



CITY OF YACHATS

Finance Committee Meeting

441 Hwy 101 N., Yachats Commons/ Room 1

February 13, 2019 at 10:00am

AGENDA

- I. **Call Meeting to Order**
- II. **Minutes**
 - A. Minutes: 01/09/19 Regular Meeting
- III. **New Business**
 - A. Introduction of COG Finance
 - B. Tentative: Discussion of Utility Billing Rates
 - C. Discussion of Franchise Fees
 - D. Discussion of IGA with Oregon Department of Administrative Services
 - E. Potential FY20 Insurance Increase
 - F. Discussion of CIP
 - a. Current CIP Project Status
 - b. FY20 CIP Projects by Commission/Committee/Department
 - G. Discussion of Draft FY20 Budget
- IV. **Other Business**
 - A. From the Committee
 - B. From the Staff
 - C. From the Floor

This meeting is open to the public and all interested persons are invited to attend. This meeting will be audio taped. All items to be considered by the Commission must be submitted to City Hall no later than one week prior to the meeting. Minutes of all public meetings are available for review at City Hall, or on the City website at www.yachatsoregon.org

In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time. The meeting room is physically accessible to persons with mobility devices; a sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541- 547-3565 or Oregon



Relay 1-800-735-2900 (TDD) two days in advance.

POSTED February 11, 2019

the 1990s, the number of people in the world who are under 15 years of age has increased from 1.1 billion to 1.5 billion, and the number of people aged 65 and over has increased from 0.5 billion to 0.7 billion (United Nations 2002).

There is a growing awareness of the need to address the needs of the young and the old. The United Nations (2002) has identified the need to address the needs of the young and the old as one of the eight Millennium Development Goals. The United Nations (2002) has also identified the need to address the needs of the young and the old as one of the eight Millennium Development Goals. The United Nations (2002) has also identified the need to address the needs of the young and the old as one of the eight Millennium Development Goals.

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City of Yachats
FINANCE COMMITTEE

January 9, 2019

Draft Minutes

I. Call to Order

Substitute Chair W. John Moore called the January 9, 2019 meeting of the Finance Commission to order at 10:00 am in Room 1 of the Yachats Commons. Members present: Shannon Beaucaire, Don Groth, Jim Tooke, Marv Wigle (Library), Scott Gordon (Parks and Commons), and John Moore. Absent: Glen Aukstikalnis. Staff present: Clerk Judy Richter, Water Treatment Plant Lead Rick McClung, and Wastewater Treatment Plant Lead Dave Buckwald.

II. Minutes December 12, 2018

Groth moved to approve the December 12, 2018 minutes as presented: Yes – 3; No – 0; Abstain – 2 (Gordon and Wigle had not received copy)

III. New Business

A. Recommended Uses of increase Transient Lodging Tax Revenue

Moore explained that the Council discussed the pending Transient Lodging Tax increase to 11.8% and noted hotel owners might be more supportive of the increase if they knew where the extra funds would be spent.

Gordon, owner of the Yatel, asserted visitors come for the festivals and fairs, use the trails and sidewalks, and have appreciated the highway improvements. He suggested parking and trails could be good uses for the additional revenue. Moore suggested some could go to the proposed trails boardwalk on the south end of Ocean View Drive or to the restoration of the Little Log Church. Groth suggested the crossing at Marine Drive and Highway 101 for an evacuation route/trail could be a possible use. Moore suggested focusing on the first few years for the recommendation the Committee makes to Council. Tom Lauritzen noted they should avoid spending on infrastructure such as water, sewer, and streets.

Tooke moved to recommend to Council that the increased revenues from the Transient Lodging Tax 1% increase of be applied to the Little Log Church, the proposed Trails Boardwalk, and the Library: Aye – 5; No – 0.

Tom Lauritzen asked who would be determining the uses of the Visitors Amenities Funds. He suggested the City strengthen the Chamber so it could take on more activities such as marketing and festivals and boost its image.

B. Discussion of the Urban Renewal District

1 Lauritzen explained that the Urban Renewal Plan was adopted in 2006 and was created
2 by the Green Ribbon Committee. The Plan proposed the Food and Beverage Tax and
3 as well as the URD. He summarized that these two revenue streams were contributing
4 approximately \$400,000 of the approximately \$500,000 debt service payment. Lauritzen
5 explained how the frozen excess value calculations worked, noting the revenue was
6 based on the portion of appraised values above the appraised value at the time the
7 URD was created. He explained that state law required the value be no more than 25%
8 of City property and must be defined by a contiguous line. He noted Koho generated
9 approximately 17.5% of the increase and the bulk increase was due to large hotels like
10 the Adobe, Fireside and Overleaf. Lauritzen noted there was a significant lag in the
11 income to the City as a result of construction.
12

13 Lauritzen explained the City Council could only amend the life of the Plan and the
14 projects of the plan. Lauritzen reviewed the original project amounts and changes in
15 2016.
16

PROJECT	ORIGINAL AMOUNT	ORIGINAL %	2016 AMENDED AMOUNT
Administrative Fee	322,400	4.1	322,400
Materials and Services	68,600	0.9	68,600
Sewer Plant, Pump Stations, other	3,700,000	47.3	2,637,087
I&I	266,650	3.4	266,650
South Water Tank	1,333,350	17.0	1,729,613
Miscellaneous Looping	133,350	1.7	0
Upgrade Water Line Size	133,350	1.7	0
New Hydrants	66,650	.9	66,650
Replace Main Water Valve	66,650	.9	0
Street Repair	266,650	3.4	266,650
Storm Drain Improvements	667,000	8.5	667,000
Sidewalks and Curbs	333,300	4.3	1,333,300
Trails	133,350	1.7	133,350
Parks, etc.	333,300	4.3	333,300

39
40 Lauritzen noted in 2016 the Council approved a plan to underground the utilities as part
41 of the Highway 101 project with no identified funding source. He reported the Council
42 adjusted the projects in the Plan to help cover this additional cost. He added the City
43 borrowed money from reserves through interfund transfers to pay for work, which would
44 be repaid as property taxes were collected.
45
46

1 Lauritzen stated the Urban Renewal Board, which is the City Council, could approve
2 changes to the Plan.

3
4 Lauritzen reviewed that the Plan had estimated revenues would begin in 2008, but
5 income was not received until 2009 due to the timing of assessments with the
6 Assessor's Office. He noted the Plan projected an increase in assessed value in 2007
7 of \$11 million, but there was no increase in value that year. He added the second year
8 projected cumulative revenue of \$15 M came in at \$11 M. Lauritzen highlighted that the
9 projection was for \$50 M of increased appraised value as of June 30, 2018 and it was
10 currently at \$30 M. He explained the process of how the information from the Tax
11 Assessor comes to the City.

12
13 Lauritzen reported revenues from the URD increased from an actual amount of
14 \$286,000 in FY17-18 to projected amount of \$385,000 in FY18-19. Lauritzen recalled
15 paying for the South Water Tank was the first priority and \$100,000 per year was being
16 applied to cover this debt. He added that the City's actual debt payment was only
17 \$60,000. He also noted \$95,000 was being paid to cover debt on the Wastewater
18 Treatment Plant.

19
20 Lauritzen explained that once the wastewater and I&I transfers were paid, funds would
21 be applied to the Highway 101 Project. The URD funds should be enough to repay this
22 interfund loan for Highway Project by 2033.

23
24 Buckwald suggested the Wastewater Treatment Plant had another 50 years of life.

25
26 Tooke asked how the economy and recessions would impact the URD Fund. Lauritzen
27 explained process of how the real estate market impacts the fund.

28 29 **C. Discussion of Ocean View Drive and CIP**

30 Richter reported there have been recent expenses for Ocean View Drive, and she has
31 been paying for these through the Streets Fund. McClung added that the crew has
32 been working on utilities around the road and that their work needed to be capitalized.
33 He anticipated Public Works costs could reach \$10,000-\$20,000 for the transfer project.
34 Manager Beaucaire reported she has had the City Engineer be present at meetings with
35 the county to ensure that standards were being met. Richter agreed that if they look at
36 the larger picture, the project would be a CIP. McClung noted Public Works has to
37 CCTV the lines, change out hookups and meters, assess utilities, and do any work that
38 would require cutting into the pavement prior to laying down the new blacktop.

39
40 Moore clarified that McClung wanted this project for FY18-19. Richter noted there was
41 already a CIP in the Streets Fund. The Committee agreed that \$20,000 was a more
42 realistic number for that fund. Tooke clarified that it was unlikely the county would cover
43 any of the City's engineering costs.

44
45 Groth moved to amend the Streets CIP Fund to include work on Ocean View Drive: Aye
46 – 5; No – 0.

1
2 **D. Meeting Dates for future Committee meetings**

3 Moore explained the Council had moved its second meeting to the third week. Tooke
4 suggested it would be more convenient to have the Finance Committee meeting move
5 to this third week as well to minimize the number of days with meetings. The
6 Committee agreed to keep the meeting on the second Wednesday.
7

8 **IV. Continuing Business**

9 **A. Minimum reserves and reserves generation**

10 **1. Status of 501 Building and Reserves**

11 Richter reported she found that the original transfer was for \$253,000. A transfer from
12 closing the US Forest Service Fund (\$80,000) left a remaining balance of \$177,265.
13 She reported the City established a repayment plan for roughly \$20,000 per year, but
14 only one payment has occurred since 2016. She noted state law stipulated interfund
15 loans must pay back within ten years. Moore suggested they include this payment in
16 the new budget. Richter clarified this payment would come from the General Fund.
17 Lauritzen recalled the plan was to use the excess revenues from the transient rental tax
18 for this debt.
19

20 Lauritzen suggested the Finance Committee review all of the interfund loans to ensure
21 they have been properly addressed.
22

23 **2. Status of Blackstone LID**

24 Richter noted the LIDs (Local Improvement District) are labeled East Hillside and
25 Windsong, and she was not certain what portion of those applied to Blackstone. She
26 reported the amount totaled \$141,477 as of June 30, 2018. Lauritzen suggested that
27 given the way the system was originally set up, the City was essentially taking money
28 from SDCs and putting it back into reserves.
29

30 Richter explained the City bills land owners two times each year, and the unpaid
31 balance becomes a lien against the property. She reported owners are told they can
32 make payments and they will be charged interest on the unpaid balance. Richter
33 clarified the LIDs were on vacant lots and would need to be paid off if the property was
34 sold.
35

36 Moore clarified there were around four properties that were not paying at all. Groth
37 asked if the East Hillside LID was Blackstone. McClung stated Windsong was included
38 in the East Hillside LIDs.
39

40 Richter noted the Committee made motion to move \$8,000 from IT to City Hall at their
41 last meeting. Richter explained that the IT money had already been spent on the
42 website. Moore clarified they would need to increase this CIP. Richter indicated she
43 would determine the amount of increase needed.
44

45 **V. Other Business**

46 **A. From the Committee – none**

1
2 **B. From the Staff**

3 Richter asked to get started on CIP planning for the Budget. Anderson clarified that
4 Beaucaire was still Chair of the Committee.
5

6 **C. From the Floor - none**
7

8 With no further business before the Committee, Moore adjourned meeting at 11:12 am.
9

10
11
12
13
14

W John Moore, Substitute Chair
15

16
17 Minutes prepared by H.H. Anderson on January 9, 2019.

the 1990s, the number of people in the UK who are employed in the public sector has increased by 1.5 million, from 2.5 million in 1980 to 4 million in 1999 (Department of Health 2000).

There is a growing emphasis on the need to improve the quality of care in the public sector, and to ensure that the public sector is able to meet the needs of the population. This has led to a number of initiatives, including the introduction of the Health Service Act 1999, which aims to improve the quality of care and to ensure that the public sector is able to meet the needs of the population.

The Health Service Act 1999 has led to a number of changes in the way that the public sector is run. These changes include the introduction of the Health Service Commissioning Authority (HSCA), which is responsible for commissioning and paying for health services, and the introduction of the Health Service Improvement Agency (HSIA), which is responsible for improving the quality of care.

The HSCA is responsible for commissioning and paying for health services, and the HSIA is responsible for improving the quality of care. These changes have led to a number of improvements in the way that the public sector is run, and to a number of improvements in the quality of care.

The Health Service Act 1999 has also led to a number of changes in the way that the public sector is funded. These changes include the introduction of the Health Service Funding Review, which is responsible for reviewing the way that the public sector is funded, and the introduction of the Health Service Funding Review Panel, which is responsible for recommending changes to the way that the public sector is funded.

The Health Service Funding Review Panel has recommended a number of changes to the way that the public sector is funded, including the introduction of a new funding system, which would involve the introduction of a new funding body, and the introduction of a new funding system, which would involve the introduction of a new funding body.

The Health Service Funding Review Panel has also recommended a number of changes to the way that the public sector is managed. These changes include the introduction of a new management system, which would involve the introduction of a new management body, and the introduction of a new management system, which would involve the introduction of a new management body.

The Health Service Funding Review Panel has also recommended a number of changes to the way that the public sector is regulated. These changes include the introduction of a new regulatory system, which would involve the introduction of a new regulatory body, and the introduction of a new regulatory system, which would involve the introduction of a new regulatory body.

The Health Service Funding Review Panel has also recommended a number of changes to the way that the public sector is monitored. These changes include the introduction of a new monitoring system, which would involve the introduction of a new monitoring body, and the introduction of a new monitoring system, which would involve the introduction of a new monitoring body.

The Health Service Funding Review Panel has also recommended a number of changes to the way that the public sector is evaluated. These changes include the introduction of a new evaluation system, which would involve the introduction of a new evaluation body, and the introduction of a new evaluation system, which would involve the introduction of a new evaluation body.

