



AGENDA

CANBY CITY COUNCIL REGULAR MEETING

August 7, 2013

7:30 PM

Council Chambers

155 NW 2nd Avenue

Mayor Brian Hodson

Council President Tim Dale

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 model ordinance for telecommunications.

Pg. 1

CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

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 July 17, 2013 City Council Regular Meeting

B. Change of Ownership Liquor License for The Mini Chef Restaurant & Lounge Pg.51

7. RESOLUTIONS & ORDINANCES

- A. Res. 1171, Adopting City Council Values and Goals Pg. 53
- B. Ord. 1383, Authorizing Lease with Zimmer Ventures, LLC for Rental of Property for Canby Area Transit (**2nd Reading**) Pg. 56
- C. Ord. 1384, Committing PERS Contribution Stabilization Reserve to be Used to Offset Future PERS Rate Increases (**2nd Reading**) Pg. 79

8. NEW BUSINESS

- A. Discussion Regarding Council Vacancy

9. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

- 12. EXECUTIVE SESSION:** ORS 192.660(2)(h) Pending Litigation, ORS 192.660(2)(i) Performance Evaluation Of Public Officer, ORS 192.660(2)(d) Labor Negotiations, and ORS 192.660(3) Labor Negotiations

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer, 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.

📖 CHAPTER

12.36: TELECOMMUNICATIONS FACILITIES

Section

- [12.36.010](#) Jurisdiction and management of the public rights-of-way.
- [12.36.020](#) Regulatory fees and compensation not a tax.
- [12.36.030](#) Definitions.
- [12.36.040](#) Registration ~~of of carriers~~ Telecommunication Providers.
- [12.36.050](#) Construction standards.
- [12.36.060](#) Location of facilities.
- [12.36.070](#) Telecommunications franchise.
- [12.36.080](#) General franchise terms.
- [12.36.090](#) General provisions.

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

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

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

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

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

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

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

(Ord. 1036, passed 11-3-1999)

§ 12.36.020 Regulatory fees and compensation not a tax.

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

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

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

(Ord. 1036, passed 11-3-1999)

§ 12.36.030 Definitions.

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

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

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

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

Aboveground Facilities, see overhead facilities.

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

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

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

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

City Council means the elected governing body of the city.

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

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

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

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

Days means calendar days unless otherwise specified.

Duct means a single enclosed raceway for conductors or cable.

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

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

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

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

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

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

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

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

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

State means the State of Oregon.

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

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

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

Telecommunications Service means any service provided for the purpose of the transmission of information, including, but not limited to voice, video or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. ~~regardless of the transmission medium and whether or not the transmission medium is owned by the provider itself.~~ Telecommunication service includes all forms of telephone services and voice, video, data

or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act; and (6) commercial mobile radio services as defined in 47 C.F.R. 20.

Telecommunications System, see telecom--munications facilities above.

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

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

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

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

Utility Facilities means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services.

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

§ 12.36.040 **Registration of ~~carriers~~Telecommunication Providers.**

A. Purpose. The purpose of registration is:

1. To assure that all telecommunications ~~carriers-providers~~ who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city;
2. To provide the city with accurate and current information concerning the telecommunications ~~carriers-providers~~ who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city; and
3. To assist the city in the enforcement of this code and the collection of any city franchise fees or charges that may be due the city.

B. Registration Required.

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

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

~~Except as provided in division D. of this section, all telecommunications carriers having telecommunications facilities within the corporate limits of the city and all telecommunications carriers that offer or provide telecommunications service to customer premises within the city shall register.~~ The appropriate application and license from either the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

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 telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses or institutions within the city; and
4. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

C. Registration Application Fee. Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in the amount ~~of \$35, or as otherwise~~ established by resolution of the City Council.

D. Annual Registration Fee. Every communications provider shall pay an annual registration fee in an amount to be determined by resolution of the City Council. Unless otherwise agreed to in writing by the City, the fee shall be paid within 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. The annual registration fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

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

1. Telecommunications ~~carriers~~ providers that are owned and operated exclusively for its own use by the state or a political subdivision of this state; and
2. A private telecommunications network, provided that the network does not occupy any public rights-of-way of the city.

(Ord. 1036, passed 11-3-1999)

§ 12.36.050 Construction standards.

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

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

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

1. Unless the telecommunications ~~carrier~~ provider has first filed a registration statement with the city pursuant to § [12.36.040](#)B. of this code; and, if applicable,
2. Unless the telecommunications ~~carrier~~ provider has first applied for and been granted a franchise pursuant to § [12.36.070](#) of this code.

(Ord. 1036, passed 11-3-1999)

§ 12.36.060 Location of facilities.

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

1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with

permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.

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

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

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

1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;
2. The operations of the city or other governmental entity in or upon the public rights-of-way; and/or
3. The public interest.

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

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

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

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

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

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

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

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

(Ord. 1036, passed 11-3-1999)

§ 12.36.070 Telecommunications franchise.

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

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

1. The identity of the applicant;
2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;
3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities;
4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;

5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed; and

6. An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease.

C. Application and Review Fee.

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

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

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

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

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

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

H. Franchise Fee. ~~Each franchise granted by the city is subject to the city's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this code shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws.~~

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

2. Every telecommunications provider that uses the public rights of way in the City to provide telecommunications services without a franchise, whether or not the provider owns the telecommunications facilities used to provide its services or whether or not the provider is required to obtain a franchise pursuant to this Chapter, shall pay a right of way use fee in the

amount of seven percent (7%) of gross revenues from the provision of communications services to customers in the City—“gross revenues” meaning 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.

3. 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.

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

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

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

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

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

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

1. The information required pursuant to § [12.36.040](#).B of this code; and
2. Any information required pursuant to the franchise agreement between the city and the grantee.

K. Renewal Determinations. Within 90 days after receiving a complete application, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

1. The financial and technical ability of the applicant;
2. The legal ability of the applicant;

3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;
4. The applicant's compliance with the requirements of this code and the franchise agreement;
5. Applicable federal, state and local telecommunications laws, rules and policies; and
6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.

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

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

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.
2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this code.
3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.
4. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

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

1. Construction or operation in the city or in the public rights-of-way of the city without a construction permit;
2. Construction or operation at an unauthorized location;

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

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

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

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

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

8. Insolvency or bankruptcy of the grantee;

9. Violation of material provisions of this code; and

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

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

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

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

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

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

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

1. The misconduct was egregious;

2. Substantial harm resulted;

3. The violation was intentional;
4. There is a history of prior violations of the same or other requirements;
5. There is a history of overall compliance; or
6. The violation was voluntarily disclosed, admitted or cured.

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

(Ord. 1036, passed 11-3-1999)

§ 12.36.080 General franchise terms.

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

B. Damage to Grantee's Facilities. Unless directly and proximately caused by wilful, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any tele- 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.

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

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

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

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

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

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

H. Grantee Insurance. Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:
 - a. Three million dollars for bodily injury or death to each person;
 - b. Three million dollars for property damage resulting from any 1 accident; and
 - c. Three million dollars for all other types of liability.
2. Automobile liability for owned, non- owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident;
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000;
4. Comprehensive form premises; operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000;
5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the city, by registered mail, of a written notice addressed to the city of the intent to cancel or not to renew."
6. Within 60 days after receipt by the city of the notice, and in no event later than 30 days prior to the cancellation, the grantee shall obtain and furnish to the city evidence that the grantee otherwise meets the requirements of this section; and

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

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

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

(Ord. 1036, passed 11-3-1999)

§ 12.36.090 General provisions.

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

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

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

D. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this code is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the code shall not be affected thereby but shall be deemed as a separate, distinct and independent provision; and the holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this code shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this code,

then the provision shall be read to be preempted to the extent and/or the time required by law. In the event the federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, the provision shall thereupon return to full force and effect and shall thereafter be binding, without the requirement of further action on the part of the city, and any amendments hereto.

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

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

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

H. Compliance with Laws. Any grantee under this code shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term any franchise granted under this code, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

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

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

K. Confidentiality. The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

(Ord. 1036, passed 11-3-1999)



Supreme Court of Oregon, En Banc.

US WEST COMMUNICATIONS INC v. CITY OF EUGENE

US WEST COMMUNICATIONS, INC., Petitioner on Review, v. CITY OF EUGENE, an Oregon municipal corporation, Respondent on Review.

(CC 16-98-01463; CA A105859; SC S49254).

Argued and Submitted Sept. 4, 2003. -- December 18, 2003

David R. Goodnight, of Dorsey & Whitney LLP, Seattle, Washington, argued the cause for petitioner on review. On the briefs were Lawrence Reichman, Elizabeth Schwartz, and Julia E. Markley, of Perkins Coie LLP, Portland. Jerome S. Lidz, of Harrang Long Gary Rudnick P.C., Eugene, argued the cause for respondent on review. With him on the briefs were William F. Gary, Eugene, and Linda J. Kessell.

The primary question this case presents is whether a city may impose more than a seven-percent privilege tax on telecommunications carriers. We agree with the Court of Appeals that it may. We disagree, however, with the Court of Appeals' decision to reach a subsidiary issue-whether the statutes governing the Public Utility Commission (PUC) preempt cities from regulating telecommunications carriers. Accordingly, we affirm the Court of Appeals decision in part and vacate it in part.

US West Communications, Inc. (U.S. West), which is now known as Qwest, provides telecommunications services within the City of Eugene. Since 1990, U.S. West has operated under the terms of a franchise agreement between the city and U.S. West's predecessor.¹ That agreement, which expires in 2005, requires U.S. West to pay the city seven percent of the revenues derived from U.S. West's exchange access service less net uncollectibles in return for the "privilege [of] engag[ing] in a general communications business using the public [rights of] way."

In 1997, the city amended the Eugene City Code (ECC) to regulate telecommunications activities within the city. Among other things, the city imposed a two-percent annual registration fee on any person "engag[ing] in any telecommunications activity through a communications facility located in the city." ECC § 3.405(1); ECC § 3.415(1). The

city also required persons who “construct, place or locate any [telecommunications] facility in, upon, beneath, over or across any public right of way” to pay an annual seven-percent license fee.² ECC § 3.410(1); ECC § 3.415(2). Because U.S. West engages in telecommunications activities within the city, the city sought to recover the two-percent registration fee in addition to the seven-percent franchise fee.

In response, U.S. West brought this action for declaratory and injunctive relief. Among other things, U.S. West sought a declaration that ORS 221.515 bars the city from collecting both the two-percent registration fee and the seven-percent franchise fee.³ ORS 221.515(1) authorizes municipal governments to 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 * * * in an amount which may not exceed seven percent of the gross revenues * * * earned within the boundaries of the municipality.”

ORS 221.515(2) defines “gross revenues” as “revenues derived from exchange access services * * * less net uncollectibles.”⁴ Finally, ORS 221.515(3) provides that

“[a] telecommunications carrier paying the privilege tax authorized by this section shall not be required to pay additional compensation or consideration * * * to the municipality for its use of public streets, alleys, or highways * * *, and shall not be required to pay any additional tax or fee on the gross revenues that are the measure of the privilege tax.”

On cross-motions for summary judgment, the trial court ruled that ORS 221.515 prevents the city from recovering both the two-percent registration fee and the seven-percent franchise fee from U.S. West. The Court of Appeals reversed. *US West Communications v. City of Eugene*, 177 Or.App. 424, 431-32, 37 P.3d 1001 (2001). It recognized that ORS 221.515 places two limits on a city's ability to impose a tax or fee on telecommunications carriers⁵ but held that the city's registration fee does not run afoul of either limitation.

The court began by recognizing that ORS 221.515 distinguishes between two types of revenue: revenue derived from exchange access services and revenue derived from nonexchange access services. 177 Or.App. at 430-31, 37 P.3d 1001. Under ORS 221.515(3), “[a] telecommunications carrier * * * shall not be required to pay any additional tax or fee” on revenues derived from exchange access services. The registration fee is consistent with that limitation, the court reasoned, because the city imposes the fee solely on revenue derived from nonexchange access services. *Id.*⁶

The court recognized that ORS 221.515 imposes a second limitation on cities—no city may impose more than a seven-percent tax on telecommunications carriers for the privilege of using the city's public rights-of-way. ORS 221.515(3). The court explained that its decision in *AT & T Communications v. City of Eugene*, 177 Or.App. 379, 390-91, 35 P.3d 1029 (2001), rev. den., 334 Or. 491, 52 P.3d 1056 (2002), resolved whether the city's

registration fee ran afoul of that limitation. US West Communications, 177 Or.App. at 431, 37 P.3d 1001. In AT & T Communications, the court explained that the city had not imposed the registration fee to recover for the privilege of using the public rights-of-way, which ORS 221.515 would prohibit. 177 Or.App. at 390-91, 35 P.3d 1029. Rather, it had imposed the fee to recover for the privilege of operating within the city without regard to whether a telecommunications carrier used (or did not use) the public rights-of-way. Id. Because the registration fee did not come within the scope of the statutory prohibition, the Court of Appeals upheld it.

On review, U.S. West does not challenge the Court of Appeals' first conclusion; that is, U.S. West does not argue that the registration fee violates the statutory prohibition against imposing more than a seven-percent tax or fee on revenue derived from exchange access services. It recognizes, as it must, that the city code, properly interpreted, imposes the registration fee solely on revenue that telecommunications carriers derive from nonexchange access services.

US West focuses its arguments instead on the Court of Appeals' second conclusion. In U.S. West's view, ORS 221.515 expressly exempts telecommunications carriers that pay a seven-percent privilege tax from paying any additional tax or fee. US West acknowledged at oral argument that ORS 221.515 would not excuse it from paying ad valorem or other general taxes, but it argues that the statute prevents the city from imposing any fee or tax (other than the seven-percent privilege tax) on telecommunications carriers for the privilege of operating within the city.⁷ The city responds that the Court of Appeals correctly recognized that the limitations that ORS 221.515 places on municipal taxation are narrower than U.S. West contends.

Before turning to the parties' arguments, it is important to clarify the question their arguments present. The question is not whether ORS 221.515 authorizes the city to impose its two-percent registration fee. See *Jarvill v. City of Eugene*, 289 Or. 157, 169, 613 P.2d 1 (1980) (holding that, under the "home rule" provisions of the Oregon Constitution, cities do not need legislative authorization to impose taxes).⁸ Rather, the question is whether state or federal law prohibits the city from doing so. See id. (stating that proposition). With that question in mind, we turn to the text of ORS 221.515. See *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 611, 859 P.2d 1143 (1993) (describing methodology for statutory construction).

ORS 221.515(1) authorizes the city to impose a privilege tax on a telecommunications carrier "for the use of [the city's] streets, alleys or highways" and provides that the amount of that tax "may not exceed seven percent" of the carrier's gross revenue, which ORS 221.515(2) defines as "revenues derived from exchange access services * * * less net uncollectibles." ORS 221.515(3) specifically limits a city's ability to tax a telecommunication carrier's revenue. It provides that a telecommunications carrier paying the seven-percent privilege tax "shall not be required to pay any additional fee, compensation or consideration * * * to the municipality for its use of public streets, alleys, or highways," nor shall it be required to pay any additional tax or fee on revenues derived from exchange access services.

By its plain terms, ORS 221.515(3) prohibits a city from recovering more than a seven-percent tax or fee from a telecommunications carrier for the privilege of using the public rights-of-way. However, that subsection does not prohibit a city from recovering an additional tax or fee for any other activity that a telecommunications carrier might undertake within a city, as long as that tax or fee is based on revenue derived from nonexchange access services. As the Court of Appeals recognized, the specific limitations that ORS 221.515(3) places on municipal taxation are narrower than U.S. West perceives.

US West, however, advances three arguments why the statute's text and context should lead to a different conclusion. In its opening brief, U.S. West recognizes that, read literally, ORS 221.515 limits only the city's ability to recover a privilege tax for the use of public rights-of-way. It reasons, however, that a telecommunications carrier cannot operate without using a city's rights-of-way. It follows, U.S. West reasons, that capping a city's ability to recover a tax for the use of its rights-of-way also caps a city's ability to recover a tax for the privilege of operating within the city.

The legislature, however, did not draw the statute as broadly as U.S. West construes it. In writing ORS 221.515, the legislature focused only on a city's ability to recover a tax for one narrow type of activity, viz., a carrier's use of the city's rights-of-way. The legislature said nothing about a city's ability to tax other business activities that a telecommunications carrier might undertake within the city limits. The legislature legitimately could distinguish those two concepts; that is, the legislature logically could choose to limit a city's ability to recover a tax for a carrier's use of its streets without also limiting a city's authority to recover other taxes or fees from carriers that do business within the city's borders. We cannot adopt the interpretation of ORS 221.515 that U.S. West urges without rewriting the statute's terms, a task that we cannot undertake. See PGE, 317 Or. at 611, 859 P.2d 1143 (explaining that courts may not rewrite statutes to insert what legislature omitted).

US West advances an alternative argument in its reply brief. It notes that ORS 221.515 (1) authorizes a city to impose the privilege tax on a "telecommunications carrier operating within the municipality." It follows, U.S. West reasons, that ORS 221.515(1) both authorizes and limits cities to a seven-percent tax for the privilege of operating within the city. US West's reading of the quoted wording misperceives the role that wording plays.

