



AGENDA

CANBY CITY COUNCIL REGULAR MEETING

July 6, 2011

7:30 PM

Council Chambers
155 NW 2nd Avenue

Mayor Randy Carson

Council President Walt Daniels
Councilor Richard Ares
Councilor Traci Hensley

Councilor Brian Hodson
Councilor Greg Parker

CITY COUNCIL REGULAR MEETING

1. **CALL TO ORDER – 5:30 PM** – City Hall Conference Room – The Council will immediately go into Executive Session with the Regular Session following at 7:30 PM in the Council Chambers.
2. **EXECUTIVE SESSION:** ORS 192.660(2)(f) Exempt Public Records, ORS 192.660(2)(h) Pending Litigation, ORS 192.660(2)(i) Performance Evaluation of Public Officer, and ORS 192.660(3) Labor Negotiations,
3. **OPENING CEREMONIES (7:30 PM - Council Chambers)**
 - A. Pledge of Allegiance and Moment of Silence
 - B. Presentation to Jason Padden
4. **COMMUNICATIONS**
5. **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.)
6. **MAYOR'S BUSINESS**
7. **COUNCILOR COMMENTS & LIAISON REPORTS**
8. **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 June 15, 2011 City Council Work Session and Regular Meeting
 - B. Reappointment to Canby Public Library Board Pg. 1
 - C. Appointment to City Budget Committee Pg. 2

9. RESOLUTIONS & ORDINANCES

- A. Ord. 1343, Authorizing a Contract with MV Transportation, Inc. for Providing Transit Operations for Canby Area Transit (CAT) **(2nd Reading)** Pg. 3
- B. Ord. 1345, Declaring City's Election to Receive State Revenue for 2011-2012 Fiscal Year **(2nd Reading)** Pg. 10
- C. Ord. 1346, Authorizing a Contract Extension with Julie Wehling of JWL Consulting, LLC for Professional Services for Management of Canby Area Transit Service Pg. 11
- D. Ord. 1347, Amending the Cable Television Franchise Agreement Between the City of Canby and WaveDivision VII, LLC Pg. 21

10. NEW BUSINESS

11. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

12. CITIZEN INPUT

13. ACTION REVIEW

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

15. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. 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.

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

Instructions: By using either your tab key or arrow keys, navigate to each field and type in your information. When complete, save the document to your computer and either mail, fax or email to the addresses listed below.

Date: 6/8/11

Name: Jon Dragt

Occupation: Software Developer

Home Address:

Employer: Self

Position: Owner

Daytime Phone:

Evening Phone: Same

E-Mail Address:

For which position are you applying? Library Board

What are your community interests (committees, organizations, special activities)? Library, Kiwanis, Vietnam Era Memorial

Experience and educational background: B.S. Social Sciences Cal Poly SLO

Reason for your interest in this position: Continue serving

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

Information on any special membership requirements: N/A

Referred by (if applicable): N/A

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

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to: **City of Canby**
Attn: City Recorder
182 N Holly Street
PO Box 930
Canby, OR 97013

Phone: 503.266.4021 Fax: 503.266.7961 Email: scheaferk@ci.canby.or.us

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

12-4-07

RECEIVED
JUN 08 2011
CITY OF CANBY

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

Instructions: By using either your tab key or arrow keys, navigate to each field and type in your information. When complete, save the document to your computer and either mail, fax or email to the addresses listed below.

Date: 6/27/2011

Name: Stephanie Boyce

Occupation: Mattress World

Home Address:

Employer: Becky Foster

Position: Sales and Management

Daytime Phone:

Evening Phone: same

E-Mail Address:

For which position are you applying? City Budget

What are your community interests (committees, organizations, special activities)? 1st Ave Redelopement Comm. General Canby Days Comm. Graduation All Night Party Comm.

Experience and educational background: High School Graduate and CCC

Reason for your interest in this position: I have been encouraged to join the City/UR Buddget Comm. to gain experience.

List any other City or County positions on which you serve or have served: NA

Information on any special membership requirements: NA

Referred by (if applicable): Traci Hensley

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

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to: **City of Canby**
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Canby, OR 97013

Phone: 503.266.4021 Fax: 503.266.7961 Email: scheaferk@ci.canby.or.us

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

12-4-07

RECEIVED

JUN 27 2011

CITY OF CANBY

ORDINANCE NO. 1343

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH MV TRANSPORTATION, INC OF FAIRFIELD, CALIFORNIA FOR PROVIDING TRANSIT OPERATIONS FOR CANBY AREA TRANSIT (CAT); AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby on behalf of Canby Area Transit (CAT) heretofore issued Request for Proposal (RFP) CAT2011 on March 18, 2011 requesting proposals from qualified companies for Canby Area Transit Operations; and

WHEREAS, the City of Canby received proposals from four (4) potential companies as follows on or before 5:00 pm on April 15, 2011:

Company Name:

MV Transportation, Inc.
Oregon Housing & Associated Services (OHAS)
First Transit, Inc.
Marson Transit, Inc.