The Health Service Funding Review Panel has also recommended a number of changes to the way that the public sector is improved. These changes include the introduction of a new improvement system, which would involve the introduction of a new improvement body, and the introduction of a new improvement system, which would involve the introduction of a new improvement body.

The Health Service Funding Review Panel has also recommended a number of changes to the way that the public sector is transformed. These changes include the introduction of a new transformation system, which would involve the introduction of a new transformation body, and the introduction of a new transformation system, which would involve the introduction of a new transformation body.



DATE: February 13, 2019

TO: Finance Committee

FROM: Shannon Beaucaire, City Manager

SUBJECT: Tentative Discussion of Utility Billing Rates

Tentatively, the Committee will hear a presentation from Tom Lauritzen on utility billing rates.



DATE: February 13, 2019

TO: Finance Committee

FROM: Shannon Beaucaire, City Manager

SUBJECT: Discussion of Franchise Fees

As we begin discussion of the FY20 budget, I wanted to note an area of revenue the City receives from 4 different entities – Cable TV Franchise Tax (Charter; 5% quarterly), Telephone Franchise Tax (Pioneer; 4% annually), Disposal Franchise Tax (Dahl; 3% quarterly), and Electric Franchise Tax (Central Lincoln; 3.5% monthly).

Many of these agreements need to be analyzed, updated and renewed (attached). Informal review has gathered information such as the attached City of Beaverton Code that does a ROW license fee ordinance that charges all utilities, including their own, a 5% fee on gross revenue. Other rates range from 3-9%, throughout the state, with some cities dedicating specific franchise fees to street maintenance/capital improvements.

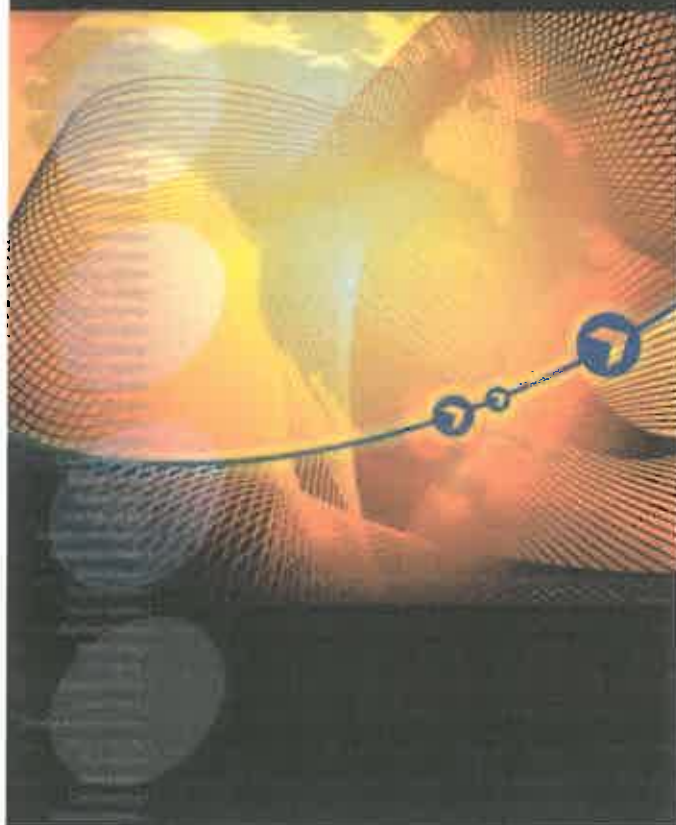
Prior to leaving, Ms. Richter left information on NATOA, an organization that negotiates and advocates for cities during franchise fee negotiations. The City Manager will discuss with the Committee options for moving forward with updating our franchise agreements.



NATOa®

*Promoting community
interests in communications*

www.natoa.org



Nationally Recognized Local Government Association

The National Association of Telecommunications Officers and Advisors (NATOA) is the premier local government professional association that provides support to our members on the many local, state, and federal communications laws, administrative rulings, judicial decisions, and technology issues impacting the interests of local governments. Founded in 1980, we offer a wide range of advocacy services to individual and agency members representing cities, towns, counties and commissions across the country. NATOA actively analyzes and addresses emerging issues in areas such as:

Local Government Communications and Internet Policy

- Network neutrality
- Consumer protection
- National Broadband Plan, access, and funding
- Public safety spectrum
- Universal service
- Public rights-of-way management and policies
- Service to anchor institutions like city halls, police and fire stations, schools, libraries, universities, hospitals, county services, courts, and community centers.
- Emergency alert systems
- Local government networks, wired, wireless, fiber and coaxial

Broadband Planning Best Practices

- National Broadband Plan
- Broadband stimulus funding
- Internet technology
- Speed and access

Cable Franchising

- Use and management of public rights-of-way
- Franchise agreements and renewals
- Regulation of rates and service standards
- State franchising laws in lieu of local oversight
- Institutional Networks (I-Nets)

Wireless Zoning

- Land use laws and enforcement
- Tower and other facility siting application and review
- Co-location issues on poles and other structures in the public rights-of-way
- Contracts for private use of public property and buildings
- Preventing and resolving interference
- Radio frequency emissions safety

New Technology Initiatives and Advancements

- Strengthening your advocacy through local communications initiatives
- Digital transition of PEG programming
- Web 2.0 and beyond
- Social media strategies
- Use of wireless networks
- Converging technologies - impact on your laws

Operation of Public, Education and Government (PEG) Access Channels

- PEG programming
- PEG funding
- PEG management, training and production

Core Activities

On the Hill and at the Federal Communications Commission (FCC)

Formal Advocacy

NATOA is highly respected and regarded by members of Congress and the FCC as a major voice and key advisor regarding local government perspectives and the public interest. We continuously collaborate with key legislators and FCC commissioners and staff to ensure NATOA's voice is heard and our positions are considered. As a trade organization, NATOA facilitates our ability to pool resources in order to make an impact in a world where the industry is able to spend exponentially more than local governments will ever be able to afford. In addition to utilizing the talent of its members, NATOA cooperates with colleague organizations such as National League of Cities (NLC), United States Conference of Mayors (USCM), National Association of Counties (NACo), and Alliance for Community Media (ACM).

Informed and Experienced Representation

NATOA's board of directors, our members, and staff are highly qualified and skilled professionals who serve as key advocates for both formal and informal advocacy activities.

Join us at www.natoa.org



Conferences, Events & Awards

Annual Conference

The NATOA Annual Conference is the premier local government conference for professionals who share oversight over communications and cable policy and regulation, legislative review and advocacy, public rights-of-way management and compensation, wireless facilities zoning and siting, information and technology, and PEG programming. The annual conference enables participants to review major policy and legal changes and developments, review technical advancements both in the context of using new technology to benefit local communities and in local government enforcement obligations, understand key issues, network, and conduct association business.

Other Conferences and Networking Events

Other opportunities for networking and learning are offered by NATOA through regional and state chapter events and monthly e-NATOA teleconference seminars and webinars.

Government Programming Awards (GPAs)

The NATOA GPA competition is the largest of its kind recognizing excellence in broadcast, cable, multimedia and electronic programming produced by local government entities. Categories cover a variety of programming including, community events, documentary, public affairs and public service, interview/talk show, performing arts, sports, election coverage and children's issues.

Community Broadband Awards

In recognition of the role of local government in broadband technology, NATOA proudly honors outstanding individuals and projects that seek to improve government and public options in broadband technology. This exceptional awards program highlights some of the many extraordinary efforts going on at the local level to bring the benefits of advanced technology to American communities.

State Chapters

NATOA has a network of State and Regional Chapters whose members reflect NATOA's mission in their home states and local communities. NATOA assists Chapters in their networking, education, and advocacy efforts at local and state levels.

Proven Track Record of Success

NATOA's knowledge and understanding of how federal communications policies impact local governments and the citizens we represent have resulted in our ability to have direct influence on legislation, regulations, and policy development.

Key Accomplishments for NATOA in our first 30 years:

- Established the first national network of local governments across the country to address cable franchise, rights-of-way and PEG issues
- Became first member organization to serve the professional needs of cable-related professionals in local government
- Advised and assisted local governments in implementing the 1984 and 1992 Cable Act, and the 1996 Telecommunications Act
- Successfully lobbied on many national legislative issues that reaffirmed local government authority to manage public property and address communications issues in the best interests of local citizens
- Continues to be the leader in government and consumer organizations in filings before courts and the FCC on vital communications issues
- Successfully negotiated technical standards with the National Cable Television Association that the FCC adopted
- Succeeded in modifying FCC rate regulation rules and customer service standards to meet the needs of the consumer
- Has become a respected voice with the FCC and Congress on broadband issues
- Educated, trained and supported over 2,000 local government professionals in a variety of communications issues impacting local government
- NATOA's efforts have saved local governments hundreds of thousands of dollars in legal and lobbying fees on issues of rights-of-way, franchising, broadband, wireless communications facilities siting and other communications matters

Join us at www.natoa.org

NATOA has been the consistent, expert voice and advisor of local government interests before the federal executive and regulatory agencies, and to general purpose local government associations. NATOA's policy advocacy record speaks for itself.

— Nicholas Miller, Miller & Van Eaton PLLC, Washington, D.C. and San Francisco, CA

Membership

NATOA offers a variety of services and programs to meet the professional needs of its members while serving as the primary information source for membership. Professional positions most benefitting from NATOA membership include, but are not limited to:

- City/Town Manager/Administrator
- Elected or Public Official
- Executive Director
- Board or Council President and Executive Committee
- City/County/Special District Attorney
- Cable Administrator
- Telecommunications Specialist
- Planning & Zoning Director
- Planners
- Local Government Planning/Siting Manager
- Consultant to Local Governments
- Public Works Director and Rights-of-Way Management Manager
- Engineer
- Public Information Manager
- PEG Production Manager
- PEG Station Manager
- Camera Operator
- Chief Information Officer/Information Technology Manager
- Information Systems Manager
- Economic Development Manager

Membership Benefits

NATOA Activity	Member Outcome	Impact
Legislative/Regulatory Advocacy	Your community is well represented on a variety of local government issues on Capitol Hill, at the FCC, and at your state and local level	A community's financial well being and quality of life related to: Communications law and policy • Broadband deployment • Cable franchising • Wireless zoning Technology • PEG
Daily Communication from NATOA and Members	Stay current on timely policy, legislative and regulatory action at the Capitol, FCC, and community throughout the country	You, your elected officials, and your organization will be better prepared to respond and take action to protect your community's interests
Training e-NATOAs, conferences/webinars, Committees NATOA Monthly Newsletter Spring Conference Newly formed CIO Advisory Council	Access to timely, added-value resources. CIO Advisory Council will provide advocacy assistance on technology issues and education programming for NATOA members in the IT world	Personal and professional development
Annual Conference Government Programme Awards Community Broadband Awards	Catch up with colleagues, hear from legislators, FCC officials, and industry representatives on the latest news and announcements. Be nationally recognized for your work and efforts. See firsthand the latest technology utilized in local government operations	Foster relationships and stay current on news and actions, and gain the right training that will help you perform your position more effectively. Shop for the latest local government related technology tools and obtain referrals from colleagues who use the same tools
Daily Educational Opportunities Private E-Mail Public Member-Only Listserv	Exchange information, ideas, and address challenges. Learn innovative ways and different perspectives to be successful in your position	Stay current on the latest FCC, Congressional, other-size actions, judicial decisions, use of technology innovations, and nationally recognized video programming. Ask a question and get instant answers from your colleagues all across the country
Headquarters Staff Assistance and Website - www.natoa.org Join the NATOA Listserv Searchable Library (forming soon) Advocacy position papers and testimony templates (forming soon) Friends of NATOA Coalition Documents (coming soon) Membership Directory Contacts for Legislators, FCC, Industry National Video FTP Site to Share Programming (forming soon) Legislative and advocacy archives	Have access to an award-winning website that offers a variety of exclusive services to its members	Gain the knowledge, training, and technical information to help you do your job better. Stay connected with other members during the year. Get instant answers and model documents to help you be more productive

NATOA is a great resource for Planners involved in broadband-related issues like cell tower siting and wireless. In NATOA, we have a strong advocate for local authority on zoning issues in Washington.

— Susan Anderson, Director, Bureau of Planning and Sustainability, City of Portland, Oregon

Join Us

Join NATOA and become a part of one of the leading local government professional associations in the country. Affordable annual dues provide cost-effective access to the best minds and resources for solving your local government matters. Fees will be prorated for members who join mid-year.

1. Join on-Line at www.natoa.org.
2. Download our Membership application in a PDF format and fax it back to us at 703-997-7080 or mail it to us with payment to: NATOA, 2121 Eisenhower Avenue, Suite 401, Alexandria, VA 22314.
3. Special Promotional Offer for Small Agencies! If your community is under 25,000 and you are new to NATOA, take advantage of this limited time offer of special introductory rates. Contact us and JOIN NOW.

Let Us Know How We Can Help You and Your Community

National Association of Telecommunications Officers and
Advisors (NATOA)

Phone: 703-519-8035 • Fax: 703-997-7080

Email: info@natoa.org • Website: www.natoa.org

Brochure design by BASS Creative • www.basscreative.com





NATOA 2018 MEMBERSHIP APPLICATION: SMALL AGENCY PROMOTION

Please provide the following information: Primary Member

Name: _____ Title: _____

Agency/Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____ Web Address: _____

Please provide the following information for your government:

Population: _____ Subscriber Base: _____

Cable Operator(s): _____

Franchise Expiration (Mo/Yr): _____

Telecommunications Providers: _____

PEG Channels: P _____ E _____ G _____ Does your community have an INET? _____

Agency Members — Please list up to two additional members and include contact information.

