Delaware limited liability company, provides Telecommunications services within the City of CANBY, Oregon ("City"); and

WHEREAS: the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of Public Rights-of-Way; and

WHEREAS: Franchisee has applied for a Telecommunications Franchise pursuant to Canby Municipal Code (CMC) Chapter 12.36 relating to Telecommunications located in the public rights of way, and the City has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions of CMC Chapter 12.36 and stated herein:

NOW THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Definitions.

Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense in the City of CANBY and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

Other definitions located in CMC Chapter 12.36

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and Franchise to erect, construct, operate, repair and maintain in, under, upon, along, and across the City's Rights-of-Way, its lines, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications network within the City. Franchisee agrees to obtain and maintain a business license to conduct business in the City of Canby and keep it current during the life of this Franchise. Franchisee agrees to comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including CMC Chapter 12.36, as amended from time to time.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to

other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance. Thereafter, this Franchise shall continue in full force and effect for an additional ten (10) years unless notice is given by either party ninety (90) days before expiration, of its intention to terminate or renegotiate the Franchise. Upon termination or expiration of the Franchise, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Grantee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove.

Section 5: No Limitation of City Authority.

(a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(c) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

(d) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of Telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.

Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same in accordance with Canby Municipal Code.

Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City.

Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(b) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may after reasonable attempts to contact the City provided emergency contacts immediately initiate such emergency repairs. At least two emergency contacts will be provided and kept up to date. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means before commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(c) Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

Section 8: Insurance.

(a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City in accordance with policy provisions prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be

responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each person, and \$3,000,000, for each occurrence of bodily injury and \$3,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

The insurance policy limits required in section 8 may be satisfied by Provider through a combination of the underlying insurance policy and umbrella (excess) liability policy(ies) so long as said umbrella policies are, at a minimum, "follow form" and provide insurance equal to or greater than coverage afforded by the underlying liability policy(ies).

Section 9: Transfers and Change in Control.

(a) Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

(b) Any transfer of ownership affected without the prior written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.

(c) The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(d) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the

Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

(e) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification. Franchisee shall indemnify and hold the City harmless for any losses, claims, damages, awards, penalties or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of representations and warranties made under this Agreement, provided that the Franchisee is promptly notified of any such claims. The Franchisee shall have the sole right to defend such claims at its own expense. The City shall provide, at the Franchisee's expense, such assistance in investigating and defending such claims as the Franchisee may reasonably request.

Such indemnification shall not extend to independent claims of City negligence for City acts outside the scope of this contractual agreement.

This indemnity shall survive the termination of this Agreement.

Section 11: Compensation.

(a) Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise area the Franchise shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services.

(b) Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

(c) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than

the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City in connection with the Grantee's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

(e) Late franchise fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's Fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

Section 14: Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 13, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or

review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16: Venue.

(b) Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Circuit Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Portland, Oregon, with the parties stipulating to trial in Portland, Oregon.

Section 17: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 19: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

Greg Ellis
City Administrator
PO Box 930
CANBY, OR 97013
Phone: 503-266-4021
Facsimile: 503-266-7961

tw telecom of oregon llc Attn: VP-Regulatory
10475 Park Meadows Drive Littleton, CO
80124
Phone: (303) 566-1280
Facsimile: (720) 225-5616

With a copy to:
tw telecom of oregon llc
Attn: Sr. VP & Deputy General Counsel
10475 Park Meadows Drive
Littleton, CO 80124
Phone: (303) 566-1279
Facsimile: (303) 803-9636

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 20: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 21: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

Section 23: Emergency. The City Council of CANBY finds the health, safety and welfare of the City requires this Ordinance to have immediate effect. Therefore, the City Council hereby

declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 15, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 5, 2013, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, 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 5th day of June 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

Attest:

Kimberly Scheafer, MMC
City Recorder

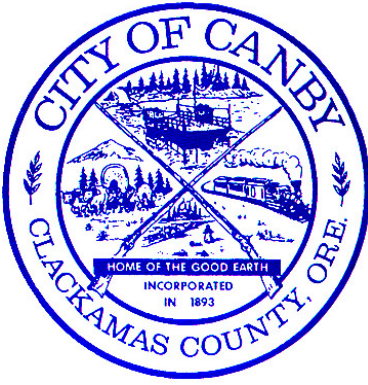
Approved as to form

Joseph A. Lindsay
City Attorney

Accepted _____(date)

tw telecom of oregon llc
By: tw telecom holdings inc.,
Its sole member

By _____
Printed Name: Title:



City of Canby

City Attorney

MEMORANDUM

DATE: May 29, 2013
TO: CANBY CITY COUNCIL
FROM: JOSEPH LINDSAY, CITY ATTORNEY
RE: ORDINANCE NO. 1382: AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH HEARD FARMS FOR WASTEWATER SLUDGE REMOVAL; AND DECLARING AN EMERGENCY

Issue: Whether or not to contract with Heard Farms for sludge removal services for the City.