The phrase on which U.S. West bases its alternative argument, "operating within the municipality," is a participial phrase that modifies the noun "carrier." It defines the entity on whom a tax may be imposed; it does not define the activities for which the tax may be imposed. Were there any doubt about the matter, the remainder of ORS 221.515 removes it. ORS 221.515(1) states that cities may impose a tax for the privilege of using the city's streets, alleys, and highways; it does not address whether a city may (or may not) impose a tax for the privilege of operating within city limits. ORS 221.515(3) then provides that a carrier may not be required to pay an additional tax "for its use of [a city's]

public streets, alleys or highways.” We cannot convert that specific limitation into the broader prohibition that U.S. West urges.

Finally, U.S. West relies on an uncodified section of the 1989 act of which ORS 221.515 was a part. That uncodified section provides that, on the effective date of the act, “existing franchise fees or privilege taxes shall be superseded by sections 4, 5 and 7 of this Act.”² Or. Laws 1989, ch. 484, § 8. However, U.S. West acknowledged in oral argument, and we agree, that the legislature did not intend the 1989 act to abrogate all taxes that a city might impose on a telecommunications carrier. Given the specific focus of the text, which is on franchise fees and privilege taxes for the use of city streets, we agree with the city that that provision does not reflect a legislative intent to exempt telecommunications carriers from all municipal taxes and fees other than the seven-percent privilege tax. Considered in context, that section does not advance U.S. West's position.

Having examined the text and context of ORS 221.515, we conclude that the legislature's intent is clear. ORS 221.515 does not prohibit the city from recovering its two-percent registration fee from telecommunications carriers.

US West raises a second issue on review. It argues that, with one exception, ORS chapter 759 gives the PUC exclusive authority to regulate telecommunications carriers. US West acknowledges that the legislature specifically authorized cities and municipalities to “prescribe by ordinance or otherwise, the terms and conditions * * * upon which any telecommunications carrier may be permitted to occupy the streets, highways or other public property within such municipality.” ORS 221.510(2).¹⁰ US West argues, however, that some sections of the city code go beyond regulating rights-of-way and intrude into the regulatory area reserved for the PUC. More specifically, U.S. West identifies seven sections of the city's code that, in its view, exceed the city's authority.¹¹

The city responds that, as a general matter, the legislature did not give the PUC exclusive authority over telecommunications carriers. In any event, the city contends that the specific regulations that U.S. West challenges come within the statute permitting cities to “prescribe * * * the terms and conditions * * * upon which any telecommunications carrier may be permitted to occupy the streets, highways or other public property within [a city].” ORS 221.510(2)(a). Although the Court of Appeals reached the merits of this issue, we conclude that it is not appropriate to do so. The issue presents only a hypothetical question and is not ripe for adjudication. See *Oregon Medical Association v. Rawls*, 281 Or. 293, 296, 574 P.2d 1103 (1978) (recognizing that courts have independent obligation to determine whether issue is justiciable).

As noted, U.S. West identifies seven code sections that, it contends, ORS chapter 759 preempts. Five sections are contingent on the occurrence of an event. Section 3.425(1), for instance, requires a licensee to remove a communications facility if the licensee closes the facility and if the city files a timely request that the facility be removed. US West has not alleged, however, that it has closed or anticipates closing a facility within the city, much less that the city has asked U.S. West to remove such a facility. The remaining two code sections that U.S. West has identified authorize the city manager to adopt

administrative rules. One section authorizes the city manager to adopt rules that “may include” criteria for determining whether an operator has sufficient resources to install a telecommunications facility in a public right of way. At least as far as the record reveals, the city manager has not adopted the rule that U.S. West seeks to challenge, nor has U.S. West sought to install a telecommunications facility in a public right of way.

In determining whether U.S. West's preemption claim is justiciable, we begin with the terms of the declaratory judgment statute. See *Budget Rent-A-Car v. Multnomah Co.*, 287 Or. 93, 95, 597 P.2d 1232 (1979) (applying that principle); cf. *Leo v. Keisling*, 327 Or. 556, 560, 964 P.2d 1023 (1998) (stating that courts should decide cases on subconstitutional grounds before reaching constitutional issues). ORS 28.020 authorizes persons whose “rights, status or other legal relations are affected” to seek a declaratory judgment. As the legislature's use of the present tense phrase “are affected” implies, the controversy must involve a dispute based on present facts rather than on contingent or hypothetical events. See *TVKO v. Howland*, 335 Or. 527, 534, 73 P.3d 905 (2003) (stating that principle); *Brown v. Oregon State Bar*, 293 Or. 446, 449, 648 P.2d 1289 (1982) (same); *Cummings Constr. v. School Dist. No. 9*, 242 Or. 106, 110, 408 P.2d 80 (1965) (same). In *Cummings Constr.*, the plaintiffs failed to show that their claim was justiciable “because they can point to no existing state of facts which give them present legal rights against the defendant, or an existing state of facts which threatens their legal rights.” 242 Or. at 110, 408 P.2d 80.¹²

US West stands in the same position as the plaintiffs in *Cummings Constr.* It “can point to no existing state of facts that give [it] present legal rights against the [city], or an existing state of facts which threatens [US West's] legal rights.” *Cummings Constr.*, 242 Or. at 110, 408 P.2d 80. Rather, U.S. West seeks a declaration concerning city code provisions that the city may or may not apply to it in the future. Under the reasoning in *TVKO* and *Cummings*, that is not sufficient. Because U.S. West's claim that ORS chapter 759 preempts various city code provisions is not ripe for adjudication, we vacate the portion of the Court of Appeals' decision addressing that claim.

The decision of the Court of Appeals is affirmed in part and vacated in part. The judgment of the circuit court is reversed in part and vacated in part.

FOOTNOTES

1. If certain conditions are met, a city either may enter into a franchise agreement that determines the “charges and fees upon which any public utility * * * may be permitted to occupy the streets, highways or other public property within such city,” ORS 221.420(2), or may impose a privilege tax “for the [utility's] use of [the] streets, alleys or highways” within the city, ORS 221.450.

2. A telecommunications facility “includes radio transmitting towers, other supporting structures, and associated facilities, including fiber, used to transmit telecommunications signals.” ECC § 3.005.

3. US West also sought a declaration that ORS chapter 759 prevents the city from imposing certain regulatory requirements on telecommunications carriers. We discuss that claim below.

4. Exchange access service is essentially basic local telephone service. Nonexchange access service includes long distance, call waiting, and similar services.

5. The court held, and no one disputes, that U.S. West is a “telecommunications carrier” within the meaning of ORS 221.515. 177 Or.App. at 430, 37 P.3d 1001.

6. The Court of Appeals observed that, although the city code defines the registration fee as two percent of an entity's “gross revenues,” ECC § 3.415(1), the code also provides that the city may recover the fee only to the extent that it is consistent with state and federal law, ECC § 3.415(4). 177 Or.App. at 430, 37 P.3d 1001. Reading those code sections in conjunction with ORS 221.515, the court held that, under the terms of the code, the city may base the registration fee for a telecommunications carrier solely on revenue derived from nonexchange access services. Id. at 431, 37 P.3d 1001. The court noted that, although the city previously had taken a different position, it “now concedes that it cannot collect more than ORS 221.515 permits.” Id.

7. As noted, U.S. West currently pays a seven-percent fee under a franchise agreement that expires in 2005. US West treats the franchise fee as the equivalent of the seven-percent license fee under the city code.

8. Jarvill thus signaled a variation on, if not a departure from, the older view, stated without reference to the home rule provisions of the Oregon Constitution, that “the power to tax is not inherent in a municipal corporation”; rather, it is “a delegated authority conferred by the [legislature].” Eugene Theatre et al. v. Eugene et al., 194 Or. 603, 617, 243 P.2d 1060 (1952).

9. Sections 4, 5, and 7 of the 1989 act are codified as ORS 221.510, 221.515, and 759.105.

10. Consistently, ORS 759.405(4) provides that “[n]othing in this section affects the authority of a city or municipality to manage the public rights of way * * * under * * * [ORS] 221.510 and 221.515.”

11. In its opening brief, U.S. West notes the following seven code sections. First, a licensee may not assign or transfer a license to use the city's streets without the city's prior written approval. ECC § 3.410(8). Second, a licensee that “ceases to operate a communications facility located within the city shall, upon [timely] written request of the city * * *, promptly remove the facility.” ECC § 3.425(1). Third, subject to certain exceptions, the city may not issue a permit to cut a street surface “for installation of any utility or facility for a period of five years from the time that the street is constructed or resurfaced.” ECC § 7.295(2). Fourth, the code authorizes the city manager to adopt administrative rules. ECC § 3.430. “Such rules may include * * * [c]riteria for

determining whether the applicant for a license is financially, technically, and legally qualified to successfully complete any proposed facility to be installed in, on, under or over the public right-of-way.” ECC § 3.430(b). Fifth, operators must respond to requests for information from the city, “including requests for information regarding [the operator's] plans for construction, operation and repair.” ECC § 3.420(1). Sixth, if a person seeks a permit to perform work affecting a public way, the permit “may require the permittee to install capacity in excess of the permittee's or other providers' needs.” ECC § 7.302(4). Finally, the code provides that administrative rules issued by the city manager shall include “[s]tandards that insure initial providers in an area provide extra capacity for later providers” as well as a procedure for initial providers to recover a portion of their costs. ECC § 7.302(6).

12. In holding that declaratory judgment claims were not justiciable, the court has not always specified whether its decision rested on a subconstitutional or on a constitutional basis. We base our decision today solely on statutory grounds.

KISTLER, J.

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FRANCHISE FEE SURVEY - 2012

League of Oregon Cities - January 2012

TABLE 1: TELECOMMUNICATIONS FRANCHISE AGREEMENTS

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Adams	CenturyLink	ILEC	Franchise Fee	7%	\$1,285	\$1,623	\$1,708
Amity	Frontier Communications	ILEC	Franchise Fee	4%	\$1,383	\$1,740	\$1,643
Ashland	CenturyLink	ILEC	Franchise Fee	7%	\$105,354	\$140,899	\$132,652
	Sprint	Long Haul Carrier	Franchise Fee	Not Available	\$42,624	\$42,788	\$41,149
	AT&T	Long Haul Carrier	Per Foot Fee	Greater of \$4,620 or \$2.88/foot	\$4,620	\$4,620	\$4,620
	Miscellaneous	CLEC	Franchise Fee	Not Available	\$1,652	-	\$1,435
Astoria	CenturyLink	ILEC	Franchise Fee	7%	\$63,864	\$72,538	\$78,983
Athena	CenturyLink	ILEC	Franchise Fee	7%	\$5,026	\$5,971	\$6,352
	Granite Telecommunications LLC	CLEC	Franchise Fee	7%	-	\$55	-
Aumsville	SCS Communications	CLEC	Franchise Fee	7%	\$2,337	\$2,593	\$2,467
	Frontier Communications	CLEC	Franchise Fee	7%	\$4,397	\$5,857	\$6,801
Aurora	CenturyLink	ILEC	Franchise Fee	5%	\$4,831	\$4,985	\$6,472
Baker City	Pacific Northwest Bell	ILEC	Franchise Fee	7%	\$57,712	\$62,451	\$67,071
Bandon	Frontier Communications	ILEC	Franchise Fee	3%	\$3,781	\$3,477	-
	Comspan	CLEC	Franchise Fee	3%	\$7,538	\$7,080	\$7,417
Banks	Frontier Communications	ILEC	Franchise Fee	7%	\$3,711	\$6,525	\$6,070
Bay City	CenturyLink	ILEC	Franchise Fee	4%	\$2,929	\$3,207	\$3,608
Beaverton	Frontier Communications	ILEC	Franchise Fee	4.03%	\$99,685	\$122,341	\$155,416
	CenturyLink	ILEC	Franchise Fee	5%	\$13,819	\$16,169	\$16,857
	Electric Lightwave	CLEC	Franchise Fee	5%	\$99,920	\$72,648	\$85,981
	Verizon MCI WorldCom Fiber	CLEC	Franchise Fee	4.03%	-	\$1,624	\$1,624

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Beaverton	AT&T Fiber	CLEC	Per Foot Fee	\$1.00	\$2,371	\$2,371	\$2,371
	Verizon MCI Metro Access	CLEC	Franchise Fee	4.03%	\$42,504	\$40,788	\$35,392
	XO Communications	CLEC	Franchise Fee	4.03%	\$7,500	\$7,000	\$6,500
	Time Warner	CLEC	Franchise Fee	5%	\$38,979	\$26,317	\$21,968
	Above Net Metro Fiber	CLEC	Franchise Fee	4.03%	-	-	\$6,000
	Metro Telecom of Oregon	CLEC	Franchise Fee	5.1%	\$2,993	\$302	\$940
	Qwest Temporary Fiber	CLEC	Per Foot Fee	\$2.00	-	-	\$19,747
	Bulls Eye	CLEC	Franchise Fee	5.1%	\$1,044	\$283	-
	Inetworks Group	CLEC	Franchise Fee	7%	\$182	\$684	-
	World Communications	CLEC	Franchise Fee	7%	\$1,868	\$1,003	-
	Com Tel	CLEC	Franchise Fee	5.1%	\$397	-	-
	New Horizon	CLEC	Franchise Fee	5.1%	\$258	-	-
	Trans National	CLEC	Franchise Fee	5.1%	\$222	-	-
	Mitel Netsolutions	CLEC	Franchise Fee	5.1%	\$804	-	-
Bend	CenturyLink	ILEC	Franchise Fee	7%	\$294,800	\$347,760	\$495,080
	Quantum	CLEC	Franchise Fee	7%	\$49,270	\$49,190	\$41,880
Boardman	CenturyLink	ILEC	Franchise Fee	5%	\$5,536	\$5,258	\$5,596
Brookings	Frontier Communications	ILEC	Franchise Fee	3.3%	\$11,366	\$14,596	\$16,303
Brownsville	CenturyLink	ILEC	Franchise Fee	7%	\$8,242	\$8,199	\$8,045
Canby	Canby Telecommunications Association (CTA)	ILEC	Franchise Fee	7%	\$44,000	\$44,500	\$47,056
	WAVE Broadband	CLEC	Franchise Fee	7%	\$41,000	\$41,703	\$45,000
Cannon Beach	CenturyLink	ILEC	Franchise Fee	4%	\$13,029	\$14,685	\$14,904
Clatskanie	Frontier Communications	ILEC	Franchise Fee	7%	\$7,226	\$8,334	\$9,096
Columbia City	CenturyLink	ILEC	Franchise Fee	4%	\$2,634	\$3,604	\$3,845
Coos Bay	Frontier Communications	ILEC	Privilege Tax	7%	\$52,639	\$67,102	\$81,067
	ORCA Communications	CLEC	Franchise Fee	5%	\$21,184	\$18,559	\$16,482
	BullsEye Telecom ME	CLEC	Privilege Tax	7%	\$238	-	-
	Birch Communications	CLEC	Privilege Tax	7%	\$39	-	-
Coquille	Frontier Communications	ILEC	Franchise Fee	7%	\$9,936	\$32,201	\$14,884
Cornelius	Integra/ELI	CLEC	Franchise Fee/ \$2 Per Foot Fee	5%	-	-	-
	Frontier Communications	ILEC	Franchise Fee	5%	\$11,269	\$15,133	\$49,418

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Corvallis	CenturyLink	ILEC	Franchise Fee	7%	\$150,586	\$171,191	\$251,045
	Electric Lightwave	CLEC	Franchise Fee	7%	\$3,842	\$3,092	\$3,579
	Preferred Long Distance	CLEC	Franchise Fee	7%	\$601	\$1,112	\$1,522
	LS Networks	CLEC	Franchise Fee	7%	\$5,447	\$4,757	\$4,176
	Eschelon Telecom	CLEC	Franchise Fee	7%	\$51,132	\$50,416	\$72
	Comcast IP Phone	CLEC	Franchise Fee	7%	\$148,434	\$124,662	\$92,937
	Transnational Communications	CLEC	Franchise Fee	7%	\$57	\$219	-
Cottage Grove	Qwest	ILEC	Franchise Fee	7%	\$48,588	\$55,506	\$61,270
Creswell	CenturyLink	ILEC	Franchise Fee	5%	\$18,475	\$23,334	\$16,846
Culver	CenturyLink	ILEC	Franchise Fee	7%	\$3,553	\$3,826	\$4,145
Dallas	CenturyLink	ILEC	Franchise Fee	7%	\$82,000	\$65,117	\$80,755
Damascus ¹	Frontier Communications	ILEC	Franchise Fee	5%	-	-	\$23,891
Dayton	Frontier Communications	ILEC	Franchise Fee	7%	\$2,945	\$12,535	-
Depoe Bay	CenturyLink	ILEC	Franchise Fee	4%	\$9,711	\$9,717	\$9,476
Detroit	Frontier Communications	ILEC	Franchise Fee	5%	\$880	\$1,323	\$1,617
Dufur	Northstate Telephone	ILEC	Franchise Fee	2%	Not Available		
Dundee ²	Frontier Communications	ILEC	Franchise Fee	7%	\$3,051	\$16,880	\$4,724
Eagle Point	CenturyLink	ILEC	Franchise Fee	7%	\$16,836	\$17,691	\$22,443
Echo	CenturyLink	ILEC	Franchise Fee	7%	\$2,553	\$2,813	\$3,854
Elgin	Frontier Communications	ILEC	Franchise Fee	4%	\$5,400	Not Available	Not Available
Estacada	Cascade Utilities Inc.	ILEC	Franchise Fee	7%	\$26,738	\$22,157	\$23,143
Eugene	CenturyLink	ILEC	Franchise Fee	7%	Not Available		
			Privilege Tax	2%			
	Over 120 different CLECs	CLEC	Franchise Fee	7%	Not Available		
			Privilege Tax	2%			
	Long Haul Carriers	CLEC	Per Foot Fee	\$4.00	Not Available		
	Private Telecommunication Networks (7)	Long Haul Carrier	Per Foot Fee	\$2.00	Not Available		
Fairview	Frontier Communications	ILEC	Privilege Tax	7%	\$15,000	\$72,295	\$15,793

¹ Voters removed the 5% franchise fee from telephone, cable and solid waste in 2008.