1st Additional: _____

2nd Additional: _____

\$100 Per Person Cost for Additional Benefits. List names for which additional benefits are being sought: _____

All memberships expire December 31, 2018.

	DUES	ASSESSMENT
<input type="checkbox"/> Agency—Population 0 - 10,000	\$100	\$375
<input type="checkbox"/> Agency—Population 10,001 - 25,000	\$200	\$375

Payment Information: Membership Type: _____

Dues Amount: \$ _____ Annual Assessment Amount: \$ _____ Amount Enclosed \$ _____

Payment Method

- ☐ Check: Mail checks to NATOA, PO Box 826127, Philadelphia, PA 19182-6127
- ☐ Credit Card (Visa, MC, AmEx) Fax form to (703) 997-7080 or mail to 3213 Duke Street, Suite 695, Alexandria, VA 22314

Card No. _____ Exp. Date _____

Name on Card _____ CCV Code _____

Signature of Cardholder _____

How did you hear about NATOA? _____

**CITY OF YACHATS
ORDINANCE NO. 271**

WHEREAS, Ordinance No. 124, as amended by Ordinance No. 193, Granting to Pioneer Telephone Cooperative the Right to Do a General Telephone and Communication Business, within the City of Yachats for the period of ten years from and after June 1, 1997; and

WHEREAS, the Public Works & Streets Commission, acting as the City's Franchise Agreement Review Committee has recommended to City Council that the agreement be continued for a period of ten years without any changes to the rate or other conditions; and

NOW THEREFORE, the City of Yachats ordains as follows:

Section 1. Amend Ordinance No. 124

Section 7 of Ordinance 124 is amended to read as follows:

"Section 7. The rights, privileges, and franchise herein granted shall continue and be in force for the period of ten (10) years from and after June 1, 2007.

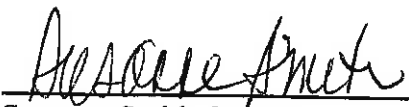
Section 2. Repeal Ordinance No. 193

The term of agreement as stated in Ordinance No. 193 has elapsed, and therefore Ordinance No. 193 is repealed in its entirety.

PASSED AND ADOPTED by the City Council of the City of Yachats on this 9th day of May, 2007.


Ayes: 5 Nays: 0 Abstentions: 0 Absent: 0

APPROVED by the Mayor this 9th day of May, 2007.



Susanne Smith, Mayor

Attest:



Nancy Batchelder, City Recorder

May 23, 2007

Nancy Batchelder
City Recorder
City of Yachats
PO Box 345
Yachats, OR 97498

Re: Ordinance No. 271 dated May 9, 2007 (amending Ordinance No. 124,
Section 7)

Dear Ms. Batchelder:

We have received a copy of the above-referenced City of Yachats ordinance, granting Pioneer Telephone Cooperative the right to do a general telephone and communication business within the City of Yachats for the period of ten (10) years from and after June 1, 2007.

Please consider this letter the Cooperative's formal written acceptance of all terms and conditions of Ordinance 271, the Board having resolved to adopt the extension period and the amending of Ordinance 124 as specified therein.

It is with extreme pleasure that Pioneer Telephone Cooperative may serve its members in the City of Yachats for another ten years.

Please thank Mayor Smith and the citizens of Yachats for their faith and support in our ongoing endeavor to provide your city premier telecommunications services now and in the years to come.

Warmest regards,



LeRoy Russell
President

CITY OF YACHATS

ORDINANCE NO. 216

AN ORDINANCE GRANTING TO CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS (HEREINAFTER DISTRICT), AN EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC UTILITY ALONG STREETS AND OTHER PUBLIC WAYS IN THE CITY OF YACHATS; SETTING THE PRICE OF SUCH FRANCHISE; AND REPEALING AND RESCINDING ORDINANCES 6, 7, & 93 AND AGREEMENT BETWEEN THE PARTIES, DATED 1966 AND 1981

WHEREAS, the District is an operating utility engaged in the distribution of electric power in the City of Yachats and other adjoining areas as a people's utility district; and

WHEREAS, the future growth and expansion of that portion of the system of said District lying within the City of Yachats is of great value to the City; and because adequate utility services are necessary for the general growth and welfare of the City of Yachats;

NOW, THEREFORE, The City of Yachats Does Ordain as Follows:

SECTION 1: GRANT OF FRANCHISE. The City of Yachats in Lincoln County, Oregon (hereinafter City), grants to District a none exclusive franchise of scope and description as follows:

The right and privilege to operate in City and to locate, construct, reconstruct, operate and maintain pole lines with all necessary poles, wires and other appurtenances, telecommunications, signal or other control circuits with all necessary lines, wires, cables, conduit and other appurtenances, underground power lines with all necessary cable, conduit, manholes, splicing boxes and other appurtenances, and all other necessary facilities used for the purpose of transmitting, distributing, delivering, signaling and controlling electric power and all necessary telecommunications on, over, along and under the public streets, alleys and public grounds of City, including the right to lay all or any part of such electric power and necessary telecommunications system underground if District so elects. In the event City abandons, through vacation or otherwise, whether voluntarily or involuntarily, any public street, alley or other public place or way, City shall, notify District of hearings upon proposed street vacations or public places under City jurisdiction in the manner required by ordinance or statute the same as if the District were an abutting property owner.

Except as provided hereafter, it is agreed and understood that District has the exclusive right and authority to construct, maintain and operate a distribution system for furnishing electric power to all consumers, public and private, within the corporate limits of City. This agreement shall have no bearing or effect as to whether District has an inherent right to serve exclusively and shall not, in any event, limit

City's ability to form a municipal electric utility under ORS Chapter 225. The exclusive aspect of this grant of franchise may be revoked unilaterally by the City in its sole discretion upon one years written notice to District.

For the above-stated purpose, District has the right to erect or construct, equip and maintain along, over or under present or future streets, alleys and other public places or ways such other facilities in addition to or conjunction with District's utility poles, telecommunications facilities, overhead transmission lines, underground transmission lines, and other apparatus and facilities as are reasonably necessary for furnishing electric service and related telecommunications, including the right to clear trees and brush from such public ways and places.

District has the right to purchase, erect, equip, maintain, own, lease and operate machinery, equipment, structures and other facilities necessary to generate, transmit, signal and control an adequate supply of electric power and related telecommunications; and the right to buy, hold, own or lease any real estate necessary to conduct such activities.

For the purpose of carrying into effect the privileges granted under and pursuant to this ordinance, District is authorized to make all necessary excavations in the streets, alleys, sidewalks and public ways and grounds within the corporate limits of City. The excavations shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible and shall be subject to any code provision, ordinance or rule of the City, unless specifically excluded herein.

District shall restore all streets, alleys, sidewalks and public grounds to their original condition of safety and utility after excavation in accordance with all City codes, ordinances and other rules, as determined by the City's Public Works Superintendent or other authorized City staff.

In case any obstruction caused by District shall remain longer than a reasonable time after notice to remove it as determined in the sole discretion of the City, or in case of neglect by District to safeguard any dangerous places, as determined by and in the discretion of the Public Works Superintendent, City may remove the obstruction or safeguard dangerous places at the expense of District.

District has the right to allow attachment to its poles and facilities by others such other equipment, lines and other facilities as District's rules and regulations may allow.

Police/Sheriff and/or fire district signal wires may be attached to the District's poles and fixtures to the extent that space is available for same as determined by the District. No such installation shall be made except on written request from the City, and any such installation, maintenance or repair of same shall either be performed by licensed contractors approved by the District or be made by the District at the expense of the City.

District, at its expense, shall protect, support, temporarily disconnect, relocate along, under or over any street, alley or public place, or remove from any street, alley or public place, any equipment or facilities when required by City by reason of traffic conditions, public safety, street excavation, freeway or street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power

lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in a governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever.

SECTION 2 TERM.he franchise is granted for a term oftweny (20) years commencing with the date on which it is accepted. Thereafter, the franchise may be renewed on such terms and conditions as may be mutually acceptable to City and District. In addition to the provisions of Section 6, below, regarding increases in franchise fees, in the event District agrees to pay another city a franchise fee greater than that provided in Section 6 below, District agrees to give City the option to receive the same amount as franchise fee provided City agrees to substantially the same terms and conditions which said greater franchise fee entails. It is understood by both parties that any franchise fees above the amounts provided in Section 6 will entail a separate line item for additional tax on the bills from District to the customer/residents of City.

SECTION 3: ACCEPTANCE. District shall file a written acceptance of the franchise with the City Recorder of City within thirty (30) days after the date of this ordinance. The franchise shall go into effect only when the acceptance has been filed and shall be retroactive to the effective date of this ordinance, as set forth in Section 8, below..

SECTION 4: INDEMNITY. District shall indemnify and defend City, its boards, commissions, officers, agents and employees, and any and all other public agencies, and their members, officers, agents and employees, against any and all liabilities for injury or death of any person or any damage to any property caused by any acts or omissions of the District, District's officers, agents or employees, in the construction, operation or maintenance of its property, or arising out of the exercise of any right or privilege under the franchise to the extent allowed by and insure in an amount at a minimum equal to the limits of liability set forth in ORS 30.260 to 30.300, as now in effect or hereafter may be amended. District shall provide certificates of insurance demonstrating compliance with this section.

SECTION 5: ADDITIONS. District shall, on subsequent additions of areas to City, either by annexation, consolidation or otherwise, be subject to the provisions of the franchise granted by this ordinance as to all such areas.

Any facilities and appurtenances in streets, alleys and public places, incidental to the franchised system, that have been, or are at any future time acquired, leased or utilized in any manner by District are to be deemed authorized by and shall be subject to all the provisions of the franchise, including, but not limited to the duty of payment of compensation as required under this ordinance.

SECTION 6: CONSIDERATION. Beginning thirty (30) days after the effective date of this ordinance, as set forth in Section 8, below, District shall pay to City monthly as a franchise fee and as compensation for the rights and privileges granted under this ordinance, a sum equal to three and one-half percent (3 1/2%) of all gross revenues from electric or other service actually provided within the corporate limits of City during each such billing month. Such basis of computation has been set as a convenient and proper method of measuring the amount that District should pay as a franchise fee for the enjoyment of the franchise granted by this ordinance, or of any or all rights or privileges granted under this ordinance. No other license, privilege, occupation tax, permit or other fee shall be required of District during the term of this franchise; provided, however, that City shall have the right to review the fee annually and, subject to Section 2 of this ordinance, increase either or both of the percentage rates stated in this section following the review. City's first such review may occur no earlier than one year after the City's adoption of this ordinance. The City shall give District thirty (30) days notice prior to any such review.

In the event of holding over after expiration or other termination of this franchise, District shall render compensation pursuant to the provisions of this ordinance until the effective date of any new franchise of date of termination.

SECTION 7: EFFECT OF INVALIDITY. This franchise is granted pursuant to the laws of the State of Oregon relating to the granting of such rights and privileges. If any section, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional, the invalidity shall not affect the validity of the ordinance or any of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of District.

SECTION 8: EFFECTIVE DATE. The effective date of this ordinance and the Grant of Franchise is December 23, 2000, providing the District files its written acceptance of Franchise with the City, in accordance with Section 3: Acceptance, of this ordinance, above.

SECTION 9: REPEAL OF ORDINANCES AND AGREEMENTS IN CONFLICT. Ordinances 6, 7, and 93 and Agreement between the parties dated 1966 and 1981, are hereby rescinded and repealed by this ordinance.

PASSED AND ADOPTED by the City Council of the City of Yachats on this 11th day of January 2001.

Ayes: 5 Nays: 0 Abstentions: 0 Absent: 0

APPROVED by the Mayor this ____ day of _____

Attest:

Lee Corbin, Mayor

Nancy Otterson, City Recorder

ORDINANCE NO. 332
FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Yachats, Oregon hereinafter referred to as the "Grantor" and Falcon Telecable, a California Limited Partnership, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the "Grantee."

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1
Definition of Terms

1.1 **Terms**. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act
- B. "Council" shall mean the governing body of the Grantor.
- C. "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- E. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.

- F. "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusions available under applicable State .
- G. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- H. "Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6 hereto.
- I. "State" shall mean the State of Oregon.
- J. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.
- K. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2

Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of five (5) years, commencing on the Effective Date of this Franchise as set forth in Section 14.10. This Franchise will be automatically extended for an additional term of five (5) years from the expiration date as set forth in Section 14.10, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

2.3 Police Powers and Conflicts with Franchise. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public , to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that is not generally applicable, this Franchise shall control.

2.4 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

SECTION 3 **Franchise Renewal**

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4 **Indemnification and Insurance**

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor , its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor , its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System.

4.2 **Insurance.**

- A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	[\$1,000,000] per occurrence, Combined Single Limit (C.S.L.) [\$2,000,000] General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	[\$1,000,000] per occurrence C.S.L.
Umbrella Liability	
Umbrella Liability	[\$1,000,000] per occurrence C.S.L.

- B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5 **Service Obligations**

5.1 **No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2 **Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6 **Service Availability**

6.1 **Service Area.** The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

6.2 **New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such

construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Grantee.

6.3 Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days 'written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 14.5 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

SECTION 7

Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

7.2 Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable

Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

7.5 Performance Monitoring. Grantee shall test the Cable System consistent with the FCC regulations.

SECTION 8

Conditions on Street Occupancy

8.1 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

- 8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.
- 8.6 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.
- 8.7 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.
- 8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.
- 8.9 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.
- 8.10 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.
- 8.11 Emergency Use.** If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

SECTION 9

Service and Rates

9.1 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are satisfied and provided that Grantee may discontinue or refuse to provide Cable Service to any person that is abusive and/or exhibits threatening behavior toward the Grantee's employees or representatives.