WHEREAS, following an interview process, a four (4) member Selection Committee met on April 21, 2011, to score the proposals in accordance with the Evaluation Criteria detailed in the RFP.

WHEREAS, MV Transportation, Inc. received the top score of 94% and was identified unanimously by the Selection Committee as the most able, experienced and cost efficient proposer; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and the City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with MV Transportation, Inc. of Fairfield, California to provide transit operations for the City's Transit System. A copy of said contract is attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to implement this ordinance in order to be able to provide its transit service to local citizens without further delay, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, June 15, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 6, 2011 commencing at the hour of 7:30 P.M. in the City Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on July 6, 2011, by the following vote:

YEAS _____

NAYS _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

Contract for Transit Service

No: CAT2011

THIS CONTRACT made and entered into, in duplicate, this _____ day of July, 2011 by and between the City of Canby, Oregon, a municipal corporation, hereinafter called "City," and MV Public Transportation, Inc., with headquarters located in Fairfield, California hereinafter called "Contractor" for the following project and amount as set forth below.

WHEREAS, City is authorized by the Oregon Revised Statutes to furnish and operate public transportation services for the City of Canby and to enter into a contract with an operator to provide such services and City has determined such public transportation services were in the best interest of the residents of City and has exercised its authority within its boundaries to furnish such services; and

WHEREAS, City issued its Request for Proposal (RFP) dated March 18, 2011 to provide such services, and Contractor submitted its Proposal dated April 15, 2011 in response thereto. Following an evaluation by the City and its selection committee, Contractor was selected to be the most efficient and reliable service provider among the field of qualified competitors; and

WHEREAS, the Parties now wish to enter into this Transit Contract Agreement to memorialize their agreement,

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

Contractor will provide services as specified to operate Canby Area Transit service as described in the Request for Proposal and listed attachments beginning July 1, 2011 through June 30, 2013, with three (3) one-year options to renew in succeeding years. The Parties acknowledge and agree that a decision to renew is completely within the discretion of the City.

Attachments on file and FTA Requirements made part of this contract:

RFP CAT2011 - Which includes Federal Transit Administration Requirements (Section 4)
Amended RFP CAT2011 Section 1.3 and Attachment H (dated May 16, 2011)
Contractor response to RFP CAT2011 dated March 18, 2011
Contractor revised Cost Proposal (dated May 16, 2011)

This Transit Contract relies heavily on the published RFP by the City and the Proposal as submitted by the Contractor. Unless specifically noted in writing between the Parties, Contractor and City will follow all Terms and Conditions as outlined in the RFP and Contractor's Proposal dated May 31, 2011.

TERM OF CONTRACT: The initial term of this Contract shall be for a period of two (2) years commencing July 1, 2011 and ending on June 30, 2013. Thereafter, upon mutual agreement of the parties, the Contract may be extended for three (3) additional periods of one (1) year each. Both parties shall notify each other in writing at least 90 days in advance of the expiration date (June 30th) of its intention to either extend or not extend into the next

succeeding year. In the event the parties mutually agree to extend, the parties shall amend the Contract in a formal writing signed by both parties.

COMPENSATION: Compensation is based on a "revenue hour rate".

For purposes of this Contract, "Revenue Hour" shall be defined as: For fixed-route and commuter services the Revenue Hours are calculated from the start of customer service to the end of customer service for each route. Vehicle pre-trip inspections, fueling, cleaning and dead head are not included in fixed-route/commuter Revenue Hours. Therefore proposers should assure that these costs are covered by their Revenue Hour rate. For Dial-a-Ride (which is our paratransit service) Revenue Hours are calculated driver's clock time. Dial-a-Ride drivers hours vary based on demand. Dial-a-Ride drivers are given a new start time each day which is based on the ride requests for that day. Currently, the dispatching, call taking, scheduling, supervision of these services and all other activities detailed in the RFP are included in the Revenue Hour rate

Budget – Year 1 & 2 \$672,478.00 (14,280 Revenue Hours - @ \$47.08 per revenue hour)

Budget – Year 3 – Year 5 - To be added by amendment as agreed upon between the parties in future negotiation should the parties mutually agree to renew the agreement for succeeding year(s).

Compensation amount awarded is a not-to-exceed dollar figure which cannot be increased without documented justification and a signed authorization of contract change.

GENERAL CONDITIONS

CONTRACTOR IDENTIFICATION AND BUSINESS LICENSE: Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service. Contractor understands it is required to obtain an annual City of Canby business license for conducting business in the City.