² In FY2009-10 Verizon paid the city \$13,149 for prior returns audit which is included in the amount.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Falls City	CenturyLink	ILEC	Franchise Fee	5%	\$2,647	\$3,169	\$3,613
Florence	CenturyLink	ILEC	Franchise Fee	7%	\$53,265	\$58,923	\$64,868
Forest Grove	Frontier Communications	ILEC	Privilege Tax	7%	\$31,710	\$41,927	\$54,557
	Electric Lightwave (New)	CLEC	Franchise Fee	5%	-	-	-
Fossil	CenturyLink	ILEC	Franchise Fee	4%	\$2,321	\$2,396	\$2,436
Gates	Frontier Communications	ILEC	Franchise Fee	7%	\$514	\$425	-
Gervais	Gervais Telephone Company	ILEC	Franchise Fee	4%	\$3,933	\$3,671	\$3,127
Grants Pass	CenturyLink	ILEC	Privilege Tax	7%	\$138,778	\$157,444	\$199,527
	Contel Telecom	CLEC	Privilege Tax	7%	\$1,204	-	-
	Preferred Long Distance	CLEC	Privilege Tax	7%	\$1,134	\$3,396	\$3,414
	Hunter Communications	CLEC	Privilege Tax	7%	\$1,785	\$1,884	-
	LS Networks	CLEC	Privilege Tax	7%	\$22,532	\$16,738	\$12,181
	BullsEye Telecom Inc.	CLEC	Privilege Tax	7%	\$171	\$54	-
Halfway	Pine Telephone Systems, Inc.	ILEC	Franchise Fee	4%	\$1,267	\$1,321	\$1,386
Halsey	Roome Telecommunications	ILEC	Franchise Fee	5%	\$2,381	\$2,605	\$2,835
Happy Valley	Frontier Communications	ILEC	Franchise Fee	7%	\$10,466	\$11,355	\$15,269
	CenturyLink	ILEC	Franchise Fee	7%	\$9,879	\$11,296	\$15,881
	Preferred Long Distance	ILEC	Franchise Fee	7%	\$69	\$49	-
Harrisburg ³	CenturyLink	ILEC	Franchise Fee	7%	\$8,500	\$10,577	\$12,724
	AT&T	ILEC	Per Foot Fee	\$4.65	\$9,000	\$9,414	\$8,965
Hermiston	CenturyLink	ILEC	Franchise Fee	5%	\$36,092	\$41,635	\$54,981
	Eastern Oregon Telecom	ILEC	Franchise Fee	3%	\$4,088	\$7,280	\$7,703
	Morrow Development Corporation	CLEC	Franchise Fee	3%	\$571	\$414	\$423
	EZ Wireless	CLEC	Franchise Fee	3%	-	\$10	\$10
	M2 Machmedia	CLEC	Franchise Fee	3%	-	-	-

³ The per foot fee was \$4.22 in FY2008-09 and \$4.43 in FY2009-10.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Hillsboro	Frontier Communications	ILEC	Franchise Fee	7%	\$186,386	\$231,287	\$291,287
	AboveNet Communications	CLEC	Franchise Fee	\$1,000 or 3.5%	\$4,307	\$4,000	\$1,000
	Alaska Communications System	Long Haul Carrier	Franchise Fee	\$1,000 or 3.5%	\$4,000	\$5,000	\$5,000
	Integra Telecommunications	CLEC	Franchise Fee	\$1,000 or 3.5%	\$26,704	\$39,940	\$43,353
	Level 3 Communications	CLEC	Franchise Fee	\$1,000 or 3.5%	\$4,000	\$4,000	\$4,000
	CenturyLink	CLEC	Franchise Fee	\$1,000 or 3.5%	\$4,000	\$6,000	\$0
	TATA Communications	Long Haul Carrier	Franchise Fee	\$1,000 or 3.5%	\$4,000	\$4,000	\$8,000
	TW Telecom	CLEC	Franchise Fee	\$1,000 or 3.5%	\$17,527	\$31,835	\$16,088
	MCI Communications	CLEC	Franchise Fee	\$1,000 or 3.5%	\$16,603	\$10,573	\$39,426
	XO Communications	CLEC	Franchise Fee	\$1,000 or 3.5%	\$4,000	-	-
Hines	CenturyLink	ILEC	Franchise Fee	7%	\$5,742	\$6,012	\$4,560
Hood River ⁴	CenturyLink	ILEC	Franchise Fee	7%	\$41,778	\$37,697	\$29,614
Hubbard	CenturyLink	ILEC	Franchise Fee	Not Available	\$7,885	\$9,694	\$11,372
	T-Mobile	ILEC	Franchise Fee	Not Available	\$6,153	\$5,594	\$5,085
Imbler	Frontier Communications	CLEC	Franchise Fee	3%	\$440	-	-
Independence ^{5,6}	CenturyLink	ILEC	Franchise Fee	7%	\$16,194	\$19,424	\$23,259
	US Sprint (Nextel)	Long Haul Carrier	Flat Rate	\$13,425 + CPI-W annually	\$16,947	\$51,709	-
Island City	LightSpeed Networks Inc.	CLEC	Franchise Fee	7%	Not Available		
Jacksonville	CenturyLink	ILEC	Franchise Fee	5%	\$11,385	\$13,031	\$14,692
Jefferson	CenturyLink	ILEC	Franchise Fee	7%	\$8,728	\$10,644	\$13,037
John Day	CenturyLink	ILEC	Franchise Fee	7%	\$15,832	\$20,182	\$17,115
Johnson City	CenturyLink	ILEC	Franchise Fee	4.3%	\$620	\$754	\$1,013
Jordan Valley	Oregon Idaho Utilities	ILEC	Franchise Fee	4%	\$1,400	\$1,044	\$1,800
Joseph	Frontier Communications	ILEC	Franchise Fee	7%	\$7,208	\$11,436	\$8,738

⁴ Hood River's franchise fee rate increased from 4% to 7% effective Jan. 1, 2010.

⁵ FY2008-09 the city received a settlement payment of \$2,631.86 from Qwest (now CenturyLink) which is not included in the total.

⁶ FY2009-10 includes prior years' payments of \$34,762.10 from US Sprint (Nextel).

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Junction City	CenturyLink	ILEC	Franchise Fee	7%	\$20,483	\$23,812	\$27,966
	Preferred Long Distance	CLEC	Franchise Fee	7%	\$69	\$55	\$56
	Frontier Communications	CLEC	Franchise Fee	7%	\$8,378	\$7,500	\$7,500
Keizer	CenturyLink	ILEC	Franchise Fee	7%	\$75,828	\$90,944	\$114,260
	Preferred Long Distance	CLEC	Franchise Fee	7%	\$120	\$330	\$230
Klamath Falls	Cal-Ore Telecommunication	CLEC	Franchise Fee	7%	\$14,323	\$1,063	-
	CenturyLink	ILEC	Franchise Fee	7%	\$89,341	\$106,937	\$134,771
	Hunter Communications	CLEC	Franchise Fee	7%	\$4,274	\$1,541	-
	Lightspeed Networks, dba LS Networks	CLEC	Franchise Fee	7%	\$32,867	\$14,101	\$18,329
	Charter Communications	CLEC	Franchise Fee	5%	\$1,773	\$2,098	\$2,494
Lafayette	Sprint	Long Haul Carrier	Per Foot Fee	\$1.00 + CPI	\$6,537	\$6,537	\$7,937
	Frontier Communications	ILEC	Franchise Fee	7%	\$2,451	\$2,866	\$3,565
Lakeview	CenturyLink	ILEC	Franchise Fee	7%	\$22,687	\$23,193	\$24,884
Lebanon	CenturyLink	ILEC	Franchise Fee	7%	\$53,159	\$55,356	\$61,982
Lincoln City	CenturyLink	ILEC	Privilege Tax	7%	\$52,198	\$54,607	\$91,726
	Coastcom	CLEC	Franchise Fee	5%	\$4,496	\$3,187	\$790
Lowell	CenturyLink	ILEC	Franchise Fee	7%	\$3,600	\$4,005	\$4,611
Lyons	Stayton Cooperative Telephone Company (SCTC)	ILEC	Franchise Fee	4%	\$2,838	\$2,830	\$2,973
Madras	CenturyLink	ILEC	Franchise Fee	7%	\$29,613	\$31,998	\$35,860
	Bend Broadband (New)	CLEC	Franchise Fee	7%	-	-	-
	Quantum	CLEC	Franchise Fee	7%	\$731	\$700	\$700
Malin	CenturyLink	ILEC	Franchise Fee	4%	\$1,739	\$1,721	\$1,885
Manzanita	RTI-Nehalem Telecom	ILEC	Franchise Fee	3%	\$6,857	\$7,212	\$6,266
Maupin ⁷	CenturyLink	ILEC	Franchise Fee	5%	\$3,188	\$3,384	\$3,334
	WiTel Communications	Long Haul Carrier	Per Foot Fee	\$3.6407	\$62,687	\$61,578	\$61,504
McMinnville	Frontier Communications	ILEC	Franchise Fee	7%	\$56,261	\$153,312	\$90,475
Metolius	CenturyLink	ILEC	Franchise Fee	7%	\$1,664	\$1,841	\$2,143
Milwaukie	CenturyLink	ILEC	Franchise Fee	7%	\$83,137	\$142,443	\$165,130

⁷ The per foot fee was \$3.5721 in FY2008-09 and \$3.5763 in FY2009-10.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Monmouth	MINET	CLEC	Franchise Fee	5% TV 7% Phone	\$52,822	\$52,343	\$46,995
	CenturyLink	ILEC	Franchise Fee	7%	\$8,623	\$15,767	\$19,186
Myrtle Creek	Frontier Communications	ILEC	Franchise Fee	7%	\$33,253	\$35,446	\$37,248
	Sprint Nextel	Long Haul Carrier	Franchise Fee	\$5,940 + CPI	\$11,526	\$11,363	\$11,363
	Frontier Communications	Long Haul Carrier	Per Foot Fee	\$1/ft. + CPI-W	\$13,602	\$13,130	\$11,939
	AT&T	Long Haul Carrier	Per Foot Fee	\$1/linear ft.	\$10,937	\$10,937	\$10,937
Myrtle Point ⁸	Frontier Communications	ILEC	Franchise Fee	5%	\$3,985	\$11,318	\$6,159
Nehalem	RTI-Nehalem Telecom	ILEC	Franchise Fee	4%	\$2,090	\$2,083	\$1,804
Newberg	Frontier Communications	ILEC	Franchise Fee	7%	\$40,301	\$56,718	\$72,524
North Bend ⁹	Frontier Communications	ILEC	Franchise Fee	6%	\$25,592	\$31,319	\$37,960
	Birch Communications	CLEC	Franchise Fee	6%	\$214	-	-
	ORCA	CLEC	Franchise Fee	5%	\$2,491	\$2,108	\$1,960
North Plains ¹⁰	CenturyLink	ILEC	Franchise Fee	7%	\$7,106	\$16,312	\$7,964
			Privilege Tax	5%	\$617	\$382	\$820
	Comcast	CLEC	Privilege Tax	5%	\$5,121	\$4,168	\$3,716
	Other phone providers (Preferred Long Distance, Accessline Communications, XO Communications)	CLEC	Privilege Tax	5%	\$991	\$1,688	\$994
North Powder	CenturyLink	ILEC	Franchise Fee	7%	\$1,802	\$2,017	\$2,331
Oakridge	CenturyLink	ILEC	Franchise Fee	7%	\$16,273	\$15,587	\$9,903
Ontario	CenturyLink	ILEC	Franchise Fee	7%	\$65,000	Not Available	Not Available

⁸ FY2009-10 revenue includes privilege audit payment of \$6,051.

⁹ In 2009 the city received a settlement check from Frontier Communications of \$24,094 which is not included in these figures.

¹⁰ In FY2008-09 the city received a settlement check of \$1,872.64, which is not included in these figures.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Oregon City ¹¹	Beavercreek Cooperative Telephone Company	CLEC	Franchise Fee	7%	\$3,265	\$261	\$272
	Qwest Communications Company (QCC)	ILEC	Per Foot Fee	\$2.75	-	-	-
	CenturyLink	ILEC	Franchise Fee	7%	\$92,642	\$133,241	\$145,591
	Level 3 Communications LLC	Long Haul Carrier	Per Foot Fee	\$2.75	\$2,585	\$17,465	\$17,465
	Electric Lightwave LLC (Integra) (New)	CLEC	Franchise Fee	Greater of 5% or minimum annual fee	-	-	-
	TCG Joint Venture Holdings Inc. dba TCG Oregon (New)	CLEC	Franchise Fee	Greater 5% or \$2.75 per ft.	-	-	-
	TW telecom of Oregon LLC (New)	CLEC	Franchise Fee	Greater of 5% or minimum annual fee	-	-	-
Philomath	Pioneer Telephone	ILEC	Franchise Fee	7%	\$18,063	\$20,556	\$23,733
Phoenix	CenturyLink	ILEC	Franchise Fee	7%	\$15,415	\$18,390	Not Available
	Preferred Long Distance C/O Billsoft Services	CLEC	Franchise Fee	7%	\$286	\$339	Not Available
	Comtel Telcom Assets	CLEC	Franchise Fee	7%	\$168	\$197	Not Available
Portland	Level 3	CLEC	Franchise Fee	5%	\$10,155	\$9,440	Not Available
	XO	CLEC	Franchise Fee	5%	\$429,483	\$2,828,338	Not Available
	TW Telecom	CLEC	Franchise Fee	5%	\$608,791	\$1,194,064	Not Available
	Integrated Regional Network Enterprise (IRNE)	CLEC	Franchise Fee	5%	\$28,021	\$26,980	Not Available
	AboveNet	CLEC	Franchise Fee	5%	\$17,994	\$14,000	Not Available
	TCG	CLEC	Franchise Fee	5%	\$244,022	\$266,413	Not Available
	ELI	CLEC	Franchise Fee	5%	\$763,302	\$768,801	Not Available
	MCI Metro	CLEC	Franchise Fee	5%	\$373,885	\$127,313	Not Available

¹¹ The per foot fee for QCC and Level 3 Communications was increased from \$1.50 to \$2.75 on Nov. 2, 2011.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Portland	McLeod USA	CLEC	Franchise Fee	5%	\$76,148	\$1,646,751	Not Available
	OnFiber	CLEC	Franchise Fee	5%	\$20,000	\$19,000	Not Available
	360 Networks	CLEC	Franchise Fee	5%	\$151,726	\$87,839	Not Available
	Comcast IP Phone	CLEC	Franchise Fee	5%	\$1,208,809	\$1,062,365	Not Available
	VSNL	Point to Point	Per Foot Fee	\$3.05	\$143,034	\$80,810	Not Available
	AT&T Long Distance	Point to Point	Per Foot Fee	\$3.10	\$247,287	\$244,718	Not Available
	NW Metal Fab	Telecom Conduit	Franchise Fee	5%	\$15,000	\$14,000	Not Available
	FSH Communications Long Distance	Public Phone Booth	Franchise Fee	25%	\$986	\$2,674	Not Available
	Broadwing Communications	Point to Point	Per Foot Fee	\$2.97	\$13,133	\$12,000	Not Available
	FTV Communications	Point to Point	Per Foot Fee	\$2.86	-	-	Not Available
	Qwest Communications	Point to Point	Per Foot Fee	\$2.85	\$42,375	\$41,613	Not Available
	Sprint Communications	Point to Point	Per Foot Fee	\$2.99	\$201,179	\$197,604	Not Available
	WCI Cable	Point to Point	Per Foot Fee	\$2.95	\$103,960	\$103,105	Not Available
	WilTel	Point to Point	Per Foot Fee	\$2.97	-	-	Not Available
	MCI Communications	Point to Point	Per Foot Fee	\$2.41	\$373,885	-	Not Available
	Communication Mgmt Services	Public Phone Booth	Franchise Fee	15%	\$469	\$945	Not Available
	FSH Communications	Public Phone Booth	Franchise Fee	15%	\$5,304	\$7,538	Not Available
	CenturyLink	ILEC	Franchise Fee	7%	\$2,014,140	\$2,257,102	Not Available
	Frontier Communications	ILEC	Franchise Fee	7%	\$3,803	\$2,448	Not Available
Rainier	AT&T	ILEC	Franchise Fee	7%	\$12,298	Not Available	Not Available
Redmond	CenturyLink	ILEC	Franchise Fee	7%	\$90,767	\$98,692	\$132,768
	Quantum Communications LLC	CLEC	Franchise Fee	7%	\$16,763	\$17,239	\$18,922
	FTV Communications	CLEC	Per Foot Fee	\$1.33 + CPI	\$32,868	\$32,299	\$31,861
	Other Telecom Companies	ILEC	Franchise Fee	7%	\$1,280	\$1,944	\$1,743
Reedsport	Frontier Communications	ILEC	Franchise Fee	7%	\$7,021	\$10,575	\$9,880
Riddle	Frontier Communications	ILEC	Franchise Fee	7%	\$8,677	Not Available	Not Available
Rivergrove	Frontier Communications	ILEC	Franchise Fee	Not Available	-	\$353	\$459
Rogue River	CenturyLink	ILEC	Franchise Fee	5%	\$8,870	\$11,810	\$12,748