SECTION 10

Franchise Fee

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 14.10. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

SECTION 11

Transfer of Franchise

11.1 Franchise Transfer. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

SECTION 12

Records, Reports and Maps

12.1 Reports Required. The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

12.2 Records Required.

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

12.3 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent

permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

SECTION 13 **Enforcement or Revocation**

13.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

13.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with Section 14 hereof. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

13.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 13.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

13.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set

forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

- B. At the hearing, the Board shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Board de novo. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

SECTION 14 **Miscellaneous Provisions**

14.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

14.2 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

14.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4 Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

14.5 Notices. Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

If to the Grantor: City of Yachats
 441 North Hwy 101
 P.O. Box 345
 Yachats, OR 97498

If to the Grantee: Charter Communications
 222 NE Park Plaza Drive, Suite 231
 Vancouver, WA 98684
 Attn: Director of Government Relations

With a courtesy copy to:
 Charter Communications
 Attn: Vice President of Government Affairs
 12405 Powerscourt Drive
 St. Louis, MO 63131

14.6 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

14.6.1 Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.6 above.

14.7 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

14.8 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

14.9 Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

14.10 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. The initial term of this franchise shall expire five (5) years from the Effective Date defined herein, unless extended in accordance with Section 2.2 of the Franchise or by the mutual agreement of the parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this 12 day of February, 2015.

City of Yachats, Oregon

Signature: _____

Name/Title: _____

Accepted this 12 day of 3, 2015, subject to applicable federal, State and local law.

Falcon Telecable, a California Limited Partnership, 1/k/a Charter Communications

By: _____

Printed Name: Mark E. Brown

Title: Vice-President, Government Affairs
Charter Communications

**CITY OF YACHATS
ORDINANCE NO. 156**

AN ORDINANCE PROVIDING FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE; GRANTING A FRANCHISE TO DAHL DISPOSAL SERVICE, INC.; AUTHORIZING THE MAYOR AND RECORDER TO ENTER INTO A FRANCHISE AGREEMENT FOR THE CITY OF YACHATS; REPEALING ORDINANCE NO 38B AND ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A PENALTY FOR THE VIOLATION HEREOF.

PURSUANT TO AUTHORITY GRANTED TO THE CITY OF YACHATS BY THE STATE OF OREGON IN ORS 459.065, THE CITY OF YACHATS ORDAINS AS FOLLOWS:

GENERAL PROVISIONS

Section 1. Short Title. This Ordinance shall be known as the "Solid Waste Management Ordinance", and may be referred to herein as "this Ordinance".

Section 2. Purposes, Policy and Scope. It is declared to be the public policy of the City of Yachats to regulate solid waste management in order to:

- (a) Insure safe, efficient, economical and comprehensive solid waste service.
- (b) Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
- (c) Eliminate overlapping service, thereby increasing efficiency and decreasing truck noise, street wear, energy waste, air pollution and public inconvenience.
- (d) Protect public health and the environment.
- (e) Protect against improper and dangerous handling of hazardous wastes.
- (f) Provide technologically and economically feasible resource recovery by and through the franchisee.
- (g) Provide public service standards.
- (h) Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology.

Section 3. Definitions.

City:	The City of Yachats, Oregon
Compensation:	Includes (a) Any type of consideration paid for service, including but not limited to rent, the proceeds from resource recovery, any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons; and (b) The exchange of service between persons.
Council:	The City Council of the City of Yachats
Franchisee:	The person granted the franchise pursuant to Section 4 of this ordinance or a subcontractor of such person.
Hazardous Waste:	(a) Defined as hazardous waste by or pursuant to ORS Chapter 466.005; or

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	(b) Defined as hazardous waste by another governmental agency or unit having jurisdiction; or (c) Found by the Franchisee to be hazardous to service workers, to service equipment, or to the public.
Person:	The state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.
Resource Recovery:	The process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials recovery or energy recovery of or from solid waste.
Service:	The collection, transportation or disposal of or resource recovery from solid waste.
Solid Wastes:	All putrescible and non-putrescible waste including without limitation: garbage, rubbish, refuse, trash, ashes, swill, newsprint or waste paper, corrugated or cardboard; demolition or construction wastes, grass clippings, compost, residential, commercial, industrial, governmental or institutional wastes; discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, vegetable or animal wastes, infectious waste as defined in ORS 459.387, and other wastes; but the term does not include (a) Hazardous Waste as defined in ORS 466.005; (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; (c) Beverage containers, subject to reuse or refund provisions, contained in ORS 459A.700 to 459A.740; (d) sewage sludge, septic tank, cesspool pumping or chemical toilet wastes.
Solid Waste Disposal Supervisor:	An individual who has been appointed by the City Council to perform the supervisory functions set forth in this Ordinance.
Solid Waste Management:	The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.
Waste:	Material that is no longer directly useable by the source, generator or producer of the material and which is to be disposed of or to be resource recovered by another person. (a) The fact that all or any part of the material may have value and thus be recovered does not remove them from this definition. (b) The fact that the source, generator or producer of materials has separated or segregated such material from other wastes does not remove the materials from this definition.

FRANCHISE AND EXEMPTIONS

Ordinance No.

2

Section 4. Grant of Exclusive Franchise. The City grants to Dahl Disposal Service, Inc. the exclusive right, privilege and franchise to provide solid waste management and service within the City limits as of the date of this Ordinance and within any area that may hereafter be annexed to the City and, for that purpose, to utilize the streets and facilities of the City. No person other than the franchisee shall provide or offer to provide service for compensation.

Section 5. Persons and Practices Exempt from Franchise. Nothing in this Ordinance requires a franchise for the following businesses or practices:

(a) The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent De Paul, Goodwill and similar organizations.

(b) The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized or is not operated for any solid waste management purpose and which organization is using the activity for fund raising, including, without limitation, scouts and churches.

(c) The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459 and that portion thereof commonly known as "Bottle Bill".

(d) The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of auto wrecking, to the extent licensed by the State of Oregon; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection. "Janitorial Service" does not include cleanup of accumulated or stored wastes.

(e) The transportation by a person of solid waste generated or produced by such person to an authorized disposal site, resource recovery site or market. In the case of non-owner occupied property, the waste is generated or produced and is owned by the occupant and not by the landlord, property owner, or association of property owners, or the agent of such landlord, property owner or association.

(f) The purchase of totally source separated solid waste for fair market value.

(g) The providing of service for hazardous wastes.

(h) Any other practice, business or activity which is withdrawn by the Council after public hearing and upon a resolution and order finding the withdrawal has no substantial impact on service, consumer rates or the purposes stated in Section 2 of this Ordinance. A copy of any such order shall be attached to and incorporated in this Ordinance.

(i) Where a new resource recovery service or a continuation of or a substantial expansion of an existing service is proposed by the City or another person other than the Franchisee:

(1) Prior written notice of the proposed service shall be given to Franchisee by the City Recorder at least thirty (30) days prior to consideration by the Council.

(2) The Council may on its own motion and shall upon request of the Franchisee or applicant for an exception hold a public hearing on the proposed service, costs and justification.

(3) In determining whether service is needed, the Council shall give due consideration to the purposes of this Ordinance, the public need for the service, the technological and economic feasibility, the effect on consumer rates, the effect on other service by Franchisee, applicable laws, ordinances or regulations and any applicable solid waste management plan.

- (4) If the Council determines that such service is needed, it may require the Franchisee to provide the service within a specified period of time. Where applicable, the Council may determine necessary rates.

Section 6. Exceptions to Provisions. The Council may authorize exceptions to provisions of the Ordinance, provided the following requirements have been met:

- (a) Applicant shall obtain an application form and file a completed application with the City Recorder.
- (b) Upon thirty (30) days written notice to the applicant and the Franchisee, a public hearing shall be held before the Council.
- (c) The City Recorder shall provide information and recommendations to the Council to assist it in reaching a determination.
- (d) The Council shall hold a public hearing and make findings. The Council's decision shall be based on the following:
 - (1) The need for the proposed service.
 - (2) The ability of Franchisee to provide the required service unless the service was being supplied on the effective date of this Ordinance.
 - (3) Whether there are unnecessary or unreasonable hardships, or practical difficulties which can be relieved only by granting an exception.
 - (4) Whether there are exceptional circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings, or similar uses.
 - (5) Whether the granting of the application will not be materially detrimental or have a substantial impact on service, consumer rates, or the Franchisee.
 - (6) Whether the applicant has the necessary equipment and/or personnel to provide adequate service.
- (e) An order by resolution shall be drawn setting forth the decision of the Council and shall be distributed to the applicant and the Franchisee. The order may specify any conditions or limitations deemed necessary by the Council to carry out the purposes of this ordinance.

Section 7. Activity Prohibited. Unless exempted under Section 5, excepted under Section 6, or franchised pursuant to Section 4, no person shall provide service or offer to provide or advertise for performance of such service within the City limits.

Section 8. Franchise Term. The rights, privileges and franchise granted by this Ordinance shall begin on the effective date of this Ordinance and shall be considered a continuing 6 year franchise. Beginning on April 13th of each year, the franchise will be considered renewed for an additional 6 year term unless at least thirty (30) days prior to April 13th of any year, the Council shall notify the franchisee in writing of intent to terminate the franchise. Upon the giving of such notice of termination, the Franchisee shall have a franchise which will terminate 7 years from the date of notice of termination. The Council may later extend the term or reinstate continuing renewal upon mutual agreement with the Franchisee. Nothing in this section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant to Section 13 of this Ordinance.

Section 9. Franchise Fee. In consideration of the franchise granted pursuant to Section 4 hereof and the terms and provisions herein, Franchisee agrees to pay to the City a franchise fee of 3% of its annual gross revenue or \$150.00 annually, whichever is the greater. The franchise fee is to be computed from an annual certified statement from the franchisee setting forth the number of residential and commercial accounts in its franchise area and the revenue received therefrom. Payments shall be made annually on or before February 1. In addition to the franchise fee, the

franchisee shall remove all solid waste from all administrative buildings, library and city owned litter receptacles. The requirement of payment of the franchise fee is in addition to and not in lieu of any business license fee which may be assessed against the franchisee.

Section 10. Franchisee Responsibility. The Franchisee agrees to:

(a) As permitted to by Federal, State and County law or ordinance, maintain or decide upon and enter into appropriate agreements to gain access to a suitable landfill for the disposal of solid waste subject to City's consent, which shall be unreasonably withheld.

(b) Provide and keep in force public liability insurance in the amount of not less than \$100,000 for injury to a single person, \$300,000 to a group of persons and \$50,000 property damage, or such other amounts as may be established by law as the maximum liability of the City, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder including the City as additional insured.

(c) Within 30 days after the effective date of this Ordinance, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Ordinance.

(d) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of the necessary service or subcontract with others to provide such service.

(e) Respond to any complaint regarding service.

(f) Provide weekly service in residential areas and daily service to commercial areas on weekdays.

(g) Provide the Opportunity to Recycle in accordance with Oregon Revised Statutes Chapter 459A, together with any rules and regulations promulgated thereunder by the Department of Environmental Quality, and in accordance with any additional rules required by the City.

(h) Franchisee agrees to permit all residents of the City to use South Lincoln Landfill or franchisee's publicly accessible solid waste facility for a reasonable individual fee at the times the facilities are customarily open for public use. The Franchisee shall have the right to make reasonable regulations to establish rates for the use of the landfill and to determine where and in what manner any material may be disposed of. If the landfill is abused in any way by any resident of the City of Yachats, Franchisee has the right to close said landfill to that individual. Franchisee agrees at all times to keep the road around the landfill ground open and in a safe and suitable condition for vehicle travel and to provide a means whereby motor vehicles may readily and conveniently turn around at or near said landfill. The City of Yachats shall be allowed to use said landfill at all times and without charge.

(i) To maintain at Franchisee's own expense a telephone at all times.

(j) The Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous waste; provided, however, that the Franchisee may provide such service outside this Ordinance in compliance with all applicable laws, ordinances and regulations.

(k) The Franchisee shall not:

(1) Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quality of solid waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the Council, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.

(2) Transfer this franchise or any portion of it to other persons without prior written approval of the Council. Franchise or its shareholders as of the date hereof shall not transfer 51% of its shares to any person unless City approves such transfer, which

approval shall not be unreasonably withheld. The Council shall approve the transfer if the transferee meets all applicable requirements met by the Franchisee. A pledge of this franchise as financial security shall be considered as a transfer for purposes of this subsection. The Council may attach whatever conditions it deems necessary to guarantee maintenance of service and compliance with this Ordinance.

Section 11. Subcontracting Service. The Franchisee may subcontract with others to provide a portion of the service where Franchisee does not have the necessary equipment or personnel. Such a subcontract shall not relieve the Franchisee of total responsibility for providing and maintaining service and from compliance with this Ordinance. Except where emergency service is provided by a subcontractor, such subcontract shall be in writing, shall be filed with the City Recorder for any service extending more than ninety (90) days and shall provide that the subcontractor shall have no claim or right of action whatsoever against the City.

Section 12. Supervision. Service provided under the franchise and other requirements of this Ordinance shall be under the supervision of the solid waste disposal supervisor, or his or her designate. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, and personnel providing service.

Section 13. Suspension, Modification or Revocation of Franchise.

(a) Failure by Franchisee to provide necessary service or otherwise comply with the provision of this Ordinance after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.

(b) After written notice from the City Recorder that such grounds exist, the Franchisee shall have at least twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the Council.

(c) At a public hearing, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.

(d) If the Franchisee fails to comply within the time specified or, if the Council hearing is held, with the order of the Council entered upon the basis of findings at the public hearing, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.

(e) In the event the Council finds an immediate and serious danger to the public through creation of a health hazard, it may take action within a time specified in the notice to the Franchisee and without a public hearing prior to taking such action.