SUBCONTRACTORS AND ASSIGNMENT: Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Contract incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all applicable OSHA regulations and requirements.

WAIVER OF CONDITIONS: The waiver of any provision, term or condition of these Contract Documents by City on any particular occasion shall not constitute a general waiver of said provision, term or condition, nor a release from Contractor's obligation to otherwise perform or observe such condition or any other term of the Contract.

SEVERABILITY: In the event any provision of this Contract is declared or determined to be unlawful, invalid or unconstitutional such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract and each provision of the Contract will be and is deemed to be separate and severable from each provision.

GOVERNING LAW AND VENUE: Contractor warrants and covenants that it shall fully and completely comply with all applicable Federal, State and local laws and ordinances, and all lawful orders, rules and regulations issued by any authority with jurisdiction in all aspects of its performance of this Contract. The laws of the State of Oregon shall govern the interpretation of any provisions of this contract. Venue shall be in the Clackamas County Circuit Court.

LEGAL EXPENSES: In the event legal action is brought by the City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs and expenses as may be set by the court both at trial and all appeals therefrom.

NOTICES: Either the City or Contractor may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

AMENDMENTS: Amendment or changes to this Contract shall be in writing and will become a part of this Contract when agreed upon by both parties and signed by the Authorized Officials.

CHANGES IN SCOPE:

a. The City may, at any time, request changes within the general scope of this Contract. If any such requested change would result in an anticipated increase in the cost of, or the time required for, the performance or any part of the work under this Contract, or would result in an anticipated increase or decrease of ten percent (10%) or more to Contractor's estimated annual revenue hours stated in the RFP, the parties shall negotiate an equitable adjustment to Contractor's rate and the Contract will be amended accordingly.

b. In the event any Federal, State, or local law, rule, regulation or ordinance becomes operative during the term of this Contract that has the effect of increasing Contractor's operating costs by ten percent (10%), to include, but not limited to, laws, rule, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on energy consumption; changes in the Americans With Disabilities Act; or government required increases to employee wages and/or benefits, to include health care benefits, the City and Contractor shall meet to discuss the impact of these unanticipated additional costs and negotiate an equitable adjustment to Contractor's rates.

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE: Throughout the term of this Contract, the City shall maintain a policy of automobile liability insurance with a combined single limit of not less than \$1,000,000 as to the ownership, maintenance, and use of "any auto." The Automobile Liability Insurance shall name the Contractor and the Contractor's officers, agents, and employees as additional insured parties. The City's insurance shall be primary and any insurance maintained by Contractor shall be non-contributory.

VEHICLE PHYSICAL DAMAGE INSURANCE: The City shall provide vehicle physical damage coverage (Comprehensive and Collision). Comprehensive covers losses caused by or resulting from damage from any cause except as otherwise excluded by Contractor insurance; and excluding terrorism, collision, upset, or overturn. Comprehensive coverage includes such perils as fire, lightning, explosion, theft, windstorm, hail, earthquake, flood, mischief, and vandalism. Collision covers losses caused by or resulting damage from collision with another object, upset, or overturn. The City's insurance shall be primary and any insurance maintained by Contractor shall be non-contributory.

INDEMNIFICATION:

a. Excluding all automobile liability and vehicle physical damage liabilities, damages, demands, judgments, awards, losses, costs, expenses, suits and actions (collectively referred to as "claims"), and all claims involving injury or death, or damages to person or property arising and resulting from the negligent acts, errors, or omissions of the City, its officers, employees, agents, or consultants, Contractor shall, to the extent permitted by law, protect, indemnify, and save the City and its officers, employees, and agents, harmless from and against any and all claims, including reasonable expenses, costs, and attorneys fees incurred by the City and its officers, employees and agents in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property, arising or resulting from the negligent acts, errors, or omissions of the Contractor, including the negligent acts, errors, or omissions of its officers, employees, servants, agents, subcontractors, and suppliers.

b. The City shall, to the extent permitted by law, protect, indemnify, and save the Contractor and its officers, employees, and agents, harmless from and against any and all automobile liability claims and vehicle physical damages claims, and any and all claims arising or resulting from the negligent acts, errors, or omissions of the City, including the negligent acts, errors, or omissions of its officers, employees, servants, agents, subcontractors, and suppliers, including reasonable expenses, costs, and attorneys fees incurred by the Contractor and its officers, employees and agents in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property, arising or resulting from operation and use of City-owned vehicles or Contractor's other performance of the Contract.

FORCE MAJEURE: Contractor shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to, any incidence of fire, flood, or severe weather; strike, labor dispute, labor work stoppages; acts of God, acts of the government, war or civil disorder, violence or the threat thereof, severe traffic congestion, commandeering of material, products, and plants or facilities by the government, and fuel shortages. Contractor agrees not to charge City for revenue hours not performed due to force majeure.