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Roseburg ^{12, 13}	CenturyLink	ILEC	Franchise Fee	7%	\$112,504	\$142,630	\$172,377
	Sprint	CLEC	Per Foot Fee	\$2.00	\$11,878	\$11,878	\$10,238
	ACN Communications Services	CLEC	Franchise Fee	5%	\$1,277	-	-
	Americatel Corporation	CLEC	Franchise Fee	5%	-	\$57	-
	AT&T Communication of the PNW	CLEC	Franchise Fee	5%	\$42,342	\$61,587	-
	AT&T Mobility	CLEC	Franchise Fee	5%	-	-\$622	\$622
	AT&T TCG	CLEC	Franchise Fee	5%	\$602	\$306	-
	BullsEye Telecom Inc.	CLEC	Franchise Fee	5%	\$440	\$455	-
	Charter-Fiberlink	CLEC	Franchise Fee	5%	\$71,209	\$77,165	-
	Comspan	CLEC	Franchise Fee	5%	\$22,898	\$48,939	\$37,979
	Comtel Telcom	CLEC	Franchise Fee	5%	\$519	-	-
	Cordia Communication	CLEC	Franchise Fee	5%	\$57	-	-
	Douglas Services	CLEC	Franchise Fee	5%	\$38,609	\$43,098	\$48,044
	First Communications LLC	CLEC	Franchise Fee	5%	\$40	\$77	\$44
	Global Crossing Telecommunications	CLEC	Franchise Fee	5%	\$822	\$1,178	-
	Granite Telecommunications LLC	CLEC	Franchise Fee	5%	\$4,783	\$4,820	-
	Group 6	CLEC	Franchise Fee	5%	\$769	-	-
	IBM Global Network Services	CLEC	Franchise Fee	5%	\$13	-	-
	HELIO LLC	CLEC	Franchise Fee	5%	-	-\$103	\$103
	Mcleod USA Telcomm	CLEC	Franchise Fee	5%	\$237	\$636	-
	Northstar Telecom Inc.	CLEC	Franchise Fee	5%	\$76	-	-
	Preferred Long Distance	CLEC	Franchise Fee	5%	\$570	\$482	\$159
	Quantum Shift/V Com	CLEC	Franchise Fee	5%	\$414	\$202	-
	Reliance Communications	CLEC	Franchise Fee	5%	\$81	-	-

¹² The per foot fee was increased to \$2.00 effective Sept. 1, 2011 prior to that it was \$0.594.

¹³ AT&T Mobility and HELIO LLC were credited their payment because they weren't providing service within the city limits of Roseburg thus they did not have to comply with city ordinance.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Roseburg	Trans National Communications	CLEC	Franchise Fee	5%	\$109	-	-
	UIDC dba Rio	CLEC	Franchise Fee	5%	\$32,197	\$17,470	-
	Value Added Communication	CLEC	Franchise Fee	5%	\$2,171	-	-
Salem	ACN Communications Services Inc.	CLEC	Privilege Tax	7%	\$3,575	-	-
	Advanced Telcom	CLEC	Franchise Fee	7%	\$33,691	\$44,412	\$32,575
	Bullseye Telecom	CLEC	Privilege Tax	7%	\$1,556	\$1,475	-
	Clearwire LLC	Wireless	Franchise Fee	Per Attachment	\$120,932	\$60,000	-
	Comcast IP Phone of Oregon LLC	CLEC	Privilege Tax	7%	\$24	-	-
	Comtel Telcom Assets LP	CLEC	Privilege Tax	7%	\$65	\$396	\$865
	Convergia Inc.	CLEC	Privilege Tax	7%	\$8	-	-
	Covad Communications Company	CLEC	Privilege Tax	7%	\$504	-	-
	Electric Lightwave	CLEC	Franchise Fee	7%	\$16,987	\$12,103	\$13,764
	Eschelon Telecom Of Oregon Inc.	CLEC	Privilege Tax	7%	\$23,650	-	-
	First Communication LLC	CLEC	Privilege Tax	7%	\$237	-	-
	FSH Communication LLC	CLEC	Privilege Tax	7%	\$21	-	-
	Global Crossing	CLEC	Privilege Tax	7%	\$2,298	-	-
	Granite Telecommunication LLC	CLEC	Privilege Tax	7%	-	\$8,647	-
	iNetworks Group Inc.	CLEC	Privilege Tax	7%	\$262	\$684	-
	Integra Telecom of Oregon Inc.	CLEC	Privilege Tax	7%	\$75,033	-	-
	IP Networked Services	CLEC	Privilege Tax	7%	\$169	-	-
	IXC Holdings Inc.	CLEC	Privilege Tax	7%	\$107	-	-
	Level 3 Communications LLC	Long Haul Carrier	Per Foot Fee	\$2.00	\$12,866	\$15,241	\$15,088
	LS Networks	CLEC	Franchise Fee	7%	\$49,602	\$47,760	\$37,911

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Salem ¹⁴	Masergy Communications Inc.	CLEC	Privilege Tax	7%	\$154	-	-
	Mitel Netsolutions Inc.	CLEC	Privilege Tax	7%	\$303	-	-
	Oregon Telcom Inc.	CLEC	Privilege Tax	7%	\$38,435	-	-
	Preferred Long Distance Inc.	CLEC	Privilege Tax	7%	\$2,577	\$3,404	\$2,330
	Qwest	ILEC	Franchise Fee	7%	\$487,305	\$564,129	\$788,160
	Qwest Communications Company LLC	ILEC	Franchise Fee	7%	\$20,223	-	-
	Sprint	Long Haul Carrier	Per Foot Fee	\$3.50	\$40,056	\$40,056	\$40,056
	Salem Hospital	Other	Per Foot Fee	Annual Minimum	\$6,200	\$6,200	\$6,200
	Shared Communications Services Inc.	CLEC	Privilege Tax	7%	\$13,928	-	-
	State of Oregon-Metropolitan Area	Other	Franchise Fee	7%	\$93,474	\$89,239	\$76,507
	T-Mobile	Wireless	Franchise Fee	Per Attachment	\$31,813	\$28,077	\$41,803
	TCG Oregon	CLEC	Privilege Tax	7%	\$8,414	-	-
	Trans National Communications	CLEC	Privilege Tax	7%	\$211	-	-
	United Communications Inc.	CLEC	Privilege Tax	7%	\$1,184	-	-
	Willamette University	Other	Per Foot Fee	Annual Minimum	\$6,200	\$6,200	\$6,200
	World Communication Inc.	CLEC	Privilege Tax	7%	\$306	-	-
Sandy	Frontier Communications	ILEC	Franchise Fee	7%	\$23,984	\$84,798	\$37,823
Seaside	CenturyLink	ILEC	Franchise Fee	7%	\$44,171	\$49,489	\$55,269
Shady Cove	CenturyLink	ILEC	Franchise Fee	7%	\$10,653	\$16,086	\$13,932
Sheridan	CenturyLink	ILEC	Franchise Fee	7%	\$15,139	\$16,974	\$18,145
Sherwood	Frontier Communications	ILEC	Privilege Tax	7%	\$21,538	\$91,995	\$38,789
	Comcast	ILEC	Franchise Fee	7%	\$34,751	\$17,881	-
	Other	ILEC	Franchise Fee	7%	\$759	-	-
Siletz	CenturyLink	ILEC	Franchise Fee	4.5%	\$7,000	Not Available	Not Available
Silverton	Frontier Communications	ILEC	Privilege Tax	4%	\$11,666	\$14,294	\$16,945

¹⁴ The per foot fee for Sprint increased to \$3.50 in FY2010-11 from \$3.44.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Sisters	CenturyLink	ILEC	Franchise Fee	5%	\$18,218	\$21,632	\$27,517
Sodaville	CenturyLink	ILEC	Franchise Fee	8%	\$684	Not Available	Not Available
Springfield	CenturyLink	ILEC	Franchise Fee	7%	\$255,612	\$276,463	\$381,149
	Sprint	Long Haul Carrier	Per Foot Fee	\$1.50	-	-	-
	Advanced Telecom. Group (ATG)	CLEC	ROW Fee	5%	\$5,353	\$3,305	\$819
	ACN	CLEC	ROW Fee	5%	\$955	-	-
	MITEL NetSolutions	CLEC	ROW Fee	5%	\$975	-	-
	Global Crossings	CLEC	ROW Fee	5%	\$713	-	-
	Comcast Digital Voice	CLEC	ROW Fee	5%	\$106,506	\$97,067	\$74,456
	Comcast of Oregon II	CLEC	Backhaul	5%	-	-	-
St. Helens	CenturyLink	ILEC	Privilege Tax	5%	\$38,038	\$45,036	\$62,628
	Preferred Long Distance (Birch Communications, Comtel Telcom, FSH Communications)	CLEC	Privilege Tax	5%	\$941	\$844	\$811
Stayton	Stayton Cooperative Telephone Company (SCTC)	ILEC	Franchise Fee	7%	\$38,327	\$44,753	\$44,563
	Wave Broadband	CLEC	Franchise Fee	0	-	-	-
Sutherlin	CenturyLink	ILEC	Franchise Fee	7%	\$31,666	\$36,837	\$42,237
	Sprint	ILEC	Franchise Fee	Fixed Amount	\$15,265	\$15,725	\$14,048
Sweet Home	CenturyLink	ILEC	Franchise Fee	7%	\$28,110	\$27,396	\$30,805
Tangent	Qwest	ILEC	Franchise Fee	5%	\$4,839	\$5,483	\$6,463
The Dalles	Sprint	ILEC	Franchise Fee	7%	\$65,844	\$74,202	\$82,075
	Electric Lightwave	ILEC	Franchise Fee	7%	\$10	\$28	\$140
Tigard	AT&T	CLEC	Franchise Fee	5%	\$75,279	\$64,457	\$86,324
	Broadwing Communications LLC	CLEC	Franchise Fee	5%	\$745	\$1,006	\$819
	BT Americas	CLEC	Franchise Fee	5%	\$35	-	-
	Comcast IP Phone II LLC	CLEC	Franchise Fee	5%	\$1	-	-
	Cricket Communications Inc.	CLEC	Franchise Fee	5%	-	-	-
	First Communications LLC	CLEC	Franchise Fee	5%	\$44	\$51	\$72

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Tigard	Frontier Communications	ILEC	Franchise Fee	5%	\$90,539	\$201,806	\$144,459
	Global Crossing Telecommunications Inc.	CLEC	Franchise Fee	5%	\$1,376	\$2,321	\$1,680
	Integra Telecom Inc.	CLEC	Franchise Fee	5%	\$86,395	\$96,872	\$148,678
	Masergy Communications Inc.	Long Haul Carrier	Franchise Fee	5%	\$855	\$533	\$640
	McLeod	CLEC	Franchise Fee	5%	\$1,503	\$420	\$223
	New Edge Network Inc.	CLEC	Franchise Fee	5%	\$306	\$280	\$186
	Preferred Long Distance Inc.	CLEC	Franchise Fee	5%	\$42	\$39	\$15
	CenturyLink	ILEC	Franchise Fee	5%	\$45,568	\$44,633	\$52,288
	Time Warner Telecom of Oregon LLC	CLEC	Franchise Fee	5%	\$61,393	\$37,855	\$31,056
	Trans National Communications Intl Inc.	CLEC	Franchise Fee	5%	\$53	-	-
	Voitel Telecommunications Inc.	CLEC	Franchise Fee	5%	\$28	\$25	\$25
	Working Assets Inc.	CLEC	Franchise Fee	5%	\$263	\$384	\$520
	XO Communications Services Inc.	CLEC	Franchise Fee	5%	\$12,532	\$10,934	\$12,485
	Zone Telecom Inc.	CLEC	Franchise Fee	5%	\$4	\$10	\$10
Toledo	Coastcom	Long Haul	Franchise Fee	5%	\$201	\$759	\$1,188
	CenturyLink	ILEC	Franchise Fee	6%	-	\$6,382	\$7,233
Troutdale	Frontier Communications	ILEC	Franchise Fee	7%	\$19,103	\$26,332	\$35,437
Tualatin ¹⁵	Frontier Communications	ILEC	Franchise Fee	7%	\$76,650	\$94,788	\$120,026
	CenturyLink	ILEC	Franchise Fee	7%	\$1,460	\$2,129	\$2,581
	Integra Telecom	CLEC	Franchise Fee	5%	\$16,159	\$16,114	\$16,316
Turner	Frontier Communications	ILEC	Franchise Fee	6%	\$3,923	\$16,420	-
Umatilla	CenturyLink	ILEC	Franchise Fee	7%	\$15,934	\$17,699	\$20,482
Vale	CenturyLink	ILEC	Franchise Fee	7%	\$9,831	\$12,459	\$10,754

¹⁵ Franchise fee for Frontier Communications increased from 4% to 7% in FY2008-09.

City	Telecommunications Provider	Type of Provider	Fee/Tax Type	Rate	Fee/Tax Revenue		
					FY2010-11	FY2009-10	FY2008-09
Veneta	CenturyLink	ILEC	Franchise Fee	7%	\$18,249	\$19,361	\$46,238
	CenturyLink	ILEC	Per Foot Fee	Collected by LCOG	\$62,073	\$73,068	\$22,048
Vernonia	Frontier Communications	ILEC	Franchise Fee	6%	\$5,170	\$6,004	\$8,500
Warrenton	CenturyLink	ILEC	Franchise Fee	7%	\$26,330	Not Available	Not Available
Waterloo ¹⁶	CenturyLink	ILEC	Franchise Fee	7%	\$698	\$597	\$568
West Linn	CenturyLink	ILEC	Franchise Fee	7%	\$64,400	\$77,370	\$97,486
Weston	CenturyLink	ILEC	Franchise Fee	4%	Not Available	\$1,523	\$2,133
Willamina	CenturyLink	ILEC	Privilege Tax	7%	\$5,796	\$6,492	\$6,920
Wilsonville	Frontier Communications	ILEC	Privilege Tax	7%	\$93,961	\$160,150	\$102,633
	Electric Lightwave/Integra	CLEC	Privilege Tax	7%	\$24,662	\$25,714	\$30,566
Winston	CenturyLink	ILEC	Franchise Fee	7%	\$14,465	\$18,315	\$21,925
	Douglas Fast Next	CLEC	Franchise Fee	5%	\$810	-	-
Wood Village	Verizon	ILEC	Franchise Fee	7%	\$5,649	\$15,180	\$9,432
Woodburn	CenturyLink	ILEC	Franchise Fee	7%	\$74,668	\$87,453	\$86,873
	Gervais Telephone Company	CLEC	Franchise Fee	7%	\$20,834	\$24,698	\$19,033
Yachats	Pioneer Telephone Cooperative	ILEC	Franchise Fee	4%	\$4,802	\$5,006	\$5,329
Yoncalla	CenturyLink	ILEC	Franchise Fee	5%	\$2,878	\$3,049	\$3,674
	DougFast	ILEC	Franchise Fee	5%	\$865	-	-

¹⁶ In FY2008-09 the franchise fee rate was 6% and increased to 7% in FY2009-10.