Section 14. Termination of Service. The Franchisee shall not terminate service to all or a portion of its customers unless:

(a) The street or road access is blocked and there is no alternate route and provided that the City shall not be liable for such blocking of access, or

(b) Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism, or

(c) A customer has not complied with Section 15 of this Ordinance or has not paid for service provided after a regular billing and after written notice to pay, or

(d) Ninety days written notice of intent to terminate all or a substantial part of service is given to the Council and written approval is obtained from the Council, or

(e) Franchisee is ordered to suspend, reduce or terminate all or a portion of service by a legislative, administrative or judicial body having jurisdiction.

RATE REGULATION

Section 15. Rate Determination.

(a) Rates for service provided by Franchisee shall be fixed and thereafter amended from time to time by resolution of the Council.

(b) In determining rates, the Council shall give due consideration to current and projected revenue and expenses; actual and overhead expense; the cost of acquiring and replacing equipment; the cost of providing for future, added or different service; a reasonable operating margin to Franchisee for doing business; research and development; and such other factors as the Council deems relevant. The Council may also consider rates charged by other persons performing the same or similar service in the same or similar areas under the same or similar service conditions.

(c) The maximum rates to be charged shall be those set as provided herein. Unscheduled services may be provided at the reasonable cost of providing the service giving consideration to the standards in (b) of this Section.

(d) Franchisee may require payment for residential service and multi-family residential service up to three (3) months in advance. Franchisee may bill up to three (3) months in advance, arrears or any combination. Where billed in advance, Franchisee shall within a reasonable time refund a prorata portion of the payment for any complete month in which service is not to be provided. Franchisee may charge at the time service is provided to a drop box or roll off box service customer where the customer has not previously established credit with the Franchisee.

(e) If approved in the rate schedule, Franchisee may charge a starting charge for a new service, a restart charge to any customer who has been previously terminated for failure to pay for service, and interest on past due accounts.

(f) Rates shall be uniform within zones or classes of service.

PUBLIC RESPONSIBILITY

Section 16. Public Responsibility. In addition to and not in lieu of compliance with ORS Chapter 459 and other applicable laws and regulations:

(a) No person shall place hazardous waste for collection or disposal by Franchisee without notice to Franchisee.

(b) No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the Franchisee is the "owner" of containers supplied by Franchisee.

(c) No unauthorized person shall remove solid waste placed out for collection and resource recovery by the Franchisee or a person exempted by Section 4 of this Ordinance and operating solely within the exemption.

(d) No person shall install an underground solid waste container for storage and collection after the effective date of this Ordinance. The Franchisee is not required to service and underground container unless the person responsible for it places the can above ground prior to time of collection.

(e) No can for residential service shall be located behind any locked or latched door, gate or inside of any building or structure.

(f) Each customer shall provide safe access to the solid waste container or wastes without risk or hazard to Franchisee's employees, the public or Franchisee.

(g) No container designed for mechanical pickup shall exceed a safe loading weights or volumes as established by the Franchisee to protect service workers, the customer, the public and the collection equipment. No garbage receptacle designed for manual collection shall exceed thirty-two (32) gallons in size nor weight more than sixty (60) pounds gross loaded weight. Cans shall be tapered so they are larger at the top and have a place for a hand-hold at the bottom.

(h) Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, the Franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other ratepayers who are not benefited.

(i) Every person who generates or produces wastes shall remove or have removed at least once every seven days all waste which may putrefy during that period. More frequent removal may be required by the Council where a facility or service involves the public health. All wastes shall be removed at sufficient frequency so as to prevent health hazards, nuisances or pollution.

(j) The producer or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free of accumulated wastes. The Franchisee shall provide periodic maintenance to containers supplied by Franchisee. When materials or customer abuse causes excessive wear or damage to a container, cart or drop box, the cost of repair or replacement may be charged to the customer.

(k) Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the Franchisee. A person who wishes service for a compactor shall, prior to acquisition of such compactor, inquire of the Franchisee as to the compatibility with Franchisee's equipment or equipment which the Franchisee is willing to acquire and assure that the compactor is compatible.

Section 17. Payment of Service. Any person who received service from the Franchisee shall be responsible for payment of service. The owner of a rental or lease facility shall be liable for payment for services provided to a tenant of such dwelling if the tenant fails to make timely payment for such service. The owner of any multiple unit rental or lease facility having two or more dwelling units shall be primarily responsible for services provided to the occupants of such facility and shall be billed for the services.

APPEAL ADMINISTRATION, ENFORCEMENT AND REPEAL

Section 18. Appeals. Any action or determination by Franchisee under or pursuant to this Ordinance may be appealed to the solid waste disposal supervisor. Any action or determination of the solid waste disposal supervisor under this Ordinance may be appealed to the City Council.

Section 19. Construction. Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provisions of this Ordinance.

Section 20. City Enforcement. The City may enforce the provisions of this Ordinance by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Ordinance. The Council shall take such legislative action as is necessary to support the Ordinance and the franchise granted. The Franchisee may also enforce payment or protect its rights by appropriate civil action.

Section 21. Penalties. Violation by any person of the provisions of this Ordinance shall be punished upon conviction by a civil penalty or a fine of not more than \$500.00. Penalties in this section

are not in lieu of other remedies provided in this Ordinance. Each day of a violation is a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action.

Section 22. Indemnity and Hold Harmless. Notwithstanding the provision of insurance by the franchisee, the franchisee shall defend, indemnify and save the City harmless from liability or loss because of injury (including death) to any person or damage to any property that may occur or may be alleged to have arisen out of connection with or related to performance of service, solid waste management service or resource recovery as a result, directly or indirectly of franchisee's or its subcontractor's or their servants, agents or employees, acts or omissions. This obligation shall survive modification, termination or transfer of the franchise. In any and all claims against the City or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors, workers' compensation acts, disability acts, or other employee benefits.

Section 23. Repeal. Ordinance No. 38B and all ordinances and parts of ordinances in conflict herewith are hereby repealed.

PASSED AND ADOPTED by the City Council of the City of Yachats on this _____ day of _____.

Ayes: _____ Nays: _____ Abstentions: _____ Absent: _____

APPROVED by the Mayor this _____ day of _____.

Attest:

Lee Corbin, Mayor

Nancy Otterson, City Recorder

THE FRANCHISEE ACCEPTS THE FRANCHISE GRANTED BY SECTION 4 OF THIS ORDINANCE.

DAHL DISPOSAL SERVICE, INC.

By: _____

Title

SOLID WASTE

**CITY OF YACHATS
ORDINANCE NO. 238**

**AN ORDINANCE AMENDING TITLE 5 - HEALTH AND SAFETY, IN PART, TO
INCLUDE CHAPTER 5.10 - COLLECTION AND DISPOSAL OF SOLID WASTE;
CONTINUING THE FRANCHISE AGREEMENT FOR SOLID WASTE COLLECTION
AND DISPOSAL WITH DAHL DISPOSAL, INC.; AND REPEALING ORDINANCE NO
156 AND ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT
HEREWITH**

**NOW THEREFORE, PURSUANT TO AUTHORITY GRANTED TO THE CITY OF
YACHATS BY THE STATE OF OREGON IN ORS 459.065, THE CITY OF YACHATS
ORDAINS AS FOLLOWS:**

It is declared to be the public policy of the City of Yachats to regulate solid waste management in order to:

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- A. Insure safe, efficient, economical and comprehensive solid waste service.
- B. Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
- C. Eliminate overlapping service, thereby increasing efficiency and decreasing truck noise, street wear, energy waste, air pollution and public inconvenience.
- D. Protect public health and the environment.
- E. Protect against improper and dangerous handling of hazardous wastes.
- F. Provide technologically and economically feasible resource recovery by and through the franchisee.
- G. Provide public service standards.
- H. Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology.

As used in this chapter:

As used in this chapter:

As used in this chapter:

As used in this chapter:

"City" The City of Yachats, Oregon

"Compensation" Includes

SOLID WASTE

(a) Any type of consideration paid for service, including but not limited to rent, the proceeds from resource recovery, any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons; and

(b) The exchange of service between persons.

"Council" The City Council of the City of Yachats

"Franchisee" The person granted the franchise pursuant to Section 5.10.030 of this Code or a subcontractor of such person.

"Hazardous Waste"

(a) Defined as hazardous waste by or pursuant to ORS Chapter 466.005; or

(b) Defined as hazardous waste by another governmental agency or unit having jurisdiction; or

(c) Found by the Franchisee to be hazardous to service workers, to service equipment, or to the public.

"Person" The state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

"Resource Recovery" The process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials recovery or energy recovery of or from solid waste.

"Service" The collection, transportation or disposal of or resource recovery from solid waste.

"Solid Wastes" All putrescible and non-putrescible waste including without limitation: garbage, rubbish, refuse, trash, ashes, swill, newsprint or waste paper, corrugated or cardboard; demolition or construction wastes, grass clippings, compost, residential, commercial, industrial, governmental or institutional wastes; discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, vegetable or animal wastes, infectious waste as defined in ORS 459.387, and other wastes; but the term does not include:

(a) Hazardous Waste as defined in ORS 466.005;

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals;

(c) Beverage containers, subject to reuse or refund provisions, contained in ORS 459A.700 to 459A.740;

(d) sewage sludge, septic tank, cesspool pumping or chemical toilet wastes.

"Solid Waste Disposal Supervisor" An individual who has been appointed by the City Council to perform the supervisory functions set forth in this Code.

"Solid Waste Management" The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

"Waste" Material that is no longer directly useable by the source, generator or producer of the material and which is to be disposed of or to be resource recovered by another person. The fact that all or any part of the material may have value and thus be recovered does not remove them from this definition. The fact that the source, generator or producer of materials has separated or segregated such material from other wastes does not remove the materials from this definition.

SOLID WASTE

The City grants to Dahl Disposal Service, Inc. the exclusive right, privilege and franchise to provide solid waste management and service within the City limits as of the date of this Code and within any area that may hereafter be annexed to the City and, for that purpose, to utilize the streets and facilities of the City. No person other than the franchisee shall provide or offer to provide service for compensation.

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Nothing in this Code requires a franchise for the following businesses or practices:

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Nothing in this Code requires a franchise for the following businesses or practices:

A. The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent De Paul, Goodwill and similar organizations.

B. The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized or is not operated for any solid waste management purpose and which organization is using the activity for fund raising, including, without limitation, scouts and churches.

C. The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459 and that portion thereof commonly known as "Bottle Bill".

D. The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of auto wrecking, to the extent licensed by the State of Oregon; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection. "Janitorial Service" does not include cleanup of accumulated or stored wastes.

E. The transportation by a person of solid waste generated or produced by such person to an authorized disposal site, resource recovery site or market. In the case of non-owner occupied property, the waste is generated or produced and is owned by the occupant and not by the landlord, property owner, or association of property owners, or the agent of such landlord, property owner or association.

F. The purchase of totally source separated solid waste for fair market value.

G. The providing of service for hazardous wastes.

H. Any other practice, business or activity which is withdrawn by the Council after public hearing and upon a resolution and order finding the withdrawal has no substantial impact on

SOLID WASTE

service, consumer rates or the purposes stated in Section 5.10.010 of this Code. A copy of any such order shall be attached to and incorporated in this Code.

I. Where a new resource recovery service or a continuation of or a substantial expansion of an existing service is proposed by the City or another person other than the Franchisee:

1. Prior written notice of the proposed service shall be given to Franchisee by the City Recorder at least thirty (30) days prior to consideration by the Council.

2. The Council may on its own motion and shall upon request of the Franchisee or applicant for an exception hold a public hearing on the proposed service, costs and justification.

3. In determining whether service is needed, the Council shall give due consideration to the purposes of this Code, the public need for the service, the technological and economic feasibility, the effect on consumer rates, the effect on other service by Franchisee, applicable laws, ordinances or regulations and any applicable solid waste management plan.

4. If the Council determines that such service is needed, it may require the Franchisee to provide the service within a specified period of time. Where applicable, the Council may determine necessary rates.

The Council may authorize exceptions to provisions of the Ordinance, provided the following requirements have been met:

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A. Applicant shall obtain an application form and file a completed application with the City Recorder.

B. Upon thirty (30) days written notice to the applicant and the Franchisee, a public hearing shall be held before the Council.

C. The City Recorder shall provide information and recommendations to the Council to assist it in reaching a determination.

D. The Council shall hold a public hearing and make findings. The Council's decision shall be based on the following:

1. The need for the proposed service.

2. The ability of Franchisee to provide the required service unless the service was being supplied on the effective date of this Code.

3. Whether there are unnecessary or unreasonable hardships, or practical difficulties which can be relieved only by granting an exception.

4. Whether there are exceptional circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings, or similar uses.

5. Whether the granting of the application will not be materially detrimental or have a substantial impact on service, consumer rates, or the Franchisee.

6. Whether the applicant has the necessary equipment and/or personnel to provide adequate service.

E. An order by resolution shall be drawn setting forth the decision of the Council and shall be distributed to the applicant and the Franchisee. The order may specify any conditions or limitations deemed necessary by the Council to carry out the purposes of this Code.

Unless exempted under Section 5.10.040, excepted under Section 5.10.050 or franchised pursuant to Section 5.10.030, no person shall provide service or offer to provide or advertise for performance of such service within the City limits.

SOLID WASTE

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The rights, privileges and franchise granted by Ordinance 156 on the 13th of August 1992 is hereby continued On April 13th of each year, the franchise will be considered renewed for an additional 6 year term unless at least thirty (30) days prior to April 13th of any year, the Council shall notify the franchisee in writing of intent to terminate the franchise. Upon the giving of such notice of termination, the Franchisee shall have a franchise which will terminate 7 years from the date of notice of termination. The Council may later extend the term or reinstate continuing renewal upon mutual agreement with the Franchisee. Nothing in this section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant to Section 5.10.120 of this Code.