Any and all notices, writings, correspondence, etc as required by this Contract shall be directed to City and Contractor, respectively, as follows:

CITY OF CANBY:

Greg Ellis, City Administrator
PO Box 930
Canby, OR 97013
503.266.4021

CONTRACTOR:

Daniel Lee, Director, Contracts Administration
2024 College Street
Elk Horn, IA 51531
712.243.4478

IN WITNESS WHEREOF, City and Contractor have executed this Contract for Transit Service dated ____ July, 2011.

CITY:

Signature of Authorized Official

Greg Ellis, City Administrator
Name, Title of Authorized Official
(print or type)

Date

CONTRACTOR:

Signature of Authorized Official

Name, Title of Authorized Official
(print or type)

Date

ORDINANCE NO. 1345

AN ORDINANCE DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2011-2012.

WHEREAS, a public hearing for the use of state revenue sharing funds was held before the Budget Committee on May 11, 2011, and before City Council on June 15, 2011; now therefore,

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1 Pursuant to ORS 221.770, the City of Canby hereby elects to receive state revenues for fiscal year 2011-2012.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 15, 2011, 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, July 6, 2011, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 6th of July 2011, by the following vote:

YEAS _____ NAYS _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

2nd Reading

ORDINANCE NO. 1346

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY
ADMINISTRATOR TO EXECUTE A CONTRACT EXTENSION WITH JULIE
WEHLING OF JWL CONSULTING, LLC FOR PROFESSIONAL SERVICES
FOR MANAGEMENT OF CANBY AREA TRANSIT SERVICE; AND
DECLARING AN EMERGENCY.**

WHEREAS, the City currently employs Julie Wehling of JWL Consulting LLC, as an independent contractor to manage the Canby Area Transit Service and wishes to continue to employ Julie Wehling of JWL Consulting, LLC, as an independent contractor under a personal services contract for the purpose of carrying out these activities; and

WHEREAS, Julie Wehling of JWL Consulting, LLC, has proposed an extension of existing personal services contract which is acceptable to the City; and

WHEREAS, the personal services contract entered into in September of 2010 provides for additional one year extensions beginning July 1, 2011 to June 30, 2012 provided the scope of work and agreed upon rate of compensation is acceptable to the City; and

WHEREAS, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this proposal, reviewed the staff report and finds that the contract extension with Julie Wehling is acceptable to the City and is in the best interest of the City to enter into; now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Julie Wehling of JWL Consulting, LLC, the copy of said contract is attached hereto and marked as Exhibit "A" and by this reference fully incorporated herein to be effective retroactively to July 1, 2011.

Section 2. Emergency Declared.

It being necessary for the health, safety, and general welfare of the citizens of Canby that there be no interruption in service for the Canby Area Transit program, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 6, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 20, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2nd Avenue in Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of July, 2011, by the following vote:

YEAS _____

NAYS _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

EXHIBIT "A"

PROFESSIONAL SERVICES AGREEMENT

Consulting Services for Canby Area Transit (CAT) Management Services

THIS Agreement is made and entered into as of the date first indicated on the signature page, by and between the **City of Canby**, Canby, Oregon, a municipal corporation of the State of Oregon, hereinafter called "City", and **JWL Consulting, LLC**, hereinafter called "Consultant."

WHEREAS, the Consultant specializes in providing transportation and transit management, supervision, planning, and grant applications, and

WHEREAS, City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Consultant, and

WHEREAS, City has determined that Consultant is qualified and capable of performing the professional services as City does hereinafter require, under the terms and conditions set forth hereafter:

THEREFORE, the parties agree as follows:

ARTICLE 1. SCOPE OF WORK

Consultant shall initiate services upon receipt of City's Notice to Proceed, together with an executed copy of this Agreement. Consultant agrees to complete work that is detailed in Exhibit A – Scope of Work and by this reference made a part hereof.

Consultant shall have the full authority to act as Director of the Transit Department on behalf of the City in connection with this contract and to manage the Department, including, but not limited to, exercising supervisory control over the performance of duties of employees assigned to the Department, and the parties agree that the Consultant shall assign **Julie Wehling**, to perform the duties of Director of Transportation. In exercising such supervisory control, the Consultant shall do so in consultation with the City's Human Resource Director in the areas of discipline and of administration of the City's collective bargaining agreement. Consultant shall have the authority to make contract purchases in the amounts and of the kind authorized at the level of Director and in accord with the applicable state and local public contracting rules and as budgeted annually by the City for the Department. Consultant has successfully provided to the City with its sub consultant team, as identified below past services of grant application and administration of received grants and federal compliance. To the extent additional costs would be incurred for subcontracting for grant application and administration and/or federal compliance by Consultant beyond that set forth in Exhibit A to this Agreement, Consultant shall seek a separate contract and approval by the City.