TABLE 2: CELLULAR TOWERS

City	Number of cell towers within city limits	Towers on city property	Monthly lease rate	Does the city charge for wireless attachments on utility poles in the ROW? If yes, collection method and amount if available.
Ashland	Unknown	No	N/A	Yes, monthly fee
Astoria	7	No	N/A	No
Aumsville	4	Yes	\$300, \$1,008, \$1,092 & \$1,138	No
Aurora	2	Yes	\$841.32 & \$900.94	No
Bandon	2 outside city limits but on city owned property	Yes	\$848.58 & \$625.57	Yes, but there are none
Beaverton	Unknown	Yes	Site 1: \$997, Site 2: \$532 & Site 3: \$502	No
Bend	27	Yes	Airport property: \$900 & \$1,050/water department property: \$1,082, \$1,442, \$1,635 & \$1,646	No
Boardman	4	Yes	\$9,600 annually	No
Cannon Beach	2	Yes	\$1,120 and \$770	No
Coos Bay	3	No	N/A	No
Coquille	1	No	N/A	No
Cornelius	2	Yes	\$1,160	No
Corvallis	Unknown	Yes	Varies	No
Cottage Grove	1	Yes	Base rent: \$900 plus \$200 per co-location, max. of 4	No
Creswell	1	No	N/A	No
Dallas	1	No	N/A	No
Depoe Bay	3	No	N/A	No
Detroit	1	No	N/A	No
Dufur	1 outside city limits but on city owned property	Yes	\$716.43	No
Eagle Point	1	No	N/A	No
Elgin	1	No	N/A	No

City	Number of cell towers within city limits	Towers on city property	Monthly lease rate	Does the city charge for wireless attachments on utility poles in the ROW? If yes, collection method and amount if available.
Eugene	150	Yes	\$2,000 average	Yes, Eugene charges a pole rental fee if they are using a city-owned pole, like a street light. But right-of-way (ROW) fees are waived if they co-locate on an existing pole in the ROW. If using city property, the city would contract just as they would for land and charge a pole rental fee; which is an annual flat rate, with a CPI increase.
Fairview	3	Yes	\$1,397 & \$1,311	No
Florence	1	Yes	\$400	No
Forest Grove	2	No	N/A	Yes, pole rental - city electric utility
Grants Pass	103	No	N/A	Yes, 7% privilege tax for telecom facilities in ROW
Halsey	1	Yes	\$1,265	No
Happy Valley	1	Yes	\$600	No
Harrisburg	2	No	N/A	No
Hermiston	3	No	N/A	No
Hillsboro	29	Yes	Varies, typically between \$500-\$2,500	No
Hood River	5	Yes	\$150,000 for 10 years	No
Hubbard	2	Yes	\$598.95	No
Independence	1	Yes	\$1,200	No
Island City	2	No	N/A	No
Jefferson	1 outside city limits	Yes	\$1,125	No
John Day	2	Yes	City exchanges monthly lease rate for a reduced rate for Internet service through the local ESD	No
Jordan Valley	1	No	N/A	Unknown

City	Number of cell towers within city limits	Towers on city property	Monthly lease rate	Does the city charge for wireless attachments on utility poles in the ROW? If yes, collection method and amount if available.
Junction City	Unknown	Yes	\$1,159	No
Keizer	Unknown	Yes	\$785	Unknown
La Grande	2	Yes	\$900	No
Lebanon	Unknown	Yes	\$450	No
Lincoln City	2	Yes	\$0	No
McMinnville	5	Yes	\$0 (belongs to the city)	Yes
Milwaukie	3	No	N/A	No
Monmouth	2	Yes	\$750	No
Newberg	5	No	N/A	No
North Bend	4-5 (approx.)	Yes	\$100	No
North Plains	1	No	N/A	No
North Powder	1	Yes	City receives free Internet service	No
Oakridge	1	Yes	\$804 & \$1,957	No
Oregon City	Unknown	Yes	\$25,200 per year with a 4% annual increase provision	No
Portland	800 (approx.)	Yes	Varies	Yes, \$5,000 annually
Redmond	1	Yes	\$759.68	No
Roseburg	5	Yes	\$16,882.63 & \$4,838.10	No
Salem	Unknown	Yes	\$2,200 - \$4,120 per month (varies by number of antennas and ground space rented)	Yes, \$5,200 annually
Shady Cove	1	No	N/A	No
Sherwood	2	Yes	Four annual leases at the two sites for a total of \$35,400 annually	No
Silverton	1	Yes	\$750	No
Sisters	2	Yes	\$1,500	Yes, \$500 per attachment
Spray	1	No	N/A	No

City	Number of cell towers within city limits	Towers on city property	Monthly lease rate	Does the city charge for wireless attachments on utility poles in the ROW? If yes, collection method and amount if available.
Springfield	15	Yes	\$1,500	No
Stayton	3	Yes	\$1,229 & \$1,049	No
The Dalles	4	No	N/A	No
Tigard	Unknown	Yes	Unknown	No
Toledo	1	Yes	\$648	No
Troutdale	2+	Yes	2 annual lease payments totaling \$28,512	No
Tualatin	Unknown	Yes	\$4,220	No
Turner	2	Yes	\$1,351	No
Umatilla	2	Yes	\$1,934	No
Veneta	2	Yes	\$1,500 & \$1,242	No
Vernonia	1	Yes	\$554	No
Wallowa	1	Yes	\$200	No
Warrenton	2	Yes	\$481	No
West Linn	4	Yes	\$500	Yes, monthly fee
Wilsonville	2	Yes	\$968	No
Wood Village	0	Yes (City owned facility in Troutdale)	\$1,688	No
Woodburn	3	Yes	\$1,000	Yes, lease agreements currently only cell antennas on water tower.

TABLE 3: CABLE FRANCHISE/LICENSE FEE RATES AND REVENUE

City	Cable Provider	Fee/Tax Rate	Fee/Tax Revenue		
			FY2010-11	FY2009-10	FY2008-09
Amity	Comcast Cable	5%	\$11,410	\$10,307	\$9,502
Ashland	Charter Communications	5%	\$132,039	\$134,386	\$131,843
	Ashland Homet Net	Exp. Basic=\$2.52/account Basic=\$1/account	\$45,770	\$50,861	\$26,503
Astoria	Charter Communications	5%	\$94,844	\$91,956	\$88,510
Aumsville	WAVE Broadband	5% Franchise Fee 2% Admin. Fee	\$27,995	\$25,570	\$23,254
Aurora	WAVE Broadband	5%	\$5,591	\$5,418	\$4,793
Baker City	Charter Communications	5%	\$38,262	\$43,485	\$48,993
Bandon	Charter Communications	5%	\$17,512	\$15,851	\$19,271
	Comspan	5%	\$5,227	\$6,648	\$8,677
Banks	Comcast Cable	5%	\$10,811	\$10,588	\$6,070
Bay City	Charter Communications	5%	\$8,780	\$8,505	\$8,176
Beaverton ¹	Comcast Cable	5%	\$866,169	\$866,088	\$729,939
Bend	Bend Cable Communications	5%	\$830,040	\$813,550	\$813,490
Boardman	Almega Cable	3%	-	\$645	\$679
Brookings	Charter Communications	5%	\$64,791	\$65,956	\$65,571
Canby	Canby Telephone Association (CTA)	5%	\$62,000	\$62,500	\$58,137
	WAVE Broadband	5%	\$58,000	\$58,918	\$55,000
Cannon Beach	Charter Communications	5%	\$39,960	\$39,010	\$36,662
Clatskanie	Charter Communications	5%	\$12,002	\$11,910	\$11,341
Columbia City	Comcast Cable	5%	\$21,757	\$19,465	\$18,188
Coos Bay	Charter Communications	5%	\$148,866	\$144,686	\$139,149
Coquille	Charter Communications	5%	\$15,139	\$16,120	\$16,449
	Comspan	5%	\$7,890	\$7,528	\$7,723
Cornelius ¹	Verizon	5%	\$12,314	\$15,174	\$11,837
	Comcast Cable	5%	\$32,312	\$46,044	\$52,431
Corvallis	Comcast Cable	5%	\$585,185	\$568,346	\$694,157
Cottage Grove	Charter Communications	3%	\$30,847	\$33,555	\$34,823

¹ Actual revenues are collected by Metropolitan Area Communications Commission (MACC). Each member city receives a portion.

City	Cable Provider	Fee/Tax Rate	Fee/Tax Revenue		
			FY2010-11	FY2009-10	FY2008-09
Creswell	Charter Communications	5%	\$16,550	\$16,323	\$17,541
Culver	Crestview Cable	5%	\$3,619	\$5,451	\$6,087
Dallas	Charter Communications	5%	\$55,000	\$54,166	\$68,409
Damascus ²	Comcast Cable	5%	-	-	-
Dayton	Comcast Cable	5%	\$15,915	\$16,078	\$15,306
Depoe Bay	Broadstripe	4%	\$14,344	\$15,263	\$14,535
Detroit ³	WAVE Broadband	3%	-	\$446	\$1,041
Dufur ⁴	Northstate Cablevision	3%	Not Available	\$440	\$440
Dundee	Comcast Cable	5%	\$22,499	\$21,078	\$21,590
	Frontier Communications	5%	\$6,011	\$5,333	\$3,266
Eagle Point	Charter Communications	5%	\$65,058	\$63,218	\$65,513
Echo	Charter Communications	3%	\$1,602	\$1,736	\$1,350
Estacada	Cascade Access LLC	5%	\$14,557	\$9,794	\$9,409
Eugene	Comcast Cable	5% Franchise Fee 2% Privilege Tax	Not Available		
Fairview	Comcast Cable	5%	\$29,354	\$29,313	\$24,354
Falls City	Charter Communications	5%	\$2,499	\$2,374	\$2,550
Florence	Charter Communications	5%	\$52,840	\$52,682	\$51,088
Forest Grove ⁵	Comcast Cable/Frontier Communications	5%	\$152,810	\$140,805	\$182,610
Gates	WAVE Broadband	4%	\$661	\$731	\$690
Gervais	WAVE Broadband	4%	\$2,725	\$2,921	\$2,695
Grants Pass	Charter Communications	5%	\$213,596	\$209,920	\$218,761
Halsey	Roome Telecommunications	3%	\$1,394	\$1,324	\$1,463
Happy Valley ⁶	Frontier Communications	5%	\$24,261	\$32,275	-
	Comcast Cable	5%	\$152,396	\$142,740	\$108,921
Harrisburg	Comcast Cable	5%	\$25,000	\$29,042	\$26,756

² Voters removed the 5% franchise fee from telephone, cable and solid waste in 2008.

³ Discontinued service at the end of 2009.

⁴ Franchise fee rate increased in FY2010-11 to 3% from 2%.

⁵ Actual revenues are collected by MACC. Each member city receives a portion.

⁶ The city also has a 3% PEG (Public, Educational and Government) Fee.

City	Cable Provider	Fee/Tax Rate	Fee/Tax Revenue		
			FY2010-11	FY2009-10	FY2008-09
Hermiston	Charter Communications	5%	\$61,370	\$60,595	\$61,516
Hillsboro	Comcast Cable	5%	\$755,134	\$702,568	\$702,799
	Frontier Communications	5%	\$276,731	\$274,439	\$189,500
Hines	Charter Communications	5%	\$10,188	\$10,832	\$11,043
Hood River ⁷	Charter Communications	5%	\$38,954	\$36,705	\$36,382
Hubbard	WAVE Broadband	5%	\$13,284	\$12,127	\$10,711
Independence ⁸	Charter Communications	5%	\$7,460	\$9,405	\$11,133
	MINET	5%	\$66,361	\$8,802	\$30,434
Island City	Charter Communications	4%	\$1,600	\$2,000	Not Available
Jacksonville	Charter Communications	5%	\$33,882	\$33,452	\$35,534
Jefferson	Charter Communications	5%	\$3,638	\$4,066	\$4,926
John Day	Blue Mountain TV Cable Company	3%	\$2,515	\$2,564	\$2,864
Johnson City	Comcast Cable	5.65%	\$5,263	\$6,681	\$4,014
Joseph	Almega Cable	5%	-	\$1,535	\$3,053
Junction City	Comcast Cable	5%	\$49,577	\$47,394	\$45,064
Keizer	Comcast Cable	5%	\$374,087	\$364,395	\$336,504
Klamath Falls	Charter Communications	5%	\$198,347	\$178,834	\$178,777
La Grande	Charter Communications	4%	\$44,264	\$41,283	\$40,974
Lafayette	Comcast Cable	5%	\$30,986	\$29,601	\$27,674
Lakeview	Charter Communications	5%	\$14,531	\$14,405	\$18,200
Lebanon	Comcast Cable	5%	\$135,823	\$130,430	\$122,791
	Peak	5%	\$541	-	-
Lincoln City	Charter Communications	5%	\$115,300	\$108,315	\$101,642
Lowell	Charter Communications	5%	\$2,586	\$3,042	\$3,241
Lyons	WAVE Broadband	3%	\$4,677	\$4,677	\$4,082
Madras	California/Oregon Broadcasting	5%	\$20,688	\$27,238	\$32,124
Malin	Almega Cable	3%	-	-	-
	Techore Consultants II Inc.	3%	-	-	\$401
Manzanita	Charter Communications	5%	\$18,231	\$16,599	\$19,640

⁷ Privilege tax as of March 13, 2011.

⁸ MINET's FY2010-11 contains prior year's payment.

City	Cable Provider	Fee/Tax Rate	Fee/Tax Revenue		
			FY2010-11	FY2009-10	FY2008-09
McMinnville	Comcast Cable	5%	\$254,702	\$236,480	\$241,653
	Frontier Communications	5%	\$92,747	\$89,252	\$47,602
Metolius	Crestview Cable	5%	\$2,961	\$4,037	\$4,694
Milwaukie	Comcast Cable	7%	\$302,002	\$225,733	\$210,829
Monmouth	Charter Communications	5%	\$8,623	\$10,706	\$14,313
Myrtle Creek	Charter Communications	5%	\$20,084	\$20,128	\$19,315
Myrtle Point	Charter Communications	5%	\$7,979	\$9,097	\$9,675
	Comspan	5%	\$7,166	\$7,852	\$1,924
Nehalem	Charter Communications	5%	\$2,754	\$2,628	\$2,795
Newberg	Comcast Cable	5%	\$156,980	\$143,234	\$175,915
	Frontier Communications	5%	\$69,093	\$69,716	\$48,499
North Bend	Charter Communications	5%	\$96,140	\$93,485	\$90,082
North Plains ⁹	Comcast Cable	5%	\$12,859	\$12,847	\$9,780
Oakridge	Charter Communications	5%	\$2,318	\$2,250	\$2,175
Ontario	Cable One	5%	\$50,000	Not Available	Not Available
Oregon City	Comcast Cable	5%	\$332,242	\$311,008	\$295,551
	Wavedivision VII LLC	5%	\$588	\$539	\$534
	Beavercreek Cooperative Telephone Co.	5%	\$10,644	\$3,085	\$2,876
Philomath	Comcast Cable	5%	\$40,533	\$41,592	\$40,443
Phoenix	Charter Communications	5%	\$36,189	\$36,858	Not Available
Portland	Comcast Cable	5%	\$6,132,386	\$5,844,942	\$5,515,809
Rainier	J & N Cable System	Not Available	\$2,774	Not Available	Not Available
Redmond	Bend Cable/Bend Broadband	5%	\$159,082	\$195,299	\$212,932
Reedsport	Charter Communications	5%	\$37,536	\$36,549	\$35,871
	Comspan	5%	\$1,082	\$1,158	\$1,495
Riddle	Charter Communications	5%	\$7,012	Not Available	Not Available
Rivergrove ⁹	Comcast Cable	5%	\$3,980	\$4,361	\$2,486
Rogue River	Charter Communications	5%	\$17,720	\$16,417	\$22,235
Roseburg	Charter Communications	5%	\$133,572	\$128,640	\$80,610
Salem	Comcast Cable	5%	\$1,493,797	\$1,473,573	\$1,374,772
Sandy	WAVE Broadband	5%	\$34,139	\$30,472	\$20,142

⁹ Actual revenues are collected by MACC. Each member city receives a portion.

City	Cable Provider	Fee/Tax Rate	Fee/Tax Revenue		
			FY2010-11	FY2009-10	FY2008-09
Seaside	Charter Communications	5%	\$79,189	\$77,975	\$74,131
Shady Cove	Almega Cable	5%	\$4,943	-	\$7,019
Sheridan	WAVE Broadband	5%	\$30,512	\$24,850	\$17,586
Sherwood	Comcast Cable	5%	\$143,374	\$133,168	\$142,325
	Frontier Communications	5%	\$80,213	\$76,944	\$42,354
Siletz	Broadstripe	5%	\$2,400	Not Available	Not Available
Silverton	WAVE Broadband	5%	\$44,128	\$39,935	\$35,216
Sisters	Bend Cable Communications	5%	\$25,084	\$23,969	\$22,843
Sodaville	Comcast Cable	3%	\$652	Not Available	Not Available
Springfield	Comcast Cable	5%	\$607,170	\$439,550	\$559,439
St. Helens	Comcast Cable	5%	\$123,144	\$112,107	\$105,743
Stayton	Uvision LLC	5%	\$46,388	\$46,984	\$43,027
Sutherlin	Charter Communications	5%	\$48,601	\$47,924	\$43,595
Sweet Home	Comcast Cable	5%	\$77,600	\$79,454	\$77,321
Tangent	Comcast Cable	5%	\$9,447	\$9,132	\$8,038
The Dalles	Charter Communications	5%	\$82,675	\$75,935	\$72,454
Tigard ¹⁰	Comcast Cable/Verizon	5%	\$582,741	\$466,498	\$377,571
Toledo	Charter Communications	5%	\$6,989	\$13,780	\$13,774
Troutdale ¹¹	Comcast Cable	5%	\$135,019	\$127,747	\$129,805
	Frontier Communications	5%	\$45,597	\$41,704	\$14,672
Tualatin ¹⁰	Frontier Communications	6.31%	\$276,508	\$271,943	\$225,193
Turner	WAVE Broadband	3%	\$7,941	\$8,203	\$7,335
Vale	Cable One	5%	\$5,389	\$5,954	\$5,962
Veneta	Charter Communications	5%	\$13,088	\$14,907	\$15,322
Vernonia	Vernonia CATV	5%	\$2,026	\$2,127	\$3,277
Warrenton	Charter Communications	3%	\$21,470	Not Available	Not Available
Waterloo	Comcast Cable	5.89%	\$1,636	\$1,470	\$1,580
West Linn	Comcast Cable	5%	\$91,884	\$114,708	\$110,448
Willamina	WAVE Broadband	5%	\$10,625	\$10,871	\$11,231

¹⁰ Actual revenues are collected by MACC. Each member city receives a portion.