The rights, privileges and franchise granted by Ordinance 156 on the 13th of August 1992 is hereby continued On April 13th of each year, the franchise will be considered renewed for an additional 6 year term unless at least thirty (30) days prior to April 13th of any year, the Council shall notify the franchisee in writing of intent to terminate the franchise. Upon the giving of such notice of termination, the Franchisee shall have a franchise which will terminate 7 years from the date of notice of termination. The Council may later extend the term or reinstate continuing renewal upon mutual agreement with the Franchisee. Nothing in this section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant to Section 5.10.120 of this Code.

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In consideration of the franchise granted pursuant to Section 5.10.030 hereof and the terms and provisions herein, Franchisee agrees to pay to the City a franchise fee of 3% of its annual gross revenue or \$150.00 annually, whichever is the greater. The franchise fee is to be computed from an annual certified statement from the franchisee setting forth the number of

SOLID WASTE

residential and commercial accounts in its franchise area and the revenue received therefrom. Payments shall be made annually on or before February 1. In addition to the franchise fee, the franchisee shall remove all solid waste from all administrative buildings, library and city owned litter receptacles. The requirement of payment of the franchise fee is in addition to and not in lieu of any business license fee which may be assessed against the franchisee.

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The Franchisee agrees to:

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A. As permitted to by Federal, State and County law or ordinance, maintain or decide upon and enter into appropriate agreements to gain access to a suitable landfill for the disposal of solid waste subject to City's consent, which shall be unreasonably withheld.

B. Provide and keep in force public liability insurance in the amount of not less than \$100,000 for injury to a single person, \$300,000 to a group of persons and \$50,000 property damage, or such other amounts as may be established by law as the maximum liability of the City, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder including the City as additional insured.

C. Within 30 days after the effective date of this Code, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Code.

D. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of the necessary service or subcontract with others to provide such service.

E. Respond to any complaint regarding service.

SOLID WASTE

F. Provide weekly service in residential areas and daily service to commercial areas on weekdays.

G. Provide the Opportunity to Recycle in accordance with Oregon Revised Statutes Chapter 459A, together with any rules and regulations promulgated thereunder by the Department of Environmental Quality, and in accordance with any additional rules required by the City.

H. Franchisee agrees to permit all residents of the City to use South Lincoln Landfill or franchisee's publicly accessible solid waste facility for a reasonable individual fee at the times the facilities are customarily open for public use. The Franchisee shall have the right to make reasonable regulations to establish rates for the use of the landfill and to determine where and in what manner any material may be disposed of. If the landfill is abused in any way by any resident of the City of Yachats, Franchisee has the right to close said landfill to that individual. Franchisee agrees at all times to keep the road around the landfill ground open and in a safe and suitable condition for vehicle travel and to provide a means whereby motor vehicles may readily and conveniently turn around at or near said landfill. The City of Yachats shall be allowed to use said landfill at all times and without charge.

I. To maintain at Franchisee's own expense a telephone at all times.

J. The Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous waste; provided, however, that the Franchisee may provide such service outside this Code in compliance with all applicable laws, ordinances and regulations.

K. The Franchisee shall not:

1. Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quality of solid waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the Council, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.

2. Transfer this franchise or any portion of it to other persons without prior written approval of the Council. Franchise or its shareholders as of the date hereof shall not transfer 51% of its shares to any person unless City approves such transfer, which approval shall not be unreasonably withheld. The Council shall approve the transfer if the transferee meets all applicable requirements met by the Franchisee. A pledge of this franchise as financial security shall be considered as a transfer for purposes of this subsection. The Council may attach whatever conditions it deems necessary to guarantee maintenance of service and compliance with this Code.

The Franchisee may subcontract with others to provide a portion of the service where Franchisee does not have the necessary equipment or personnel. Such a subcontract shall not relieve the Franchisee of total responsibility for providing and maintaining service and from compliance with this Code. Except where emergency service is provided by a subcontractor, such subcontract shall be in writing, shall be filed with the City Recorder for any service extending more than ninety (90) days and shall provide that the subcontractor shall have no claim or right of action whatsoever against the City.

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Service provided under the franchise and other requirements of this Code shall be under the supervision of the solid waste disposal supervisor, or his or her designate. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, and personnel providing service.

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A. Failure by Franchisee to provide necessary service or otherwise comply with the provision of this Code after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.

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B. After written notice from the City Recorder that such grounds exist, the Franchisee shall have at least twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the Council.

C. At a public hearing, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.

D. If the Franchisee fails to comply within the time specified or, if the Council hearing is held, with the order of the Council entered upon the basis of findings at the public hearing, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.

E. In the event the Council finds an immediate and serious danger to the public through creation of a health hazard, it may take action within a time specified in the notice to the Franchisee and without a public hearing prior to taking such action.

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The Franchisee shall not terminate service to all or a portion of its customers unless:

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A. The street or road access is blocked and there is no alternate route and provided that the City shall not be liable for such blocking of access, or

B. Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism, or

C. A customer has not complied with Section 5.10.040 of this Code or has not paid for service provided after a regular billing and after written notice to pay, or

D. Ninety days written notice of intent to terminate all or a substantial part of service is given to the Council and written approval is obtained from the Council, or

E. Franchisee is ordered to suspend, reduce or terminate all or a portion of service by a legislative, administrative or judicial body having jurisdiction.

A. Rates for service provided by Franchisee shall be fixed and thereafter amended from time to time by resolution of the Council. Rates shall be based upon the Uniform Rate Reporting Format set forth in Section 5.10.150.

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B. In determining rates, the Council shall give due consideration to current and projected revenue and expenses; actual and overhead expense, the cost of acquiring and replacing equipment; the cost of providing for future, added or different service; a reasonable operating margin to Franchisee for doing business; research and development; and such other factors as the Council deems relevant. The Council may also consider rates charged by other persons performing the same or similar service in the same or similar areas under the same or similar service conditions.

C. The maximum rates to be charged shall be those set as provided herein. Unscheduled services may be provided at the reasonable cost of providing the service giving consideration to the standards in Section 5.10.150.

C. Franchisee may require payment for residential service and multi-family residential service up to three (3) months in advance. Franchisee may bill up to three (3) months in advance, arrears or any combination. Where billed in advance, Franchisee shall, within a reasonable time, refund a prorata portion of the payment for any complete month in which service is not to be provided. Franchisee may charge at the time service is provided to a drop box or roll off box service customer where the customer has not previously established credit with the Franchisee.

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D. If approved in the rate schedule, Franchisee may charge a starting charge for a new service, a restart charge to any customer who has been previously terminated for failure to pay for service, and interest on past-due accounts.

F. Rates shall be uniform within zones or classes of service.

As used in this Section, unless the context requires otherwise:

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"Affiliated Company" The parent company of franchisee or any subsidiary of such parent company or any company of which thirty percent (30%) or more of the common stock of control is owned or controlled by franchisee or shareholder(s) of franchisee who own or control thirty percent (30%) or more of the common stock of franchisee which shares costs with the franchisee with respect to the services provided under this Agreement. Examples of such shared costs include but are not limited to labor, equipment or administrative costs.

"Allowable Expenses" Those expenses incurred by franchisee in the performance of this Agreement that are acceptable as reimbursable by the ratepayer as enumerated below. Allowable Expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the franchisee solely in the course of performing its obligations under the franchise. Allowable expenses, as qualified above, shall include but not be limited to the following:

1. The costs of complying with all laws, regulations or orders applicable to the obligations of franchisee.

2. Disposal costs as defined below including increased disposal costs and surcharges to the extent that such increase does not exceed eighty-five percent of the Consumer Price Index (CPI) for the current year as provided in Section 5.10.160(D). If such increased disposal costs and surcharges exceed eighty-five percent of the CPI for the current year, then such costs and surcharges shall be allowed as pass through expenses as provided in Section 5.10.160(J).

3. Labor costs, including supervisory labor, associated with provision of services under the franchise, including workers' compensation and benefits and third-party transportation costs for recyclable materials.

4. Vehicle and equipment expenses including vehicle registration fees, motor fuel, oil, tires, and repairs and maintenance of equipment.

5. All expenses of maintaining and replacing capital equipment and assets, including depreciation and repair and maintenance.

6. Performance bonds and insurance, at a minimum, in the amounts and coverage required by the City.

7. Administrative expenses related to data processing, billing and supplies, finance and accounting, officer salaries, franchise administration, human resource and labor management, rate analysis, and regulatory compliance.

8. Utilities.

9. Training and worker safety.

10. Advertising, promotion and public education costs.

11. Property or facility depreciation, rental or lease costs necessary to the provision of services required by the franchise agreement.

12. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and ongoing basis in the provision of services under this franchise over standardized economic useful lives of the various assets. The City shall set the standard economic lives based upon industry input and prevailing practices.

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13. Outside professional fees and costs.

14. Debt service expenses other than any debt service expenses associated with purchases of routes or business purchases, that is not in excess of market rates ordinarily charted for the various types of financing required for purchases or leases.

15. Franchise fees.

16. Any expense incurred in the collection, handling, processing, storing, transporting, marketing, or sale or other disposition of recyclable materials, as defined in ORS 459.005(20).

17. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon franchisee or levied by federal, state or local governments in connection with franchisee's provision of solid waste collection, transportation, disposal and resource recovery services.

18. Any other expense determined in advance by the City and franchisee to be reasonable and necessary to the provision of the services required under the franchise agreement.

19. Bad Debts.

"Collection" or "Collection Service" All or any part of the activities involved in the collection of solid waste and its transportation to an appropriate solid waste management facility.

"Customer" Generators of solid waste in the City to whom franchisee provides collection services pursuant to a franchise granted by City and who have not been refused service pursuant to this Code.

"Disposal" The disposition of solid waste collected by franchisee at a permitted solid waste handling facility selected by franchisee.

"Disposal Costs" The total paid by franchisee for the disposal of solid waste collected pursuant to a franchise granted by City at the solid waste handling facility or transfer station.

"Gross Revenue" for any period shall mean gross accrual-based billings by the franchisee to customers for services provided under this Code and agreement and the accrual-based proceeds from the sales of recycled material collected within the franchise.

"Operating Margin" for a period shall mean gross revenues minus allowable expenses.

"Operating Ratio" is the allowable expense divided into the gross revenues. Expressed as a percentage, the return on gross revenues shall be approximately eighty-eight percent (88%) of gross revenues, which is consistent with industry averages for solid waste collection companies.

"Revenue Requirement" The sum of the quotient of allowable expenses divided by the operating ratio (expressed as a decimal) and pass through expenses.

"Unallowable Expense" Under no circumstances will the following expenses be counted as allowable expenses:

1. Political and charitable contributions.
2. Federal, state, and local income taxes.
3. Loss on sale of assets.
4. Officers' life insurance premiums.
5. Director fees.
6. Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase.
7. Penalties and fines.
8. Costs, whether allocated or direct, associated with collection or unrelated operations that are not governed by this Code.
9. Accruals for future unknown regulatory changes.
10. Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and facilities at a price that would be construed to include goodwill or a premium in excess of fair market value at the time of acquisition.
11. Attorney's fees and related expenses resulting from:

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- a. Any judicial proceeding in which the City and a franchisee are adverse parties, unless the franchisee is the prevailing party.
- b. Any judicial proceeding in which a franchisee is ruled to be liable due to willful misconduct or gross negligence or in violation of law or regulation

A. Franchisee shall charge and collect those rates adopted each year in accordance with this Section. The rates set shall be fixed at a level sufficient to produce a revenue requirement for franchisee that is equal to the quotient of allowable expenses divided by the operating ratio (expressed as a decimal). The operating ratio for this agreement shall be calculated at eighty eight percent (88%). For purposes of this section, the rates shall include all monies collected by franchisee for the services provided pursuant to a franchise granted by City, including, but not limited to, charges for collection of solid waste and recyclable materials, revenue from the sale of recycled material, disposal charges, surcharges, fees and taxes. Revenue shall also include any other monies received by franchisee from any other entity as compensation for services allocated fairly and reasonably to the jurisdiction and customers receiving said services.

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B. The franchisee and its affiliates may use common resources (equipment, fuel, labor, management, and administration) to service the City and other nearby jurisdictions. In such cases, it will be necessary to allocate the costs of such resources among the jurisdictions they serve. Franchisee and the City and other jurisdiction(s) shall mutually agree upon an allocation formula. Such allocation formula may be amended upon the written mutual consent of the franchisee and

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the City and shall be applied, as amended, to determine allowable expenses throughout the term of the franchise. The three factors that will be used to allocate these costs are:

1. Labor hours - Used to allocate labor costs. Vehicle costs will also be allocated on labor hours as a substitute for engine hours. If, in the opinion of the operator, these hours would not be materially similar, then a four-factor formula would need to be implemented which would include engine hours to allocate the cost of vehicles.

2. Weight - Average Vessel Weights used to allocate disposal.

3. Customer Base - Weighted customer counts used to allocate general and administrative and management expenses.

C. These factors will be captured and applied to the costs on a periodic basis. The City and franchisee agree that test periods shall be utilized, at least quarterly, to collect this data. The methods for collecting this data are:

1. Labor hours - A "time on route form" will be completed by route drivers one week each quarter. This data will then be summarized and averaged for application to the annual accounting data, or summarized and applied to the specific quarterly accounting data.

2. Weight - Quarterly weight statistics will be generated by the company to obtain quarterly average vessel weights. These weights will then be applied to route list customer data to obtain relative weights per route. These relative weights per route will then be applied to the cost of disposal.

3. Customer Base - This data is readily available from computer reports generated in conjunction with billing and route list preparation.