ARTICLE 2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective from the date of execution by both parties. Work under this Agreement for the initial term shall be completed before the expiration of the initial term of this Agreement.

The services required by this Agreement shall commence on July 1, 2011 with a contract term of one year to and including June 30, 2012, with an option of additional one-year extensions beginning July 1, 2012 to June 30, 2013, The one-year extensions will be based on an updated scope of work and an agreed upon rate by the City and Consultant. The terms referenced herein are intended to be limited in time and revised by the

City at the end of each term for City's satisfaction of performance by Consultant as a condition precedent to any option extension.

ARTICLE 3. COMPENSATION

City agrees to pay Consultant, on an a monthly negotiated rate of Seven Thousand One Hundred Forty Dollars (\$7,140), per month for the contract term through June 30, 2012 for performance of those services described in Exhibit A—Scope of Work of this Agreement. Said payment shall cover all costs associated with the performance of services as described in Exhibit A. Payment will be based on Consultant's invoice to be submitted at the beginning of each contract year, subject to the approval of City Administrator for the City, listed herein, and not more frequently than twice a month with bi-monthly checks for \$3,570 on the 15th and 30th/31st of the month.

In the event that additional work is required over the contract payment cap stated above, it may be negotiated individually at Consultant's hourly rate of \$100/hour, or at a negotiated project rate.

ARTICLE 4. CONTACT INFORMATION

All notices, bills, and payments shall be made in writing and may be given by personal delivery, mail, or fax. Payments may be delivered by personal delivery, mail, or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

Project Manager for City:	Project Manager for Consultant:
City of Canby	Company: JWL Consulting, LLC
Attn: City Administrator	Attn: Julie Wehling
Address: PO Box 930 Canby, OR 97013	Address: 14138 S. Caufield Road Oregon City, OR 97045
Phone: (503) 266-4021	Phone: (503) 890-6260
Fax: (503) 266-7961	Fax:
Email Address: ellisg@ci.canby.or.us	Email Address: Julie@transitmanagers.com

ARTICLE 5. CONSULTANT AS INDEPENDENT CONTRACTOR

Consultant acknowledges that for all purposes related to this Agreement, Consultant is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments, insurance, taxes and or other expenses associated with the performance of the Consultant's duties required by law. Furthermore, in the event that Consultant is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of this Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Consultant or to a third party) as a result of said finding.

Consultant acknowledges that for all purposes related to this Agreement, Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

Consultant and the City have reviewed and considered the principal test and secondary factors below and agree that Consultant is an independent contractor and not an employee of the City. Consultant is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes as

set forth herein Consultant is not entitled to any employee benefits. The City agrees that Consultant shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The Consultant rather than the City has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, the City may exercise over the details of the work is slight rather than substantial; (b) Consultant is engaged in a distinct occupation or business; (c) Transit systems of local governments often contract with specialists such as Consultant to provide the service to be done by Consultant as specialist without direct supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The Consultant rather than the City supplies key instrumentalities and sub-consultants (f) The length of time for which Consultant is engaged is of limited duration rather than indefinite; (g) The method of payment of Consultant is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of municipal governments in the region and state; (i) Consultant and the City believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) the City conducts public business. It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that Consultant is an independent contractor. By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the Consultant engaged under this Agreement is in fact an independent contractor.

ARTICLE 6. INDEMNIFICATION

City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant's work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws.

Consultant and City agree to indemnify and defend the other, and the other's officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) incurred by the party being indemnified resulting from the indemnifying party's acts (or failure to act when action is appropriate) that may be asserted by any person or entity which in any way arise from or relate to this Agreement or the performance of obligations under this agreement. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

ARTICLE 7. INSURANCE

Consultant shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder.

The policy or policies of insurance maintained by the Consultant shall provide at least the following limits and coverage:

a. **Commercial General Liability Insurance**

Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Each Occurrence	1,000,000
Fire Damage (any one fire)	50,000
Medical Expense (any one person)	5,000

b. Workers' Compensation Insurance

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

c. Insurance Carrier Rating

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

d. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Consultant shall furnish a Certificate of Insurance to the City. No contract shall be affected until the required certificates have been received and approved by the City.

ARTICLE 8. TERMINATION

The parties agree that this contract may be terminated by written mutual agreement of both parties, or by one of the parties to the agreement with at least ninety (90) days written notice to the other party prior to the date termination would take effect, or immediately, upon breach of the contract by either party. There shall be no penalty for early termination. If City terminates the contract pursuant to this paragraph, it shall pay Consultant for services rendered prorated to the date of termination.