Summary: The City is currently charged by Kahut at a rate of \$71.60 per wet ton of sludge hauled. Under this new Heard Farms proposal, the prices charged per wet ton hauled are \$53, and the not-to-exceed price on the total amount of services caps at \$149,000 as a precaution under public contracting law (so as to only have to operate at the formal quote procedure in securing this contractor). Wastewater treatment folks think this change could save the City somewhere in the neighborhood of \$40,000 per year. Further, certain contingencies have been reduced to writing and included in this contract to account for some possible issues regarding current litigation involving the sludge dryer.

Attachments: *Exhibit A* Personal Services Agreement with Heard Farms.

Recommendation:
Authorize this contract.

Motion: "I move to approve Ordinance No. 1382: AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH HEARD FARMS FOR WASTEWATER SLUDGE REMOVAL; AND DECLARING AN EMERGENCY to come up for second reading on June 19, 2013."

ORDINANCE NO. 1382

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH HEARD FARMS FOR WASTEWATER SLUDGE REMOVAL; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby requires the hauling of tonnage of wet sludge as part of its wastewater treatment; and

WHEREAS, the City of Canby desires to secure a cost effective contract for this integral service;

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into a Personal Services Agreement with Heard Farms to haul wet sludge for the City. A copy of the Personal Services Agreement is attached hereto as Exhibit "A."

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to dispose of sludge and wastewater, in order to provide both essential and general services to the public, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 5, 2013, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, June 19, 2013, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, 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 June 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and Heard Farms (Contractor).

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree a Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. Contractor agrees to obtain a Canby Business License prior to commencing work under this contract.**
- 3. Compensation:
 - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$149,000 is the not to exceed price of this contract, without prior written approval from the City.
 - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
 - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
 - A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.
 - B. Contractor certifies that it is either a carrier-insured employer or a self-

insured employer as provided in Chapter 656 of the Oregon Revised Statutes.

- C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

5. **Subcontractors and Assignment.** Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA regulations and requirements.

6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.

7. Term.

- A. This Agreement may be terminated by:

1. Mutual written consent of the parties.
2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.

8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.).** For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.
11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.
13. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this

Agreement.

14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.

CITY: Greg Ellis, City Administrator
City of Canby
PO Box 930
182 N. Holly Street
Canby, OR 97013

CONTRACTOR: Richard Heard
Heard Farms, Inc.
578 Rogers Road
Roseburg, OR 97471

Please submit invoices to: **Attn: Accounts Payable**
City of Canby
PO Box 930
Canby, OR 97013
potterl@ci.canby.or.us

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR: CITY OF CANBY

By: By:

Date: Date:

Subcontractors will be used _____ **No (If Yes, please complete List of Subcontractors attached to this Agreement)**

Approved as to Form:

Joseph Lindsay
City Attorney

LIST OF SUBCONTRACTORS

As per Section 5 of the Personal Services Agreement, the following businesses will be subcontractors. Subcontractors are required to have a City of Canby Business License prior to commencing work under this contract.

[illegible]

The City hereby approves the above listed subcontractors.

City of Canby

Date _____

EXHIBIT “A”

Memorandum of Agreed Terms for Personal Services Agreement between City of Canby, Oregon (City) and Heard Farms, Inc. for Sludge (Bio-solid) Pickup and Disposal

In addition to the terms agreed upon in the signed Personal Services Agreement, the City of Canby, Oregon (City) and Heard Farms, Inc. agree to the following:

1. Heard Farms will pick up and dispose of sludge (bio-solids) from the City of Canby Wastewater Treatment Plant located at 1480 NE Territorial Road in Canby, Oregon, at a price of \$53.00 per ton.
2. The above-stated price of \$53.00 per ton will remain fixed for a two-year period commencing at the execution of the Personal Services Agreement.
3. Heard Farms agrees to supply three (3) trailers for the City to pre-load the bio-solids for pick-up every Thursday (unless otherwise agreed upon mutually by the parties due to special circumstances).
4. Sludge (Bio-solids) are not required to meet the Class B standard in order for Heard Farms to haul them off and dispose of them. The sludge (bio-solids) need to be in the range of 5 to 9 on the pH scale. Any testing of the sludge (bio-solids) for disposal purposes will be the responsibility of Heard Farms and will be done at the Heard Farms facility. The City is not responsible for this testing at all.
5. Containers and/or trailers will be hauled off by Heard Farms within 24 hours of the load being ready.
6. The City continues to reserve the right to utilize their current contracted franchise agreement with Canby Disposal (Kahut) for its option of 150 tons per year of free disposal of sludge (bio-solids).
7. The City does not guarantee a specific amount of sludge (bio-solids) each month, but parties assume that amounts should be fairly consistent from month to month.
8. The City continues to reserve the right to haul off or have hauled off any excess sludge that Heard Farms cannot pick up and dispose of in a timely manner (by the end of each work week). The goal is to not have any sludge (bio-solid) storage over the weekends.
9. Both parties understand that this deal is also contingent upon pending litigation involving a sludge dryer. Heard Farms understands and accepts that the City may have to accommodate a period of testing of the sludge dryer, which could entail as much as six weeks of sludge being unavailable to Heard Farms. Further, this agreement is contingent upon the City being able to move the existing hopper out of the way—which is likewise associated with and controlled by the pending litigation.

Management Team Meeting Minutes

May 14, 2013

2:00 PM

City Hall Conference Room

In attendance: Greg Ellis, Amanda Zeiber, Renate Mengelberg, Bryan Brown, Kim Scheafer, Jorge Tro, Penny Hummel, Julie Wehling, Darvin Tramel, Eric Laitinen, Joe Lindsay, and Haley Fish.

Kim Scheafer

- Attended CIS Spring Supervisor training last Thursday with Haley Fish

Greg Ellis

- Stephanie Boyce resigned from the City Budget Committee
- In negotiations with CUB regarding property
- Met with Chamber President

Haley Fish

- Reviewed Agendas for upcoming Budget Committee meetings

Darvin Tramel

- Working on collections reports
- Attending ACWA Conference Wednesday - Friday

Eric Laitinen

- Gator Grinder had over 300 participants
- Thanked all the City Departments that helped with the Gator Grinder

Bryan Brown

- Library is on the PC Agenda for tonight
- Working on site plan review for Johnson Controls

Renate Mengelberg

- Received new aerials for the City of Canby
- May be getting a GIS Intern
- Industrial Forum is at Johnson Controls this Wednesday
- Flower baskets are up

Penny Hummel

- Gave an update on trip to Washington, DC
- Ford Foundation decision should be made this week

Julie Wehling

- The company that manufactures the mini-van they were going to purchase went out of business
- Working on negotiating lease for new office

Joe Lindsay

- Clackamas County is fine with the possibility of implementing a privilege tax for utilities operating within the public right-of-way

Minutes taken by Kim Scheafer

CITY COUNCIL / URA MEETING FOLLOW-UP ITEMS				
ORIG. CC / URA MTG. DATE	ITEM	STATUS	ASSIGNED TO	TARGET DATE FOR CC OR URA MTG.
July 11, 2012	Retail Business Recruitment Update	Begun	Jamie Stickel	TBD
	Dog Park Construction Contract	Engineering underway	Matilda Deas	June 2013
	New Tree Ordinance	Underway	Matilda Deas/Sol Jacobsen	June 2013
July 11, 2012	Main Street Annual Report	Not started	Jamie Stickel	June 12, 2013
	Stormwater Master Plan Adoption	Consultant is working on plan	Darvin Tramel	June 2013
	Buildable Land Needs Study	Analysis underway	Matilda Deas	August 2013
	NE Canby Master Plan	1st meeting in March	Matilda Deas	December 2013
	N Redwood Master Plan	Not started (Need Funding)	Matilda Deas	June 2014

OTHER STAFF ITEMS				
DATE	ITEM	STATUS	ASSIGNED TO	TARGET DATE
	Maintain Police Accreditation - Police	On-Going	Melody Thompson & Lt. Jorge Tro	Next Assessment 2014
	Selling Property Partitioned Next to Maple Street Park (former location of Marshall House)	Waiting for better econmic times to sell property		
	Participate as member of NW Regional Computer Forensic Laboratory - Police	Underway	Bret J. Smith	TBD
	Develop Dept Website - Police	Underway	Melody Thompson & Lt. Jorge Tro	June 2013
	Formalize Volunteer Program - Police	Underway	Melody Thompson & Lt. Jorge Tro	April 2014