D. Commencing on April 1, but in no event after April 1, 2004, the franchisee will submit to the City an annual report of operations prepared by the hauler's Certified Public Accountant (the "Report") showing the actual allowable expenses incurred by franchisee in the preceding fiscal year, all additional allowable expenses franchisee reasonably anticipates will be incurred or imposed in the current fiscal year, the allocation formulas used to determine expenses, the actual operating ratio for the preceding fiscal year, and the expected operating ratio for the current fiscal year.

E. Except as provided in Section 5.10.160(F) a cost of living rate adjustment shall be made every other year commencing with the completion of the Report and according to the following procedure:

1. Commencing on June 1, 2004 and on June 1 of each even numbered year thereafter (the adjustment date) throughout the term of the franchise, the rates shall be adjusted in a percentage amount equal to eighty-five percent (85%) of the two-year percentage change in the Consumer Price Index for all Urban Consumers for West B/C, All Items (1982-84=100) published by the Bureau of Labor Statistics (the Index) that occurred between the months of May and April of the previous and the current years. The adjustment shall not exceed six percent (6%) in any two-year period. In addition, no cost of living adjustment shall be allowed if the adjustment would cause the franchisee to project operations in excess of the Operating Ratio Range. The adjusted rates shall become effective on each July 1, thirty days following the adjustment date.

2. On each adjustment date, the then current rates shall be multiplied by the calculated percentage change in the index for the year.

3. On or before each adjustment date, franchisee shall send to the City a revised rate schedule reflecting the proposed new rates, as adjusted by the Index as provided in this subsection. Upon adoption, the revised rate schedule shall become effective on July 1 of each year.

4. If a rate adjustment occurred in the previous year due to an upward adjustment of the rates due to a formal rate review, then the franchisee is only eligible for eighty five percent (85%) on the one year change in the Consumer Price Index.

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5. In the event that the Index for Urban Consumers of West B/C is no longer published by the Bureau of Labor Statistics, franchisee and City shall negotiate in good faith to agree upon a suitable replacement index reflective of the cost of living in the franchise area.

F. If the reviewed Report indicates that the operating ratio for the next succeeding 12-month period will be less than eighty-five (85%) or greater than ninety-one percent (91%), then a rate review will automatically be implemented in accordance with this section. No more than five consecutive years shall pass during the term of this franchise without a formal rate review as set forth in this subsection. In the event a rate review is requested or required as provided hereunder, the following procedures shall bind the City and franchisee:

G. The City shall review the Report and, if the City's review of the Report indicates that the Operating Ratio is likely to be greater than eighty-five percent (85%) or less than ninety-one percent (91%), the City shall adopt rates for the next year, either as proposed by franchisee in the Report or as modified by the City, no later than June 15. The duly adopted rates shall then become effective not later than July 1 and shall supersede the rates that were previously in effect. The adopted rates shall provide the franchisee an operating ratio of eighty-eight percent (88%).

H. In the event the Report shows that the Operating Ratio for the current fiscal year is not likely to be greater than eighty-five percent (85%) or less than ninety-one percent (91%), the existing rates shall not be adjusted and the current rates shall continue in effect until next adjusted in accordance with subsection d. of this section. The City shall set all policies and procedures respecting the implementation of rates and shall direct franchisee to carry out such policies and procedures. The City, its agents or employees may, upon reasonable notice and during normal business hours, audit those records of franchisee that pertain to revenue and allowable expenses; provided, however, in reviewing such records, the City and its agents and employees shall maintain such records in strict confidence and not disclose, divulge or transmit such records or copies of such records to any third party.

I. Upon review by the City, if it is found deliberate or malicious material misrepresentation of books, records, accounts or data relating to collection service operations has occurred, the franchisee shall pay review costs incurred by the City.

J. In the event franchisee, at any time, becomes liable to pay any new or increased legislated costs, including surcharges, fees or expenses associated with regulatory requirements, or any new or increased disposal and/or long-haul transportation costs or fees, and these costs represent in excess of three percent (3%) of gross revenue, then all such costs and/or fees shall be passed through and added to the then-existing rate structure immediately upon City's receipt and verification of franchisee's documentation of and liability to pay the same. In the event franchisee, at any time, experiences a reduction in such costs, in excess of three percent (3%) of gross revenue, then all such savings shall be passed through and subtracted from the then-existing rate structure immediately upon City's receipt and verification of franchisee's documentation of the same. Franchisee shall include all such costs, cost savings, and/or fees in the next succeeding year's Report as actual Allowable Expenses of Franchisee.

The following reports and information shall be submitted by franchisee to the City in accordance with the following schedule:

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A. Commencing with the first rate adjustment request by the franchisee and on each April 1st thereafter the franchise shall submit the annual report in the format approved and distributed by the City consisting of the following:

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1. Financial statements for franchisee for the preceding year, with schedules prepared by the franchisee's Certified Public Account to provide backup for any allocated expenses. Franchisee shall also identify any expense incurred with an affiliated company. At the County's request, franchisee shall provide such backup as is reasonable to vary expenses.

2. Equipment and depreciation schedules and equipment replacement projections for the current year.

3. Projected allowable expense and pass-through expense for the current year.

4. Projected gross revenue for the current year based on current levels of service and the current rate schedule (before any cost of living adjustment).

5. Subject to the conditions of Section 5.10.040(B), a proposed rate schedule to be effective July 1 with rationale as to how the rates were developed.

B. The franchisee shall maintain accounting, statistical, operational, and other records related to its performance under the franchise agreement. Also, the franchisee agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and solid waste program management needs of the City. To this extent, such requirements set out in this and other parts of this section shall not be considered limiting or necessarily complete. In particular, this requirement is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of the City, the records and reports to be maintained and provided by the franchisee in accordance with this and other articles of the agreement shall be adjusted in number, format, or frequency. The foregoing is not intended to require significant additional administrative labor or the modification of the franchisee's computer software. Subject to these conditions, the following additional requirements apply to records and reports of the franchisee:

1. General. All records shall be maintained for five (5) years after the expiration of this agreement, with the exception of accounts payable records, which will be maintained for three (3) years after payment. The franchisee agrees that the records addressed in this Code shall be provided or made available to the City and its official representatives during normal business hours.

2. Solid Waste Records. Records shall be maintained by the franchisee for the City relating to:

- a. Customer service and billing.
- b. Weight and volume of solid waste and recyclable materials.
- c. Routes, facilities, equipment and personnel used.
- d. Facilities and equipment operations, maintenance and repair.
- e. Disposal of Solid Waste.
- f. Complaints.
- g. Missed pick-ups.

3. CERCLA Defense Records. The City views the ability to defend against CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC w9601, et seq.) and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where solid waste collected in the City was taken for disposal, as well as where it was not taken, to be matters for concern. Franchisee shall maintain data retention and preservation systems which can establish where solid waste collected in the City was land filled (and therefore establish where it was not land filled) and provide a copy or summary of the reports required for five (5) years after the term during which collection services are to be provided pursuant to this agreement, or to provide copies of such records to the City.

4. Disposal Records. The franchisee shall maintain records of disposal of all solid waste collected in the City for the period of this agreement and all extensions to this agreement or successor agreements. In the event the franchisee discontinues providing solid waste services to the City, the franchisee shall provide all records of disposals or processing of all solid waste

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collected in the City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

5. **Reporting Responsibilities.** At the time of payment of the annual franchise fees, the franchisee shall file with the City a sworn and verified statement of annual gross revenues for the period covered by the tendered fee. Such statements shall be public records. The franchisee shall maintain books and records disclosing the gross receipts derived from business conducted within the City, which shall be open at reasonable times for audit by City personnel or assigned agents. The City may require that the system of bookkeeping and record keeping used by the franchisee be uniform with other jurisdictions served by the franchisee.

6. **Annual Rate Review Reports.** Franchisees may identify information submitted to the City as confidential. The City shall treat any information marked "Confidential" as such, and shall not subject the confidential information to public disclosure except as required by law. If the City receives a request for disclosure of confidential information, the City shall notify the franchisee within five business days of receiving the request so as to allow the franchisee a reasonable opportunity to defend against the requested disclosure through the appropriate legal process.

7. **Reportable Incidents.** The franchisee shall provide the City two copies of all reports, pleadings, applications, notifications, Notices of Violation, or other formal actions relating specifically to the franchisee's performance of services pursuant to this Code, submitted by franchisee to, or received by franchisee from, the United States Environmental Protection Agency, the Oregon Department of Environmental Quality, or any other federal, state, or local agency, including federal or state court actions brought by any of the aforementioned agencies, with regard to franchisee's operations within the State of Oregon. Copies shall be submitted to the City simultaneously with franchisee's filing or submission of such matters with said agencies. Franchisee's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City upon written request.

8. **Vehicle Inventory.** The franchisee, in conjunction with the annual report, shall provide the City with an inventory of vehicles used within the City. The list shall include vehicle make, year of manufacture, model name, identification number (VIN), and PUC numbers.

9. **Access for Inspections and Delivery of Notices.** Franchisee shall make all company premises, facilities and records related to its solid waste, recyclable materials and yard debris collection services (including, but not limited to: offices, storage areas, financial records, non-financial records, records pertaining to the origin of any solid waste collected by the franchisee, receipts for sale or delivery of collected recyclable materials, customer lists, and all records related to vehicle maintenance and safety which are required under Oregon Department of Transportation motor carrier requirements and regulations and ORS 767) available for inspection by the City and or the Lincoln County Solid Waste District employees or assigned agent within 24 hours of notice by registered mail. Such inspections are only for purposes of enforcing this Code and are restricted to normal business hours. Collection vehicles must be accessible for inspection during the normal operating hours for collection, in addition to normal business hours. Where receptacles are stored in the public right-of-way or when the City is inspecting a situation where the franchisee is allegedly disposing recyclable or yard debris with solid waste, the need for 24-hour notice does not apply to inspection of receptacles or vehicles.

10. **Failure to Report.** Deliberate or malicious misrepresentation of gross revenues by a franchisee constitutes a major ordinance and franchise violation, and may be cause to initiate the process to terminate the franchise. The refusal or willful failure of franchisee to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by franchisee in such report shall be deemed a material breach of this Code and shall subject the franchisee to all remedies which are available to the City under this Code, including termination of the franchise.

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In addition to and not in lieu of compliance with ORS Chapter 459 and other applicable laws and regulations:

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A. No person shall place hazardous waste for collection or disposal by Franchisee without notice to Franchisee.

B. No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the Franchisee is the "owner" of containers supplied by Franchisee.

C. No unauthorized person shall remove solid waste placed out for collection and resource recovery by the Franchisee or a person exempted by Section 4 of this Code and operating solely within the exemption.

D. No person shall install an underground solid waste container for storage and collection after the effective date of this Code. The Franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to time of collection.

E. No can for residential service shall be located behind any locked or latched door, gate or inside of any building or structure.

F. Each customer shall provide safe access to the solid waste container or wastes without risk or hazard to Franchisee's employees, the public or Franchisee.

G. No container designed for mechanical pickup shall exceed a safe loading weight or volumes as established by the Franchisee to protect service workers, the customer, the public and the collection equipment. No garbage receptacle designed for manual collection shall exceed thirty-two (32) gallons in size nor weight more than sixty (60) pounds gross loaded weight. Cans shall be tapered so they are larger at the top and have a place for a hand-hold at the bottom.

H. Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, the Franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other ratepayers who are not benefited.

I. Every person who generates or produces wastes shall remove or have removed at least once every seven days all waste which may putrefy during that period. More frequent removal may be required by the Council where a facility or service involves the public health. All wastes shall be removed at sufficient frequency so as to prevent health hazards, nuisances or pollution.

J. The producer or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free of accumulated wastes. The Franchisee shall provide periodic maintenance to containers supplied by Franchisee. When materials or customer abuse causes excessive wear or damage to a container, cart or drop box, the cost of repair or replacement may be charged to the customer.

K. Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the Franchisee. A person who

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wishes service for a compactor shall, prior to acquisition of such compactor, inquire of the Franchisee as to the compatibility with Franchisee's equipment or equipment which the Franchisee is willing to acquire and assure that the compactor is compatible.

Any person who received service from the Franchisee shall be responsible for payment of service. The owner of a rental or lease facility shall be liable for payment for services provided to a tenant of such dwelling if the tenant fails to make timely payment for such service. The owner of any multiple unit rental or lease facility having two or more dwelling units shall be primarily responsible for services provided to the occupants of such facility and shall be billed for the services.

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Any action or determination by Franchisee under or pursuant to this Code may be appealed to the solid waste disposal supervisor. Any action or determination of the solid waste disposal supervisor under this Code may be appealed to the City Council.

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Any finding by any court of competent jurisdiction that any portion of this Code is unconstitutional or invalid shall not invalidate any other provisions of this Code.

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The City may enforce the provisions of this Code by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Code. The Council shall take such legislative action as is necessary to support the Ordinance and the franchise granted. The Franchisee may also enforce payment or protect its rights by appropriate civil action.

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Violation by any person of the provisions of this Code shall be punished upon conviction by a civil penalty or a fine of not more than \$500.00. Penalties in this section are not in lieu of other remedies provided in this Code. Each day of a violation is a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action.

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Notwithstanding the provision of insurance by the franchisee, the franchisee shall defend, indemnify and save the City harmless from liability or loss because of injury (including death) to any person or damage to any property that may occur or may be alleged to have arisen out of connection with or related to performance of service, solid waste management service or resource recovery as a result, directly or indirectly of franchisee's or its subcontractor's or their servants, agents or employees, acts or omissions. This obligation shall survive modification, termination or transfer of the franchise. In any and all claims against the City or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors, workers' compensation acts, disability acts, or other employee benefits.