ARTICLE 9. AGREEMENT MODIFICATIONS

Modifications to this Agreement are valid only if made in writing and signed by all parties.

ARTICLE 10. SUBCONTRACTING

No portion of the Agreement may be subcontracted to any other individual, firm, or entity without the express and prior approval of the City.

No portion of the Agreement may be subcontracted to any other individual, firm, or entity without the express and prior approval of the City. Consultant will contact the City Administrator via email for approval of any work to be subcontracted to any other individual or firm.

ARTICLE 11. NON-ASSIGNMENT

No portion of nor any interest in this Agreement may be assigned to a third party without the express and prior approval of the City.

ARTICLE 12. OWNERSHIP OF WORK PRODUCT

City shall be entitled to ownership and possession of any and all work products, at no additional cost during the products useful lifetime and which are located at City workplaces, of Consultant which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the work pursuant to this Agreement. Provided, however, that the City does not intend to own or claim ownership to any underlying intellectual property or source code developed by Consultant and for which Consultant intends to otherwise use in Consultants products, licensing or sales to others.

ARTICLE 13. GOVERNING LAW

Consultant shall comply with all applicable federal, state and local laws, and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability. **Consultant shall obtain a local Canby business license.** The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. All provisions required by ORS Chapter 279 to be included in a contract of this type are incorporated into this Agreement as though fully set forth herein. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

ARTICLE 14. COMPLETE AGREEMENT

This Agreement and attached exhibit constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Consultant, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

ARTICLE 15. SURVIVAL

The terms, conditions, representations, and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Consultant has executed this Agreement on the date herein below first written.

CITY OF CANBY

CONSULTANT

By: City Administrator

By: Authorized Agent of Consultant

Printed Name

Printed Name

Date

Date

**City of Canby
Canby Area Transit**

Scope of Work
July 1, 2011 - June 30, 2012

Contractor agrees to provide the following products and services to the City of Canby, Canby Area Transit and report to the City Administrator or his/her designee.

Deliverables

General management of Canby Area Transit (the City's Transit Department); which includes availability by phone during CAT service hours and a management presence in the CAT offices a minimum of eighty (80) hours per month. Contractor will attend required staff meetings, City Council meetings, City Department Director meetings, Transit Advisory Committee meetings, and other meetings specified by the City Administrator.

Operational Management

- Supervision of Transit Department personnel
- Operational contractor and contract oversight - currently MV Transportation, Inc.
- General oversight of system operation
- Preparation and submission of bi-monthly Transit Department reports
- Monitor all aspects of service provision
- Make service provision recommendations
- Oversee service adjustments as needed

Service Design and Delivery

- Oversee service delivery, schedules, and route design
- Direct service changes as needed
- Manage revisions of schedules, brochures, website and collateral materials as necessary
- Oversee CAT participation in community events

Financial Management

Management of the Transit Fund includes drafting and maintaining the annual budget, application and administration of multiple grants, and monitoring grant compliance.

Budget

- Monitor and administer approved budget

- Draft and submit annual budget recommendation
- Present budget recommendation to staff and budget committee as required

Grants

Draft and submit annual or periodic grant applications and prepare and submit required reports and/or billings for the following regular grant opportunities:

- Rural and Small Urban Areas (FTA Section 5311)
- Federal Capital Funding - earmark (FTA Section 5309)
- Job Access & Reverse Commute (FTA Section 5316)
- New Freedom (FTA Section 5317)
- Elderly and Disabled Specialized Transit Program (FTA Section 5310)
- American Recovery and Reinvestment Act (ARRA)
- Special Transportation Fund (State of Oregon STF)
- STO and JTA (new funding sources)
- Other opportunities as they present themselves

Research and review additional grant or fund development opportunities. Contact appropriate representatives for the various grant funds and take appropriate steps to ensure Canby is well represented in the funding process for each grant. Attend necessary funding review committee meetings and other pertinent meetings of the following organizations: PTAC, OTA, OTC, TMAC, JPACT, and TPAC.

BETC

Prepare pre-project documents for Department of Energy Business Energy Tax Credit (BET C) program prior to deadline (July 1 each year) and oversee project. Prepare post project documents and arrange audit for previous project as soon as project ends (June 30 each year). Work with City representatives and the Finance Department to identify and secure BETC pass through partner(s). Work closely with Department of Energy staff to assure all steps of the process have been accomplished and project documentation is complete.

Contract Management

Review grant contracts, identify compliance requirements and make necessary recommendations. Communicate requirements to other city departments as necessary.