¹¹ Actual revenues collected by the Mt. Hood Cable Regulatory Commission (MHCRC). Prior to cost deductions for MHCRC budget and MetroEast costs the city only receives the net funds forwarded by MHCRC.

City	Cable Provider	Fee/Tax Rate	Fee/Tax Revenue		
			FY2010-11	FY2009-10	FY2008-09
Wilsonville	Comcast Cable	5%	\$224,547	\$206,335	\$200,709
Winston	Charter Communications	3%	\$19,570	\$19,081	\$19,068
Wood Village ¹²	Comcast Cable	7%	\$8,740	\$8,215	\$6,968
Woodburn ¹³	WAVE Broadband	5%	\$102,839	\$101,703	\$73,467
Yachats	Charter Communications	5%	\$12,031	\$11,310	\$11,357
Yoncalla	Charter Communications	5%	Not Available	\$3,467	\$3,700

¹² Actual revenues collected by the MHCRC. Prior to cost deductions for MHCRC budget and MetroEast costs the city only receives the net funds forwarded by MHCRC.

¹³ The city also has a PEG fee separate from the 5% franchise rate of \$1.25 per subscriber.

Memo

To: Mayor Hodson & Members of City Council
From: Bret J. Smith, Chief of Police 
CC: Kim Scheafer, City Recorder
Date: July 11, 2013
Re: Liquor License Application / Change of Ownership / The Mini Chef Restaurant

I have reviewed the attached liquor license application / Change of Ownership completed by the applicant, Rose Marie Santmyer for the business, The Mini Chef Restaurant, located at 102 N. Ivy Street, Canby, Oregon.

We discussed the laws involving the sale of alcoholic beverages. She told me she is familiar with the liquor laws, further stating Linda Morris who also will be an employee of the restaurant is familiar with Oregon Liquor Laws. Ms. Santmyer said Linda Morris will be conducting the training for the employees regarding the laws involving the serving of alcoholic beverages. Ms. Santmyer said she understands the consequences for failure to comply with the rules as set forth by Oregon State law. She said she will continue to work closely with OLCC as it relates to training employees on pertinent laws involving alcohol related issues.

It is my recommendation that the Canby City Council approve this application to the Oregon Liquor Control Commission (OLCC).



OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

pd 7/5/13 SR
#75 cash

Application is being made for:

LICENSE TYPES

- ☒ Full On-Premises Sales (\$402.60/yr)
☐ Commercial Establishment
☐ Caterer
☐ Passenger Carrier
☐ Other Public Location
☐ Private Club
☐ Limited On-Premises Sales (\$202.60/yr)
☐ Off-Premises Sales (\$100/yr)
☐ with Fuel Pumps
☐ Brewery Public House (\$252.60)
☐ Winery (\$250/yr)
☐ Other: _____

ACTIONS

- ☒ Change Ownership
☐ New Outlet
☐ Greater Privilege
☐ Additional Privilege
☐ Other _____

L #184275
P# 49742

90-DAY AUTHORITY

☒ Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

- ☐ Limited Partnership ☐ Corporation ☒ Limited Liability Company ☐ Individuals

CITY AND COUNTY USE ONLY

Date application received: 7/5/13

The City Council or County Commission:

City of Canby
(name of city or county)

recommends that this license be:

☐ Granted ☐ Denied

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: CMORENO

Date: 7/5/13

90-day authority: ☐ Yes ☐ No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① ~~Sam LLC~~ Rose Marie Santmyer ③

② _____ ④ _____

2. Trade Name (dba): The Mini Chef Restaurant & Lounge

3. Business Location: 102 N Ivy St Canby Clackamas Or 97013
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: Same
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-266-1441 503-266-1442
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☒ Yes ☐ No

7. If yes to whom: Jim LLC Linda Morris Type of License: Full on Premise

8. Former Business Name: Jim LLC DBA The Mini Chef Restaurant & Lounge

9. Will you have a manager? ☐ Yes ☒ No Name: none at this time
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Canby Clackamas
(name of city or county)

11. Contact person for this application: Rose Marie Santmyer
(name) (phone number(s))
102 N Ivy St Canby, Or 97013 503-266-1442 theminichef@hotmail.com
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Rose Marie Santmyer Date 7-4-13 ③ _____ Date _____

② _____ Date _____ ④ _____ Date _____

RESOLUTION NO. 1171

A RESOLUTION ADOPTING THE CITY COUNCIL VALUES AND GOALS

WHEREAS, on February 23, 2013 the City Council held a Special Meeting with a facilitator to establish new Council Values and Goals; and

WHEREAS, on March 20, 2013 the City Council held a Work Session to review the document that was developed at the Special Meeting; and

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

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

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

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

This resolution will take effect on August 7, 2013.

ADOPTED this 7th day of August 2013 by the City of Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder



CITY OF CANBY CITY COUNCIL VALUES AND GOALS

VALUES

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

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

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

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

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

GOALS

Community

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

Growth and Economic Development

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

Parks and Recreation

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

Transportation, Public Safety, and Public Services

- Maintain and improve City infrastructure – Storm Water, Road Maintenance, Water, WWTP, and others
- Continue to provide quality public safety and services that enhance Canby's livability
- Develop strategy for improving and sustaining Canby Area Transit System
- Develop method to enable north side access for emergency services and economic development
- Develop strategy for implementing Transportation System Plan (TSP)
- Develop implementation plan for Library and City Hall
- Long-term services and infrastructure plans for NE and SE development
- Develop strategy for implementing Oregon 99E Corridor and Gateway Plan

ORDINANCE NO. 1383

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE AGREEMENT WITH ZIMMER VENTURES, LLC, FOR THE RENTAL OF PROPERTY FOR CANBY AREA TRANSIT OFFICES AND PARKING; AND DECLARING AN EMERGENCY.

WHEREAS, Canby Area Transit has been desiring and planning to move their office space to a location closer to their fleet facility, reducing dead-head costs, and that also allows for greater potential parking options for their fleet; and

WHEREAS, the City of Canby desires to secure a cost effective lease with parking options and potential future parking expansion;

WHEREAS, Zimmer Ventures, LLC has office space available across the street from the Fred Meyer transit hub, is willing to upgrade the structure significantly at no upfront cost to the City, and is willing to lease said space to the City at a reasonable rental for a five year term; and

WHEREAS, the Canby City Charter requires an ordinance be approved for any contract exceeding \$50,000; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, the attached Lease Agreement with Zimmer Ventures, LLC. A copy of the Lease Agreement is attached hereto as Exhibit "A."

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, that the lease be completed as soon as possible in order to immediately effectuate many necessary agreed upon structural changes at the site and ensure minimal disruptions of necessary transit services to users of the service and CAT employees alike, 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, July 17, 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, August 7, 2013, commencing at 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 7th day of August 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

LEASE AGREEMENT

THIS LEASE is entered into this 13th day of June, 2013, between **ZIMMER VENTURES, LLC** ("Landlord"), and **CITY OF CANBY, an Oregon municipal corporation, acting on behalf of CANBY AREA TRANSIT** ("Tenant"). Landlord owns a building and other improvements on that certain property known as 195 S. Hazel Dell Way, Canby, Clackamas County, Oregon known as **THE SEQUOIA COMMERCE CENTER** (the "Property"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain space on the Property consisting of 1728 rentable square feet, as outlined on the attached Exhibit A (the "Premises") on the terms and conditions set forth in this Lease. The Property, as it may be expanded or otherwise reconfigured from time to time is sometimes referred to herein as **"Suite C of Lot 1 of the Zimmer Commerce Center"**.

1. TERM. The term of this Lease (the "Term") shall be for a period of Sixty (60) months, commencing on August 1, 2013, or Tenant's first day open for business to the public ("The Anticipated Commencement Date"), whichever shall first occur. The Term shall expire Sixty (60) months after the Commencement Date. Promptly following the Commencement Date, Landlord shall prepare, and the parties shall execute, an addendum to this Lease confirming the Commencement Date and Expiration Date of the Term.

2. RENT. Beginning on the Commencement Date and continuing during the entire Term, Tenant shall pay to Landlord as rent the "Base Rent" as defined in this section.

(a) Base Rent. The minimum monthly rent during the Term ("Base Rent") shall be:

- | | | |
|-------|----------------------|--|
| (i) | Months 1 through 12 | \$2880 per month. |
| (ii) | Months 13 through 24 | \$2966 per month (previous 12 months base rent plus \$86). |
| (iii) | Months 25 through 36 | \$3055 per month (previous 12 months base rent plus \$89). |
| (iv) | Months 37 through 48 | \$3147 per month (previous 12 months base rent plus \$92). |
| (v) | Months 49 through 60 | \$3241 per month (previous 12 months base rent plus \$94). |

(b) Adjustments in Base Rent: The Base Rents referenced in paragraph "2 (a)(i)" (Months 1 through 12) above are based on an assumption that Landlord's costs, as outlined in paragraph 7-A(a) (LANDLORD IMPROVEMENTS AND ALTERATIONS) shall total \$130,000. To the degree that Landlord's cost are more than or less than

\$130,000, the monthly Base Rent shall be adjusted up or down respectively based on the following: The numerical amount by which the rent increases or decreases shall be amortized over a 60 month period at six percent (6%) per annum and that amount shall be added to (or deducted from) the Base Rent as illustrated in the following example. If, for example, the total "landlord improvements and alternations" shall be \$132,000 instead of \$130,000, the increase of \$2,000, when amortized at 6% per month over the five year period shall add \$38.67 per month to the Base Rent for months 1 through 12 so that the adjusted Base Rent would be \$2,918.67 per month. Future increases would then be increased accordingly as well at the rate of 3% per annum. Thus, instead of \$86 being the amount of increase for months 13 through 24, the new Base Rent increase would be \$87.56 with a similar percent increase in the following years.

(c) No Partnership Created. Landlord is not by virtue of this Section 2 a partner or joint venture with Tenant in connection with the business carried on under this Lease, and shall have no obligation with respect to Tenant's debts or other liabilities.

(d) Additional Rent. All references to "Rent" or "Rental" in this Lease shall mean Base Rent, and all other payments required of Tenant under this Lease unless otherwise expressly specified. All payments of Rent shall be made to Landlord without offset, abatement, or deduction.

3. SECURITY DEPOSIT (FIRST AND LAST MONTHS RENT). Upon execution of this Lease, Tenant shall pay to Landlord the sum of \$6121 which is equal to the first month's Base Rent of \$2880 and the last month's Base Rent of \$3241, as security for the full and faithful performance by Tenant of all of the covenants and terms of this Lease required to be performed by Tenant. Such security deposit shall be returned to Tenant after the expiration of this Lease, provided Tenant has fully and faithfully carried out all of Tenant's obligation hereunder, including the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Lease. However, Landlord, at its option, may apply such sum on account of the payment of the last month's Base Rent or other unpaid obligation of Tenant's. Such sum may be commingled with other funds of Landlord and shall not bear interest. In the event of a sale of the property on which the Premises are located, subject to this Lease, Landlord shall have the right to transfer the lease consideration to the purchaser to be held under the terms of this Lease, and Landlord shall thereupon be released from all liability for the return of the lease consideration. Tenant agrees to look solely to the new landlord for the return of the lease consideration.

4. TAXES; INSURANCE; AND OPERATING EXPENSES.

(a) Tenant's Taxes. Tenant shall be responsible for and shall pay before delinquent all taxes assessed during the Term against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.

(b) Tenant's Share of Property Taxes. In addition to Base Rent, Tenant shall pay during each calendar year or part thereof during the Term, Tenant's Proportionate Share (as provided in Section 4(h)) of the total real property taxes and assessments levied, assessed or imposed during the Term upon the Property or the

use, occupancy or operations of the Property ("Taxes") for each such calendar year. PROVIDED, HOWEVER, IN THE EVENT THE PROPERTY TAXES ARE REDUCED BECAUSE OF TENANT'S NOT-FOR-PROFIT STATUS, TENANT WILL BE ENTITLED TO ALL CREDITS APPLICABLE TO SUITE C OF LOT 1 OF THE ZIMMER COMMERCE CENTER. **It is the assumption of both parties that Tenant will not have to pay these taxes.** Otherwise, in the interim, commencing with the payment due August 1, 2013, Tenant shall pay to Landlord an amount each month, which is equal to one-twelfth of Landlord's reasonable estimate of Tenant's share of the Taxes. Landlord shall notify Tenant of the estimated monthly amount to be paid, and of any changes in the estimated amount, and Tenant shall pay Landlord such estimated amount at the same time as and together with Tenant's Base Rent. When the actual Taxes are determined each year, Landlord shall furnish to Tenant a statement showing in reasonable detail the computation of Tenant's share of the Taxes, and the charge or credit to Tenant for any difference between the actual amount and the estimated amounts previously paid by Tenant. Any deficiency shall be reimbursed by Tenant within ten (10) days after Landlord gives Tenant notice thereof and any credit shall be applied to Tenant's next succeeding payment of Rent or other charges under the Lease. No interest or earnings shall be payable by Landlord to Tenant on any amount paid hereunder, and Landlord may commingle such payment with other funds of Landlord. Should there be in effect during the Term any law, statute, or ordinance which levies, assesses, or imposes any tax (other than federal or state income tax) upon rents, Tenant shall pay such taxes as may be attributable to the Rents under this Lease or shall reimburse Landlord for any such taxes paid by Landlord within ten (10) days after Landlord bills Tenant for the same.

(c) Insurance. During the Term, Landlord shall maintain in full force a policy or policies of fire insurance with standard extended coverage endorsements covering the building or buildings and other improvements (exclusive of Tenant's trade fixtures, tenant improvements and other property) situated on the Property. During the Term, Landlord shall maintain in full force a comprehensive liability insurance policy insuring Landlord against liability for bodily injury and property damage occurring in, on or about the Property. Landlord shall use its reasonable efforts to secure said insurance at competitive rates. Tenant shall pay Tenant's Proportionate Share of such insurance pursuant to the terms of Section 4(h) of this Lease, as part of Operating Expenses.

(d) Increases in Premiums. This Lease is entered into on the basis that Tenant's occupancy will not affect the Property's classification for insurance rating purposes. If Tenant's initial intended use of the Premises results in higher insurance premiums for any buildings situated on the Property, Tenant shall pay for the increased costs of the premiums for insuring any such buildings against loss by fire with standard extended coverage endorsements during the Term. If the insurance premiums on any such buildings are increased during the Term as a result of the installation of equipment on the Premises by Tenant, by reason of Tenant maintaining certain goods or materials on the Premises or as a result of other use or occupancy of the Premises by Tenant, Tenant shall pay the additional cost of the insurance for any such buildings (whether or not Landlord has consented to the activity resulting in the increased insurance premiums). Tenant shall refrain from any activity in its use of the Premises which would make it impossible to insure the Premises or the buildings situated on the Property

against casualty or which would increase the insurance rate of any such buildings or prevent Landlord from taking advantage of the ruling of the Insurance Rating Bureau of the state in which the Premises are situated or its successors allowing Landlord to obtain reduced premium rates for long term fire insurance policies, unless Tenant pays the additional cost of the insurance. All of Tenant's electrical equipment shall be U-L approved. If Tenant installs any electrical equipment that overloads the lines in the Premises or in any such buildings, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction. Any insurance premiums to be paid by Tenant by reason of its initial intended use of the Premises or any increase in fire insurance premiums attributable to Tenant's use or occupancy of the Premises during the Term shall be paid by Tenant to Landlord within thirty days after Landlord bills Tenant for the same.

(e) Indemnity; Tenant's Insurance. Tenant shall indemnify and save harmless Landlord from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) the use, occupancy, management, or control of the Premises, (ii) any failure of Tenant to comply with the terms of this Lease, and (iii) the acts or omissions of Tenant, its agents, officers, directors, employees, or invitees; provided, however, that Tenant shall not be liable for claims caused by the negligence of Landlord. Tenant shall, at its own cost and expense, defend any and all suits which may be brought against Landlord either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant. Neither Landlord nor any partner, director, officer, agent, or employee of Landlord shall be liable to Tenant or any person claiming through Tenant for any loss, injury, or damage whatsoever, including without limitation any loss, injury, or damage caused by other tenants or persons in or about the Business, except to the extent any such loss, injury, or damage is caused by or results from the negligent or willful act or omission of Landlord or its agents or employees. Except in cases of Landlord negligence, Landlord shall not be liable for consequential damages, including lost profits, of Tenant or any person claiming through Tenant, regardless of the cause of any loss, injury, or damage. Tenant shall at its own expense during the Term carry in full force and effect a comprehensive public liability insurance policy, with an insurance carrier satisfactory to Landlord, naming Landlord as an additional insured, with combined limits of not less than \$2,000,000 in bodily injury liability, and property damage liability, insuring against any and all liability of Tenant with respect to the Premises and under this Lease, or arising out of the maintenance, use or occupancy of the Premises. Such policy shall provide that the insurance shall not be cancelable or modified without at least ten (10) days' prior written notice to Landlord, and shall be deemed primary and noncontributing with other insurance available to Landlord. Tenant shall maintain, at Tenant's expense, insurance covering Tenant's personal property, furnishings, fixtures, and equipment; Landlord is not responsible therefore. On or before the Commencement Date, Tenant shall furnish Landlord with a certificate or other acceptable evidence that such insurance is in effect. Tenant shall also provide and maintain insurance to comply with Worker's Compensation and Employer's Liability Laws.