- Assure that required reports and/or billings such as the following are submitted:
 - Annually:
 - Reports for all Grants funded with 5310, 5311, 5316, & 5317
 - MIS Report, NTD Report, TEAM Report, Certifications & Assurances, TriMet's STF report and others upon request
 - Quarterly: - Reports for all Grants funded with 5310, 5311, 5316, & 5317

- Monthly: - STF Grant Report
- Lead negotiations for Transit grant contracts and service contracts under the direction of the City Administrator and the City Attorney
- Manage and/or assist with following grant funded project:
 - Purchase 2 vehicles (JTA grant funds)

Community Relations/Marketing

- Attend and participate in City Council, Departmental, Planning or other meetings as necessary to maintain internal communication
- Attend and participate in community gatherings and events to promote CAT and CAT services
- Maintain peer contact with community transit partners, local, regional, and state transportation agencies and other appropriate organizations.

Transit Advisory Committee (TAC)

- Facilitate Quarterly Transit Advisory Committee Meetings
- Prepare agenda's and respond to committee requests
- Ongoing communication with TAC members

ORDINANCE NO. 1347

**AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE
AGREEMENT BETWEEN THE CITY OF CANBY AND WAVEDIVISION VII, LLC
AND DECLARING AN EMERGENCY.**

WHEREAS, on April 8, 1999, the City of Canby granted a twelve year franchise to Willamette Broadband, LLC, effective May 7, 1999 (the “Franchise”). The Franchise was subsequently assigned to North Willamette Broadband, LLC in 2001, and the City approved the transfer to WaveDivision VII, LLC, a Washington Limited Liability Company, doing business as Wave Broadband (“Wave”) in 2007 ; and

WHEREAS, the Franchise was to expire on May 7, 2011, and the parties agreed to extend the term through June 6, 2011, to allow additional time to reach agreement on a longer term extension of the agreement; and

WHEREAS, the City and Wave did not intend to allow the franchise to expire without extension, but the City inadvertently did not extend the Franchise while discussions about the longer term extensions continued; and

WHEREAS, the City and Wave have agreed to extend the term of the Franchise to expire on March 4, 2017, which is consistent with the expiration date of the cable franchise agreement the City granted to a competitive cable service provider in the City, Canby Telephone Association; and

WHEREAS, the City and Wave have agreed to amend the Franchise to reflect the new expiration date and to address several other issues raised by Wave; and

WHEREAS, the City finds it is in the public interest to amend Franchise as set forth in this Ordinance, and that such amendment be effective as of June 6, 2011, to ensure that Wave has a continuous franchise from the City; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby hereby amends the Franchise with Wave as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. All references in the Franchise to “Grantee,” “Franchisee,” or “North Willamette Telecom” shall mean WaveDivision VII, LLC.

- B. Section 1.1 of the Franchise shall read as follows: “The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise agreement does grant to WaveDivision VII, LLC (hereafter Grantee) a nonexclusive Franchise through March 4, 2017, revocable as provided herein, to construct, operate and maintain a cable communications system in the City.”
- C. Section 3.1: The phrase “for a 12-year period” shall be deleted from the first sentence.
- D. The first sentence of the first paragraph of Section 3.3 of the Franchise shall be deleted in its entirety and replaced with the following: “Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be through March 4, 2017, at which time the franchise shall expire and be of no force and effect.”
- E. The phrase “twelve (12) year” shall be deleted from the first sentence of the second paragraph and from the last sentence of the last paragraph of Section 3.3 of the Franchise.
- F. Section 6.5(c)(i): The phrase “and continuing throughout its term,” shall be deleted from the first sentence of Section 6.5(c)(i). After the first sentence of Section 6.5(c)(i), the following sentence shall be added: “No sooner than August 1, 2011, Grantee shall provide one percent (1%) of its gross revenues earned providing cable services within the City as support for PEG access.” After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: “In the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, within sixty (60) days of the effective date of the change in law, provide a total of two percent (2%) of its gross revenues earned providing cable services within the City as support for PEG access.”
- G. The following paragraph shall be added at the end of Section 6.5(c)(ii): “Grantor shall cause Canby Telephone Association, a competitive cable service provider in the City, to contribute eight hundred sixty two dollars (\$862.00) per month to Grantor, which Grantor shall promptly pay to the Grantee. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s Designated Access Provider as of June 6, 2011 (which is approximately eighty-seven percent (87%) of the leased space), the remainder of which is used by the Grantee. In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Grantee and the owner of the leased space, then Grantor shall cause Canby Telephone Association to contribute one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by Grantor’s Designated Access Provider. Grantor and Grantee further agree that if the Designated Access Provider’s proportionate use of the access facility increases or decreases by five percent (5%) or more, the payment required under this paragraph shall be increased or decreased in

proportion to the change. Grantor's obligation to make the payment set forth in this paragraph shall cease if Canby Telephone Association no longer provides cable services in the City or if the Designated Access Provider stops using the access facility.

- H. Section 9.1 shall be deleted in its entirety and replaced with the following: "The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act."

Section 2. The amendments to the Franchise set forth in this Ordinance shall take effect as of June 6, 2011, provided that Wave files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If Wave fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

Section 3. Emergency Declared. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 6, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 20, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2nd Avenue in Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of July, 2011, by the following vote:

YEAS _____

NAYS _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

EXHIBIT A

ACCEPTANCE

City Administrator
City of Canby
P.O. Box 930
Canby, Oregon 97013

The undersigned, WaveDivision VII, LLC, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No.1347, approved at first reading on July 6, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1347 by the City of Canby at second reading on July 20, 2011.

WAVEDIVISION VII, LLC

BY: _____

TITLE: _____

DATE: _____

Management Team Meeting Minutes

June 13, 2011

2:00 PM

City Hall Conference Room

In attendance: Greg Ellis, Bryan Brown, Renate Mengelberg, Sue Engels, Penny Hummel, Julie Wehling, and Kim Scheafer.

Kim Scheafer

- Still need to have departmental goals emailed from Finance and the Police Department
- Will be advertising for a Court Clerk position. Dana Wipff's last day is June 24.
- Interviewing applicants this week for the Deputy City Recorder position

Renate Mengelberg

- Had First Friday/Main Street debrief meeting with business owners. Consensus was it was a success.
- Met with Pioneer Pump regarding Business Oregon resources
- Working on data gathering for Economic Development Plan

Greg Ellis

- Joe Shaddox of Shimadzu will be a Council Meeting on Wednesday night to thank the City
- Street maintenance projects will start in a few weeks

Julie Wehling

- Transit Advisory Committee meeting on June 8 went well. Got back good information on where hubs should be
- In process of changing all forms due to new schedule
- Contract with MV Transportation has been changed. Second reading of ordinance will now take place on July 6.
- New service starts on June 27

Sue Engels

- Consultants have been working on three projects for the Finance Department

Penny Hummel

- Submitted a Smart Investing @ Your Library grant proposal
- Intercambio program is starting
- Working on collection development
- Summer reading starts today. An adult program is also being offered.
- Large print collection has been expanded

Bryan Brown

- Police Department and Shimadzu pre-construction meetings will be held this week
- Preparing for Hope Village Annexation presentation
- Dealing with department being short staffed

Minutes taken by Kim Scheafer

Management Team Meeting Minutes

June 20, 2011

2:00 PM

City Hall Conference Room

In attendance: Greg Ellis, Amanda Klock, Bret Smith, Bryan Brown, Renate Mengelberg, Eric Laitinen, Sue Engels, Penny Hummel, Julie Wehling, and Kim Scheafer.

Kim Scheafer

- Brought back two applicants for a second interview today for the Deputy City Recorder position
- Court Clerk position has been posted and will close on July 5. Dana's last day is Friday.
- Will be out of the office on Wednesday.

Bryan Brown

- Hope Village annexation public hearing has been moved to July 11
- Researching documents regarding a sidewalk condition that was placed and money that was put in escrow
- Need for asphalt lift in public right-of-way in Darcy Estates
- Received a preliminary application from City Engineer for vacations and right-of-way due to Walnut Street LID
- Out of office on Friday

Penny Hummel

- Intercambio program is starting
- Spanish story time started on Saturday
- Library will be at Canby Cares Fair on July 16

Bret Smith

- Working on final budget for new police facility
- *Oregonlive* ran an article last week regarding five former Clackamas County police officers who could have state certifications revoked
- Working on transitional issues

Greg Ellis

- First Avenue redevelopment community meeting is tonight at 6:30 PM at Cutsforth's Thriftway
- Out of office late Thursday and all day on Friday

Julie Wehling

- *Oregonian* published article over weekend on CAT, but did not have correct trip numbers
- Information is on web page regarding route changes
- Put out markers over weekend for new shuttles
- MV trained drivers last weekend

Eric Laitinen

- Finished first week of summer lessons
- Summer classes are full

Renate Mengelberg

- Intern will be starting next week
- Will be making changes for Urban Renewal and Canby Business web pages
- Out of office Thursday and Friday

Sue Engels

- *Oregonian* published article on sewer rates but it left out important information about how seniors qualify for a discount
- Auditors are coming next to test internal controls. May contact departments to ask questions

Amanda Klock

- Contacted by college regarding a student that is looking to do administrative work for an internship
- Emergency contact information forms need to be returned
- Working on AFSCME negotiations
- Benefits Fair is scheduled for July 19 at the Adult Center
- Out of office next Monday – Wednesday to attend a conference

Minutes taken by Kim Scheafer