(f) Routine Operating Expenses. From and after the Commencement Date, Tenant shall pay to Landlord during each calendar year or part thereof during the Term, in addition to Base Rent and additional rent ("Additional Rent") Tenant's Proportionate Share of Routine Operating Expenses. Tenant shall pay to Landlord an amount each month, which is equal to one-twelfth of Landlord's reasonable estimate of Tenant's share of the Routine Operating Expenses. Landlord shall notify Tenant of the estimated monthly amount to be paid, and of any changes in the estimated amount, and Tenant shall pay Landlord such estimated amount at the same time as and together with Tenant's Base Rent. When the actual Routine Operating Expenses are determined each year, Landlord shall furnish to Tenant a statement showing in reasonable detail the computation of Tenant's share of the Routine Operating Expenses, and the charge or credit to Tenant for any difference between the actual amount and the estimated amounts previously paid by Tenant. Any deficiency shall be reimbursed by Tenant within ten (10) days after Landlord gives Tenant notice thereof and any credit shall be applied to Tenant's next succeeding payment of Rent or other charges under the Lease. No interest or earnings shall be payable by Landlord to Tenant on any amount paid hereunder, and Landlord may commingle such payment with other funds of Landlord. The term "Routine Operating Expenses" means all reasonable and routine expenses paid or incurred by Landlord or on Landlord's behalf and determined by Landlord to be necessary or appropriate for the efficient operation, maintenance, and repair of the Business, for those areas of the Business not reserved for exclusive use by a specific tenant, such as the driveways, parking areas, landscape areas, curbs, sidewalks, plazas, and refuse collection areas. Routine Operating Expenses shall include, but not be limited to, the following (to the extent not chargeable to a specific tenant):

(i) Salaries, wages, and benefits (including without limitation medical and other insurance, pension payments, payroll taxes, and worker's compensation insurance) for employees of Landlord, if any, engaged in the on-site repair, operation, maintenance, management, engineering, or security of the Business;

(ii) All expenses incurred for gas, electricity, heat, ventilation, air-conditioning, water, and other services or utilities furnished to the Business, together with any taxes thereon;

(iii) All repair, replacement, service, and general maintenance costs relating to the Business, including without limitation heating, ventilating, and air conditioning systems, sidewalks, landscaping, surface parking, service areas, refuse collection areas, mechanical rooms, roofs, and building exteriors, whether the work in question is done by Landlord or its agents, or by an independent contractor;

(iv) The cost of all insurance charges, including without limitation casualty, comprehensive liability, fire with extended coverage endorsement, boiler and machinery, rent loss, earthquake, flood, and such other policies of insurance as Landlord deems reasonable to obtain with respect to the Business;

(v) The cost or rental of all supplies, including without limitation cleaning supplies, light bulbs, tubes and ballasts, materials, and equipment, and all taxes thereon;

(vi) The cost of all charges for cleaning, sweeping, janitorial, and security services;

(vii) The cost of reasonable alterations and improvements to ZIMMER COMMERCIAL CENTER as required by any governmental authority or insurance underwriter or similar board or body;

(viii) Actual management fees paid to a third party with respect to the Business or, if no managing agent is employed by Landlord, a management fee not in excess of the then-prevailing management fees charged for comparable businesses in the Portland, Oregon metropolitan area;

(ix) Legal, accounting, and other professional fees incurred in connection with general, routine operations, maintenance, and management of the Business as it applies to Routine Operating Expenses;

(x) Any parking charges, utilities surcharges, or other costs levied, assessed, or imposed by or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by, any governmental authority in connection with the use or occupancy of the Business or the parking facilities serving the Business;

(xi) All other expenses properly allocable to the operation, repair, and maintenance of the Business in accordance with generally accepted accounting principles.

(g) Net Lease. This Lease shall be an absolutely net lease and Rent shall be paid to Landlord absolutely net of all costs and expenses. The provisions for payment of Tenant's Proportionate Share of Taxes and Operating Expenses are intended to pass on to Tenant and to reimburse Landlord for all costs and expenses of the nature described in this Lease.

(h) Tenant's Proportionate Share. As of the date of this Lease, Tenant's Proportionate Share of Taxes, insurance, and Operating Expenses is twenty-five percent (25%). Tenant's Proportionate Share may be adjusted from time to time if the number of rentable square feet in the Business is remeasured or changes, so long as such adjustment is equitable.

5. PLACE OF PAYMENT. Tenant shall pay the Rent and other amounts required to be paid by Tenant hereunder to Landlord at the address for Landlord set forth on the last page of this Lease, or at such other place as Landlord may from time to time designate in writing.

6. USE OF PREMISES. The Premises shall be used for retail office space to support CANBY AREA TRANSIT (CAT) and for no other purpose without Landlord's written consent, which consent shall not be unreasonably withheld. In connection with the use of Premises or as a tenant or owner of any other parcel in the ZIMMER COMMERCE CENTER, Tenant shall:

(a) Conform to and comply with all applicable laws and regulations of any public authority affecting the Premises, the condition of the Premises, and the use of the Premises and correct promptly, at Tenant's own expense, any failure of compliance.

(b) Refrain from any activity which would be reasonably offensive to Landlord, to other tenants in any buildings situated on the Property, or to owners or users of the adjoining premises, or which would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any objectionable noise or odor to escape or be emitted from the Premises nor permit the use of flashing (strobe) lights;

(c) Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by Landlord and refrain from using water, sewer, and plumbing systems in any harmful way. Tenant shall use hair interceptors, grease traps or other drain protection devices as needed to avoid such harmful use;

(d) Tenant, at its sole cost and expense, may install a sign on the fascia of the building at a location and of a style which meets the approval of the landlord (consent shall not be unreasonably withheld) and is in accordance with all appropriate government regulations. Tenant may also have signage at the existing pylon reserved for ZIMMER COMMERCE CENTER tenants. Tenant shall have use of the top lens panel on each side of the pylon for its exclusive use. Notwithstanding Landlord's consent to any signs, Tenant shall remove all such signs upon termination of the Lease and repair any damage to the Premises caused thereby, at Tenant's own cost and expense;

(e) Comply with any reasonable rules respecting the use of the Premises promulgated by Landlord from time to time and communicated to Tenant in writing. Of the twenty-eight (28) parking spaces allocated for Lot 1 of ZIMMER COMMERCE CENTER, Tenants normal use shall not exceed seven (7) of these spaces. It is understood by the parties that until occupied by future tenants, the remaining additional 14 spaces, for a total of 21 spaces, will be available for use by Tenant.

(f) Not permit any cash, credit card, or coin-operated vending, novelty or gaming machines or equipment on the Premises without the prior written consent of Landlord; and not to permit the use of any part of the Premises for a second-hand store, nor for an auction, distress or fire sale, or bankruptcy or going-out-of-business sale or the like;

(g) Not commit or suffer any strip or waste of the Premises including without limitation the improvements thereon or any part thereof; and Tenant shall keep the Premises in a neat, clean, sanitary, and orderly condition;

(h) Not display or sell merchandise outside the exterior walls of the Premises; and

(i) Shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use

or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 6. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

(j) Be subject to Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements, Clackamas County Recorder's Fee No. 2007-081170, as amended in Clackamas County Recorder's Fee No. 2009-026540.

7. IMPROVEMENTS AND ALTERATIONS.

a. LANDLORD IMPROVEMENTS AND ALTERATIONS.

(i) Landlord shall be responsible for making alterations requested by Tenant in conformance with the attached Exhibit B (ceiling plan and floor plan). Construction notes have been enlarged for the convenience of Landlord and Tenant. Except for the alterations requested by the Tenant in the attached Exhibit B, Landlord shall not be required to make any further improvements or alterations to the premises.

(ii) Provided, however, Tenant shall obtain and pay for all developmental, design and architectural permits, fees and costs.

b. TENANT IMPROVEMENTS AND ALTERATIONS.

(i) When Tenant takes possession of the Premises, Tenant shall be deemed to have accepted the Premises and the Building in their current condition. Landlord makes no representations regarding the fitness of the Premises or the Building for any particular purpose.

(ii) Tenant shall make no improvements or alterations to the premises of any kind without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

(iii) All work by Tenant shall be done in strict compliance with all applicable building, fire, sanitary and safety codes and other applicable laws, statutes, regulations and ordinances and Tenant shall secure all necessary permits for the same.

Tenant shall keep the premises free from all liens in connection with any such work. Landlord or Landlord's agents shall have the right at all reasonable times to inspect the quality and progress of such work.

(iv) All improvements, alterations and other work performed on the Premises by the Tenant shall be the property of Landlord when installed, except for Tenant's trade fixtures, and items marked on the Exhibit C to be removed at the conclusion of the Lease. All such improvements, alterations or other work to be performed by Tenant shall be at the Tenant's sole cost and expense.

8. REPAIRS AND MAINTENANCE.

(a) Landlord's Responsibilities. The following shall be the responsibility of Landlord, and Landlord shall maintain all of the following in good condition and repair:

(i) Structural repairs and maintenance and repairs necessitated by structural disrepair or defects;

(ii) Repair and maintenance of the exterior walls, roof, gutters, downspouts and the foundation of the building in which the Premises are located. This shall not include maintenance of the operating condition of doors and windows or replacement of glass, nor maintenance of the store front; and

(iii) Repair of interior walls, ceilings, doors, windows, floors and floor coverings when such repairs are made necessary because of failure of Landlord to keep the structure in repair as above provided in this Section 8(a).

(b) Tenant's Responsibilities. The following shall be the responsibility of Tenant, and Tenant shall maintain all of the following in good condition and repair:

(i) The interior of the Premises including any interior decorating;

(ii) Any repairs necessitated by the negligence of Tenant, its agents, employees and invitees and their use of the Premises;

(iii) Maintenance and repair of the heating, ventilating, and air conditioning systems, plumbing system, electrical system, and sprinkler systems, if any. However, Landlord reserves the right to contract with a service company for the maintenance and repair of the foregoing systems, or any of them; and Tenant's share of such expenses shall be paid by Tenant to Landlord monthly;

(iv) Maintenance and repair of the interior walls and floor coverings (both hard surfaces and carpeting);

(v) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in this Lease; and

(vi) All other repairs or maintenance to the Premises which Landlord is not expressly required to make under Section 8(a) above, which includes, without

limiting the generality of the foregoing, the replacement of all glass which may be broken or cracked during the Term with glass of as good or better quality than that in use at the commencement of the Term, wiring, plumbing, drainpipes, sewers, and septic tanks including without limitation, repairs outside of the Premises if the need for the repair arises from Tenant's use of the Premises. All of Tenant's work shall be in full compliance with then-current building code and other governmental requirements.

(c) Inspections. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs as outlined above in any area in Tenant's possession and control shall not mature until a reasonable time after Landlord has received from Tenant written notice of the necessity of repairs, except in the event emergency repairs may be required and in such event Tenant shall attempt to give Landlord appropriate notice considering the circumstances.

(d) Landlord's Work. All repairs, replacements, alterations or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Tenant. Tenant shall have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's performance of repairs and maintenance pursuant to this Section 8.

9. LIENS. Tenant shall keep the Premises free from all liens, including mechanic's liens, arising from any act or omission of Tenant or those claiming under Tenant. Landlord shall have the right to post and maintain on the Premises or the building in which the Premises are situated such notices of non-responsibility as are provided for under the lien laws of the state in which the Premises are located.

10. UTILITIES. Tenant shall pay promptly for all water and sewer facilities, gas and electrical services, including heat and light, garbage collection, and all other facilities and utility services used by Tenant or provided to the Premises during the Term. If the heating and air-conditioning systems are not on separate meters, Tenant shall pay its proportionate share of such charges based upon the actual use of the heat and air conditioning by Tenant and by the other tenants of the building in which the Premises are situated within ten (10) days after billings therefore. Tenant shall arrange for regular and prompt pickup of trash and garbage and shall store such trash and garbage in only those areas designated by Landlord. However, if Landlord elects to arrange for garbage collection on a cooperative basis for Tenant and other tenants, Tenant shall pay its proportionate share of the garbage collection charges, within ten (10) days after billings therefore. Landlord shall not be liable for any interruption of utility services to the Premises.

11. ICE. SNOW. AND DEBRIS. Tenant shall keep the walks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstructions. Tenant shall save and protect Landlord from any injury whether to Landlord or Landlord's property or to any other person or property caused by Tenant's failure to perform Tenant's obligations under this Section 11. Tenant's obligations under this Section 11 shall be performed at Tenant's cost and expense.

12. WAIVER OF SUBROGATION. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, including sprinkler leakage insurance, if any. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants or employees.

13. INJURY TO TENANT'S PROPERTY. Landlord shall not be liable for any injury to any property of Tenant or to any person in or upon the Premises resulting from fire or collapse of the building in which the Premises are located or any portion thereof or any other cause, including but not limited to damage by water, gas or steam, or by reason of any electrical apparatus in or about the Premises. Landlord shall not be responsible for securing the Premises or providing security to the Building.

14. DAMAGE OR DESTRUCTION.

(a) Partial Destruction. If the Premises shall be partially damaged by fire or other cause, and Section 14(b) below does not apply, the damages to the Premises shall be repaired by Landlord, and all Base Rent until such repair shall be made shall be apportioned according to the part of the Premises which is useable by Tenant, except when such damage occurs because of the fault of Tenant. The repairs shall be accomplished with all reasonable dispatch. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs. However, if the holder of any indebtedness secured by the Property requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease.

(b) Substantial Damage. If the buildings situated on the Property or the building in which the Premises are located or the Premises, or any of them, are 50% or more destroyed during the Term by any cause, Landlord may elect to terminate the Lease as of the date of damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. In the absence of an election to terminate, Landlord shall proceed to restore the Premises, if damaged, to substantially the same form as prior to the damage or destruction, so as to provide Tenant useable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Landlord. From the date of damage until the Premises are restored or repaired, Base Rent shall be abated or apportioned according to the part of the Premises useable by Tenant, unless the damage occurred because of the fault of Tenant. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an

endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.

(c) Restoration. If the Premises are to be restored by Landlord as above provided in this Section 14, Tenant, at its expense, shall be responsible for the repair and restoration of all items which were initially installed at the expense of Tenant (whether the work was done by Landlord or Tenant) or for which an allowance was given by Landlord to Tenant, together with Tenant's stock in trade, trade fixtures, furnishings, and equipment; and Tenant shall commence the installation of the same promptly upon delivery to it of possession of the Premises and Tenant shall diligently prosecute such installation to completion.

15. EMINENT DOMAIN.

(a) Partial Taking. If a portion of the Premises is condemned and neither Section 15(b) nor Section 15(c) apply, the Lease shall continue in effect. Landlord shall be entitled to all the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of condemnation. Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to the condition as comparative as reasonably practicable to that existing at the time of condemnation. Base Rent shall be abated to the extent that the Premises are untenable during the period of alteration and repair. After the date on which title vests in the condemning authority, Base Rent shall be reduced commensurately with the reduction in value of the Premises as an economic unit on account of the partial taking. However, if the holder of any indebtedness secured by the Property requires that the condemnation proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease.

(b) Substantial Taking of the Property. If a condemning authority takes any substantial part of the Property or any substantial part of the building in which the Premises are located, the Lease shall, at the option of Landlord, terminate as of the date title vests in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(c) Substantial Taking of Premises. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for Tenant's use, the Lease shall terminate as of the date title vest in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(d) Definition. Sale of all or any part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purpose of this Lease as a taking by condemnation.

16. BANKRUPTCY. Subject to Section 17, this Lease shall not be assigned or transferred voluntarily or involuntarily by operation of law. It may, at the option of Landlord, be terminated, if Tenant be adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or files or is a party to the filing of a petition in bankruptcy, or commits an act of bankruptcy, or in case a receiver or trustee is appointed to take charge of any of the assets of Tenant or sub lessees or assignees in or on the Premises, and such receiver or trustee is not removed within 30 days after the date of his appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Tenant or any sub lessees or assignee hereunder, unless such property or reasonable replacement therefore be installed on the Premises. To the extent permitted by law, this Lease or any sublease hereunder shall not be considered as an asset of a debtor-in-possession, or an asset in bankruptcy, insolvency, receivership, or other judicial proceedings.

17. DEFAULT. The following shall be events of default:

(a) Failure of Tenant to pay any Base Rent, or Additional Rent when due or failure of Tenant to pay any other charge required under this Lease when due.

(b) Failure of Tenant to execute the documents described in Section 21 or 22 within the time required under such Sections; failure of Tenant to provide or maintain the insurance required of Tenant pursuant to Section 4(e); or failure of Tenant to comply with any governmental law, order, rule, regulation, ordinance or directive applicable to the Premises within 24 hours within written demand by Landlord.

(c) Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the failures described in Sections 17(a) or 17(b)), within ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Tenant begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Landlord shall not be obligated to give written notice for the same type of default more than twice; at Landlord's option a failure to perform an obligation after the second notice shall be an automatic Event of Default, without notice or an opportunity to cure.

(d) The abandonment of the Premises by Tenant or the failure of Tenant for fifteen (15) days or more to operate the business described in Section 6 of this Lease in the Premises unless such failure is excused under other provisions of this Lease.

(e) The bankruptcy or the occurrence of other acts specified in Section 16 of this Lease which give Landlord the option to terminate.

18. REMEDIES ON DEFAULT. In the event of a default, Landlord may, at Landlord's option, exercise anyone or more of the rights and remedies available to a

landlord in the state in which the Premises are located to redress such default, consecutively or concurrently, including the following:

(a) Landlord may elect to terminate Tenant's right to possession of the Premises or any portion thereof by written notice to Tenant. Following such notice, Landlord may re-enter, take possession of the Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Landlord shall have the right to retain the personal property belonging to Tenant which is on the Premises at the time of re-entry, or the right to such other security interest therein as the law may permit, to secure all sums due or which become due to Landlord under this Lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise as provided by law.

(b) Following re-entry by Landlord, Landlord may relet the Premises for a term longer or shorter than the Term and upon any reasonable terms, including the granting of rent concessions to the new tenant. Landlord may alter, refurbish or otherwise change the character or use of the Premises in connection with such reletting. Landlord shall not be required to relet for any use or purpose which Landlord may reasonably consider injurious to its property or to any tenant which Landlord may reasonably consider objectionable. No such reletting by Landlord following a default by Tenant shall be construed as an acceptance of the surrender of the Premises. If rent received upon such reletting exceeds the Rent received under this Lease, Tenant shall have no claim to the excess.

(c) Following re-entry Landlord shall have the right to recover from Tenant the following damages:

(i) All unpaid or other charges for the period prior to re-entry, plus interest at a rate equal to six percent (6%) per annum.

(ii) An amount equal to the Rent lost during any period during which the Premises are not relet, if Landlord uses reasonable efforts to relet the Premises. If Landlord lists the Premises with a real estate broker experienced in leasing commercial property in the metropolitan area in which the Premises are located, such listing shall constitute the taking of reasonable efforts to relet the Premises.

(iii) All costs incurred in reletting or attempting to relet the Premises, including but without limitation, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions or advertising expenses.

(iv) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation is commenced.

(d) Landlord may sue periodically to recover damages as they accrue throughout the Term and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Landlord may obtain a decree of specific performance requiring Tenant to pay the damages stated in

Section 18(c) above as they accrue. Alternatively, Landlord may elect in anyone action to recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent under this Lease and the reasonable rental value of the Premises for the remainder of the Term, discounted to the time of the judgment at the rate of six percent (6%) per annum.

(e) In the event that Tenant remains in possession following default and Landlord does not elect to re- enter, Landlord may recover all back Rent and other charges, and shall have the right to cure any nonmonetary default and recover the cost of such cure from Tenant, plus interest from the date of expenditure at the Interest Rate. In addition, Landlord shall be entitled to recover attorney's fees reasonably incurred in connection with the default, whether or not litigation is commenced. Landlord may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

(f) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another remedy.

19. SURRENDER AT EXPIRATION

(a) Condition of Premises. Upon expiration of the Term or earlier termination Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Except as provided in section 7 (see Exhibit C), improvements and alterations constructed by Tenant shall not be removed or restored to the original condition unless the terms of Landlord's consent provides otherwise or unless Landlord requests Tenant to remove such improvements or alterations, in which event Tenant shall remove the same and restore the Premises. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 19 shall be subject to the provisions of Section 14 relating to damages or destruction.

(b) Fixtures.

(i) Except as set forth in Exhibit C, all fixtures placed upon the Premises during the Term, other than Tenant's trade fixtures, shall, at Landlord option, become the property of Landlord. Movable furniture, decorations, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, drapes, blinds, furnishing and trade fixtures shall remain the property of Tenant if placed on the Premises by Tenant; provided, however, if Landlord granted Tenant an allowance for improvements, installation, floor coverings, curtains, drapes, blinds or other items, such items shall at Landlord's option become the property of Landlord notwithstanding the installation thereof by Tenant.

(ii) If Landlord so elects, Tenant shall remove any or all fixtures which would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the Interest Rate. Tenant shall

remove all furnishings, furniture and trade fixtures which remain the property of Tenant. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease. Landlord may effect a removal and place the property in public or private storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, with interest on all such expenses from the date of expenditure at the Interest Rate.

(iii) The time for removal of any property or fixtures which Tenant is required to remove from the Premises upon termination shall be as follows:

(1) On or before the date the Lease terminates because of expiration of the Term or because of a default under Section 17.

(2) Within 30 days after notice from Landlord requiring such removal where the property to be removed is a fixture which Tenant is not required to remove except after such notice by Landlord, and such date would fall after the date on which Tenant would be required to remove other property.

(c) Holdover.

(i) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provision for the Term, and except the Base Rent provided herein shall double during the period of the month-to-month tenancy. Failure of Tenant to remove fixtures, furniture, furnishings or trade fixtures which Tenant is required to remove under this Lease shall constitute a failure to vacate to which this Section 19(c) shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(ii) If a month-to-month tenancy results from a holdover by Tenant under this Section 19(c), the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

20. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease or sublet all or any part of the Premises without the written consent of Landlord, which consent will not be unreasonably withheld. Without limiting the generality of the foregoing, it shall not be unreasonable for Landlord to withhold its consent if the proposed assignee or sublessee does not have the net worth of Tenant and/or does not have an established record of high-quality operations. Tenant shall remain primarily liable, after any assignment or sublease, for the payment of all Rent and other charges under this Lease and for the performance of all of Tenant's obligations under this Lease, notwithstanding such assignment or subletting by Tenant.

21. SUBORDINATION. Tenant's interest hereunder shall be subject and subordinate to all mortgages, trust deeds, and other financing and security instruments placed on the Premises by Landlord from time to time ("Mortgages") except that no

assignment or transfer of Landlord's rights hereunder to a lending institution as collateral security in connection with a Mortgage shall affect Tenant's right to possession, use and occupancy of the Premises so long as Tenant shall not be in default under any of the terms and conditions of this Lease. The provisions of this Section 21 shall be self-operating. Nevertheless, Tenant agrees to execute and acknowledge an instrument in recordable form which expressly subordinates Tenant's interest hereunder to the interests of the holder of any Mortgage within ten (10) days after request by Landlord. As an accommodation to Landlord and at its request, Tenant shall furnish Landlord current and past balance sheets and operating statements certified as accurate and up to date by Tenant and in the form requested by the holder of any Mortgage to which Landlord applies for financing concerning the Property or any prospective purchaser of the Business.

22. ESTOPPEL CERTIFICATE. Tenant shall from time to time, upon not less than ten (10) days prior notice, submit to Landlord, or to any person designated by Landlord, a statement in writing, in the form submitted to Tenant by Landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of Tenant no uncured default exists hereunder (or if such uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that Tenant has no claims against Landlord and no defenses or offsets to rental except for the continuing obligations under this Lease (or if Tenant has any such claims, defenses or offsets, specifying the same), and any other information concerning this Lease as Landlord reasonably requests.

23. PERFORMANCE BY LANDLORD. Landlord shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease if the same shall be due to any labor dispute, strike, lockout, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, through acts of God, or other cause beyond the reasonable control of Landlord, providing such cause is not due to the willful act or neglect of Landlord. Tenant shall look only to Landlord's estate and property in the Property (or the proceeds thereof) for the satisfaction of any judgment against Landlord resulting from a default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed, shall be subject to levy, execution, or other enforcement procedure for the satisfaction of any such judgment.

24. LANDLORD'S RIGHT TO CURE DEFAULT. If Tenant shall fail to perform any of the covenants or obligations to be performed by Tenant, Landlord, in addition to all other remedies provided herein, shall have the option (but not the obligation) to cure such default after thirty days' written notice to Tenant. All of Landlord's expenditures incurred to correct the default shall be reimbursed by Tenant upon demand with interest from the date of expenditure at the Interest Rate. Landlord's right to cure defaults is for the sole protection of Landlord and the existence of this right shall not release Tenant from the obligation to perform all of the covenants herein

provided to be performed by Tenant, or deprive Landlord of any other right which Landlord may have by reason of such default by Tenant.

25. INSPECTION; CHANGES. Landlord, Landlord's agents and representatives, shall have the right to enter upon the Premises at reasonable times for the purpose of inspecting the same, for the purpose of making repairs or improvements to the Premises or the building in which the Premises are located, for showing the Premises during the final ninety days of the Term, or for any other lawful purpose.

26. FOR SALE AND FOR RENT SIGNS. During the period of ninety days prior to the date for the termination of this Lease, Landlord may post on the Premises or in the windows thereof signs of moderate size notifying the public that the Premises are "for sale" or "for rent" or "for lease".

27. ATTORNEY'S FEES. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Lease or with respect to any dispute relating to this Lease, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

28. NOTICES. Any notice required or permitted under this Lease shall be in writing and shall be deemed given when actually delivered or when deposited in the United States mail as certified or registered mail, addressed to the addresses set forth on the last page of this Lease or to such other addresses as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

29. BROKERS. Landlord and Tenant acknowledge and agree that TERRY N. TOLLS (T.N. TOLLS COMPANY) and ALLEN C. PATTERSON (CAPACITY COMMERCIAL GROUP) are the agents of both Landlord and Tenant (disclose limited agency) and that no other broker shall be entitled to a commission with this transaction: Upon execution of a Lease, Landlord shall pay a commission totaling six percent (6%) of the gross lease consideration to T.N. TOLLS COMPANY and to CAPACITY COMMERCIAL GROUP (split 50/50 between brokerage firms).

30. LATE CHARGES. Tenant acknowledges that late payment by Tenant to Landlord of any Base Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges which may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent is not received by Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the

overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

31. RULES AND REGULATIONS. Tenant and its employees and agents shall faithfully observe and comply with the rules and regulations for the Business attached as Exhibit D and such changes to such rules and regulations as Landlord may from time to time promulgate (the "Rules and Regulations"). Landlord shall not be liable to Tenant for any violation of the Rules and Regulations by any other person, including any other tenant.

32. MISCELLANEOUS PROVISIONS.

(a) This Lease does not grant any rights of access to light or air over any part of the Property.

(b) Time is of the essence of this Lease.

(c) The acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default. Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to require strict performance of the same provision in the future or of any other provision of this Lease.

(d) This Lease contains the entire agreement of the parties. This Lease shall not be amended or modified except by agreement in writing, signed by the parties hereto.

(e) Subject to the limitations on the assignment or transfer of Tenant's interest in this Lease, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

(f) No remedy herein conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative.

(g) In interpreting or construing this Lease, it is understood that Tenant may be more than one person, that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations, partnerships, and individuals.

(h) Section headings are for convenience and shall not affect any of the provisions of this Lease.

(i) If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(j) All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

(k) Each person executing this Lease on behalf of Tenant hereby covenants and warrants that Tenant is duly incorporated and validly existing under the laws of its state of incorporation; Tenant has full corporate right and authority to enter into this Lease and to perform all of the Tenant's obligations under this Lease; and each person signing this Lease on behalf of the corporation is duly and validly authorized to do so.

33. ARBITRATION

a. Disputes to Be Arbitrated. If any dispute arises between the parties [as to a matter which this lease says should be arbitrated, or as to any other question involving apportionment or valuation], either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within 10 days of the choosing of the prior arbitrator, then either party may apply to the presiding judge of the judicial district where the premises are located to appoint the required arbitrator.

b. Procedure for Arbitration. The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

34. EXHIBITS AND ADDITIONAL PROVISIONS.

Exhibit A (Premises Outline);
Exhibit B (Transit Office Ceiling and Floor Plan);
Exhibit C (Improvements to Be Removed Upon Lease Termination);
Exhibit D (Rules and Regulations);
Exhibit E (Renewal Options); and

Exhibit F (Covenants, Conditions and Restrictions)

are attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

Landlord:
ZIMMER VENTURES, LLC

Tenant:
CITY OF CANBY, an Oregon municipal Corporation, acting on behalf of CANBY AREA TRANSIT (CAT)

By: Robert Zimmer

Title: OWNER / MANAGER

By:

Title: City Administrator

Address: 182 N. Holly

Canby, OR 97013

ORDINANCE NO. 1384

AN ORDINANCE COMMITTING PERS CONTRIBUTION STABILIZATION RESERVE TO BE USED TO OFFSET FUTURE PERS RATE INCREASES.

WHEREAS, the City Council established a PERS Contribution Stabilization Reserve (the Reserve) by adopting Resolution No. 1170; and

WHEREAS, the City plans to maintain the Reserve in the General Fund would like to commit the corresponding fund balance for the purpose of offsetting future PERS contribution rate increases; and

WHEREAS, the Governmental Accounting Standards Board (GASB) Statement No. 54, Fund Balance Reporting and Governmental Fund Type, paragraph 10 specifies that amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the government's highest level of decision-making authority should be reported as committed fund balance; and

WHEREAS, a City of Canby Ordinance is the highest level of decision-making authority; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The PERS Contribution Stabilization Reserve is hereby committed to be used for the purpose of offsetting future PERS Contribution rate increases.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, that the reserve be committed, 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, July 17, 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, August 7, 2013, commencing at 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 7th day of August 2013, by the following vote:

YEAS_____

NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

Management Team Meeting Minutes

July 15, 2013

2:00 PM

City Hall Conference Room

In attendance: Greg Ellis, Eric Laitinen, Amanda Zeiber, Penny Hummel, Bryan Brown, Kim Scheafer, Bret Smith, and Darwin Tramel.

Bret Smith

- Interviewing of participants during July 4 parade created a safety issue due to big gaps in parade
- Fire was set at Community Park by the trailhead
- Industrial accident fatality at BBC Steel last Friday

Amanda Zeiber

- Health & Benefits Fair will be tomorrow morning at the Police Department Community Room

Kim Scheafer

- Out of office next week

Bryan Brown

- Out of office last week of August
- Gave updates on Dinsmore Estates Phase II and Northwoods Phase II
- A pre-application meeting is pending for a Planned Unit Development of garden homes on NE 3rd
- Thanked Finance Staff for helping cover staff during lunch hour the last few weeks

Greg Ellis

- Out of office Tuesday and most of Wednesday
- Thanked staff for work that was done on the library project

Darvin Tramel

- Training staff on submitting Emergency Response Notification and Discharge Notice
- Will be doing inspections at SR Smith and Johnson Controls this week
- Stormwater Master Plan should be done this month
- Getting quotes for an effluent outfall diffuser

Minutes taken by Kim Scheafer

Management Team Meeting Minutes

July 29, 2013

2:00 PM

City Hall Conference Room

In attendance: Greg Ellis, Renate Mengelberg, Amanda Zeiber, Julie Wehling, Haley Fish, Bryan Brown, Kim Scheafer, Joseph Lindsay, Bret Smith, and Darwin Tramel.

Bret Smith

- Gave update on vandalism to City property that was done over the weekend

Kim Scheafer

- CC will be adopting goals on August 7
- Reviewed CC Agenda for August 7

Greg Ellis

- Out of office Thursday

Darvin Tramel

- Working on an effluent outfall diffuser
- Inspecting Johnson Controls this week

Bryan Brown

- Pre-construction meeting for Northwood Park went well
- Staff is still working out dog park issues. Water well now has to be decommissioned.
- PC approved revised Site and Design Review. Going back to CC on September 4
- Still working with Applicants for a Planned Unit Development of garden homes on NE 3rd and a fourplex

Renate Mengelberg

- Community Response Team is meeting on Wednesday
- Industrial Park property owners are meeting on Wednesday
- First Friday will have some street vendors participating
- Working on development oriented newsletter that will go out every six months
- Metals Summit went well
- Manufacturing Day will be held in October again
- Canby Rental got their design back from LRS Architects
- Parking meeting with downtown business owners went well last week

Amanda Zeiber

- Police Association negotiations are going well
- Flu shot clinic will be held on September 25
- PT Librarian job offer has been made
- ID badges will be issued to all staff (except Police) during the next few weeks
- Remind staff to turn in flexible spending forms and sign up for flu shot clinic
- Starting to plan for holiday party
- Out of office several days in August

Joseph Lindsay

- Working on telecommunications ordinance

Haley Fish

- Working with auditors this week

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	October 2013
	New Tree Ordinance	Underway	Matilda Deas/Sol Jacobsen	August 2013
	Stormwater Master Plan Adoption	Consultant is working on plan	Darvin Tramel	Fall 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