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SOLID WASTE

any person or damage to any property that may occur or may be alleged to have arisen out of connection with or related to performance of service, solid waste management service or resource recovery as a result, directly or indirectly of franchisee's or its subcontractor's or their servants, agents or employees, acts or omissions. This obligation shall survive modification, termination or transfer of the franchise. In any and all claims against the City or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors, workers' compensation acts, disability acts, or other employee benefits.

Notwithstanding the provision of insurance by the franchisee, the franchisee shall defend, indemnify and save the City harmless from liability or loss because of injury (including death) to any person or damage to any property that may occur or may be alleged to have arisen out of connection with or related to performance of service, solid waste management service or resource recovery as a result, directly or indirectly of franchisee's or its subcontractor's or their servants, agents or employees, acts or omissions. This obligation shall survive modification, termination or transfer of the franchise. In any and all claims against the City or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors, workers' compensation acts, disability acts, or other employee benefits.

Notwithstanding the provision of insurance by the franchisee, the franchisee shall defend, indemnify and save the City harmless from liability or loss because of injury (including death) to any person or damage to any property that may occur or may be alleged to have arisen out of connection with or related to performance of service, solid waste management service or resource recovery as a result, directly or indirectly of franchisee's or its subcontractor's or their servants, agents or employees, acts or omissions. This obligation shall survive modification, termination or transfer of the franchise. In any and all claims against the City or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors, workers' compensation acts, disability acts, or other employee benefits.

Ordinance No. 156 and all ordinances and parts of ordinances in conflict herewith are hereby repealed.

PASSED AND ADOPTED by the City Council of the City of Yachats on this _____ day of _____.

Ayes: _____ Nays: _____ Abstentions: _____ Absent: _____

APPROVED by the Mayor this _____ day of _____.

Lee Corbin, Mayor

Nancy Otterson, City Recorder

CHAPTER 4.15

UTILITY FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sections:

- 4.15.010 Short Title.**
- 4.15.020 Purpose and Intent.**
- 4.15.030 Jurisdiction and Management of the Public Rights-of-Way.**
- 4.15.040 Regulatory Fees and Compensation Not a Tax.**
- 4.15.050 Definitions.**
- 4.15.060 Registration.**
- 4.15.070 Licenses.**
- 4.15.080 Construction and Restoration.**
- 4.15.090 Location of Facilities.**
- 4.15.100 Leased Capacity.**
- 4.15.110 Maintenance.**
- 4.15.120 Vacation.**
- 4.15.130 Rights-of-Way Fee.**
- 4.15.140 Audits.**
- 4.15.150 Insurance and Indemnification.**
- 4.15.160 Compliance.**
- 4.15.170 Confidential/Proprietary Information.**
- 4.15.180 Equal Employment Opportunity/Diversity in Workforce/Minority Business Enterprises.**
- 4.15.190 Penalties.**
- 4.15.200 Severability and Preemption.**
- 4.15.210 Application to Existing Agreements.**
- 4.15.010 Short Title.**

The ordinance codified in this chapter shall be known and may be referenced as the “Utility Facilities in Public Rights-of-Way” ordinance. [BC 4.15.010, added by Ordinance No. 4684, 5/4/16]

4.15.020 Purpose and Intent.

The purpose and intent of this chapter is to:

- A. Permit and manage reasonable access to the rights-of-way of the City for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable State and Federal law;
- B. Assure that the City's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;
- C. Secure fair and reasonable compensation to the City and its residents, who have invested millions of dollars in public funds to build and maintain the rights-of-way, for permitting use of the rights-of-way by persons who generate revenue by placing facilities therein and charging residents for services delivered thereby;
- D. Assure that all utility companies, persons and other entities owning or operating facilities or providing services within the City register and comply with the ordinances, rules and regulations of the City;
- E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents, and assure the structural integrity of its rights-of-way when a primary cause for the early and excessive deterioration of the rights-of-way is their frequent excavation by persons whose facilities are located therein;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City. [BC 4.15.020, added by Ordinance No. 4684, 5/4/16]

4.15.030 Jurisdiction and Management of the Public Rights-of-Way.

- A. The City has jurisdiction and exercises regulatory management over all rights-of-way within the City under authority of the City Charter and State law.
- B. The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. The exercise of jurisdiction and regulatory management of a 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.
- D. The provisions of this chapter are subject to and will be applied consistent with applicable State and Federal laws, rules and regulations and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations. [BC 4.15.030, added by Ordinance No. 4684, 5/4/16]

4.15.040 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 rights-of-way provided for in this chapter, are separate from, and in addition to, any and all other Federal, State, local and City charges, including any permit fee, or any other generally applicable fee, tax or charge on the business, occupation, property or income, as may be levied, imposed or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery or transmission of utility services.

B. The City has determined that any fee or tax 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 or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this chapter are subject to applicable Federal and State laws. [BC 4.15.040, added by Ordinance No. 4684, 5/4/16]

4.15.050 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

A. "Cable service" is to be defined consistent with Federal laws and means the one-way transmission to subscribers of: (1) video programming, or (2) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

B. "City" means the City of Beaverton, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

C. "City Council" means the elected governing body of the City of Beaverton, Oregon.

D. "City facilities" means City or publicly owned structures or equipment located within the rights-of-way or public easement used for governmental purposes.

E. "Communications services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications services 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) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (4) public communications systems; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

F. "License" means the authorization granted by the City to a utility operator pursuant to this chapter.

G. "Person" means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, local service district, governmental entity or other organization, including any natural person or any other legal entity.

H. "Public communications system" means any system owned or operated by a government entity or entities for their exclusive use for internal communications or communications with other government entities, and includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140. "Public communications system" does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

I. "Public works director" means the public works director for the City of Beaverton or any designee.

J. "Public utility easement" means the space in, upon, above, along, across, over or under an easement for the construction, reconstruction, operation, maintenance, inspection and repair of utility facilities. "Public utility easement" does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection and repair of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

K. "Rights-of-way" means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland or other City property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

L. "State" means the State of Oregon.

M. "Utility facility" or "facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plants, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

N. "Utility operator" or "operator" means any person who owns, places, operates or maintains a utility facility within the City.

O. "Utility service" means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer or storm sewer to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.

P. "Work" means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation. [BC 4.15.050, added by Ordinance No. 4684, 5/4/16]

4.15.060 Registration.

A. Registration Required. Every person who desires to provide utility services to customers within the City shall register with the City prior to providing any utility services to any customer in the City. Every person providing utility services to customers within the City as of the effective date of this chapter shall register within 45 days of the effective date of this chapter.

B. Annual Registration. After registering with the City pursuant to subsection A of this section, the registrant shall, by December 31st of each year, file with the City a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection A of this section on or after September 30th shall not be required to file an annual registration until December 31st of the following year.

C. Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services will be provided.

D. Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council sufficient to fully recover all of the City's costs of administering the registration program. [BC 4.15.060, added by Ordinance No. 4684, 5/4/16]

4.15.070 Licenses.

A. License Required.

1. Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to conducting any work in the rights-of-way.

2. Every person that owns or controls utility facilities in the rights-of-way as of the effective date of this chapter shall apply for a license from the City within 45 days of the later of: (a) the effective date of this chapter, or (b) the expiration of a valid franchise from the City, unless a new franchise is granted by the City pursuant to subsection E of this section.

B. License Application. The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council in an amount sufficient to fully recover all of the

City's costs related to processing the application for the license.

D. Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable Federal, State and local laws, rules, regulations and policies.

E. Franchise Agreements. If the public interest warrants, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable State and Federal law. The franchise may conflict with the terms of this chapter with the review and approval of the City Council. The franchise shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with any such franchise. In the event of a conflict between the express provisions of a franchise and this chapter, the franchise shall control.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the City code and other applicable provisions of State or Federal law, to construct, place, maintain and operate utility facilities in the rights-of-way for the term of the license.
2. Any license granted pursuant to this chapter shall not convey equitable or legal title in the rights-of-way, and may not be assigned or transferred except as permitted in subsection K of this section.
3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, including without limitation the police power or regulatory power of the City, as it may exist at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this chapter will remain in effect for a term of five years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record that may affect the rights-of-way. Nothing in the license shall be deemed to grant, convey, create or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing or altering any rights-of-way, constructing, laying down, repairing,

relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, City utility, City improvement or City facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in BC 4.15.090(C), (D) and (E), in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and right-of-way fee requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection (J)(1) requires a utility operator to pay the license, registration or right-of-way fee requirements owed to the City by a third party using the utility operator's facilities.

2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service; provided, that it gives notice to the City of each utility service provided or transmitted and pays the applicable rights-of-way fee for each utility service.

K. Transfer or Assignment. Unless exempted by applicable State and Federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under Federal and State laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for fulfilling all the obligations under the license with respect to all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least 90, but no more than 180, days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in subsection B of this section and the application fee required in subsection C of this section. The City shall review the application as required by subsection D of this section and grant or deny the license within 90 days of submission of the application. If the City determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The City Council may terminate or revoke the license granted pursuant to this chapter for any of the following reasons:

- a. Violation of any of the provisions of this chapter;
- b. Violation of any provision of the license;
- c. Misrepresentation in a license application;
- d. Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs;
- e. Failure to restore the rights-of-way after construction as required by this chapter or other applicable State and local laws, ordinances, rules and regulations;
- f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
- g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by State or Federal law for the placement, maintenance or operation of the utility facilities.

2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- a. Whether the violation was intentional;
- b. The egregiousness of the violation;
- c. The harm that resulted;
- d. The utility operator's history of compliance; and
- e. The utility operator's cooperation in discovering, admitting and curing the violation.

3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a clear and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond, the Public Works Director shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked. [BC 4.15.070, added by Ordinance No. 4684, 5/4/16]

4.15.080 Construction and Restoration.

A. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable Federal, State and local codes, rules and regulations, including without limitation the National Electrical Code, the National Electrical Safety Code, Chapter 9.05 BC and the City's Engineering Design Manual.

B. Construction Permits.

1. No person shall perform any work on utility facilities within the rights-of-way without first obtaining all required permits. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has registered and applied for and received the license required by this chapter, or has a current franchise with the City, and all applicable fees have been paid.
2. In the event of an emergency, a utility operator with a license pursuant to this chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the City; provided, that, to the extent reasonably feasible, it attempts to notify the Public Works Department prior to commencing the emergency work and in any event initiates a permit application as soon as reasonably practicable, but not later than 12:00 noon of the next business day after commencing the emergency work. As used in this subsection, "emergency" means a circumstance in which immediate work is necessary to restore lost service or prevent immediate harm to persons or property.
3. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
 - a. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
 - b. The location and route of all utility facilities to be installed aboveground or on existing utility poles and, if the utility operator owns the existing utility poles, a comprehensive summary, including ownership, of any and all infrastructure currently attached to the pole. Unless approved in writing by the Public Works Director, the construction of new utility poles is prohibited. An existing utility pole that is damaged or failing may be repaired or replaced with a new utility pole of substantially similar dimensions and materials.
 - c. The location and route of all utility facilities on or in the rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the rights-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing utility facilities in relation to the street, curb, sidewalk or rights-of-way.
 - d. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

4. All permit applications shall be accompanied by the verification of a qualified and duly authorized representative of the applicant that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The Public Works Director may, in the Director's sole discretion, require the verification of a registered professional engineer.

5. All permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by the Public Works Department.

6. Prior to issuance of a construction permit, the applicant shall pay a permit fee in the amount determined by resolution of the City Council.

7. If satisfied that the application, plans and documents submitted comply with all requirements of this chapter, the Public Works Department shall issue a permit authorizing construction of the utility facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

8. Except in the case of an emergency, the permittee shall notify the Public Works Department not less than two business days in advance of any excavation or construction in the rights-of-way.

9. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The Public Works Department and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

10. All construction activities must comply with the work hours and noise regulations of the City's Engineering Design Manual.

11. All work that does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed or corrected at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provisions of this chapter.

12. The permittee shall promptly complete all construction activities so as to minimize disruption of the City rights-of-way and other public and private property. All construction work within the rights-of-way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the Public Works Department.

C. Performance Surety.

1. Unless otherwise provided in a franchise agreement or agreed to in writing by the City, a performance bond or other form of surety acceptable to the City equal to at least 100 percent

of the estimated cost of the work within the rights-of-way of the City shall be provided before construction is commenced.

2. If applicable, the performance bond or other form of surety acceptable to the City shall remain in force until substantial completion of the work, including restoration of rights-of-way and other property affected by the construction, as determined in writing by the City.

3. If applicable, the performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

- a. Timely completion of the work;
- b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;
- c. Proper location of the facilities as specified by the City;
- d. Restoration to City standards of the rights-of-way and other property affected by the work; and
- e. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

D. Injury to Persons or Property. A utility operator shall preserve and protect from injury or damage other utility operators' facilities in the rights-of-way, the public using the rights-of-way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and shall comply with all applicable Americans with Disabilities Act requirements.

E. Restoration. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

- 1. When a utility operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable Federal, State and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the City and as determined by the Public Works Department.
- 2. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the City, the utility operator shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

3. If the utility operator fails to restore rights-of-way or property as required in this chapter, the City shall give the utility operator written notice and provide a period of time not less than 10 days and not exceeding 30 days to restore the rights-of-way or property. If, after said notice, the utility operator fails to restore the rights-of-way or property as required in this chapter, the City shall cause such restoration to be made at the expense of the utility operator. In cases where the City believes that an emergency or threat to public safety exists, it may act without notice to and at the expense of the utility operator. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City within 30 days for the costs the City incurred.

F. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this chapter and all other applicable State and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the rights-of-way comply with the terms of this chapter and applicable State and City codes, ordinances, rules and regulations.

G. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights-of-way.

1. Prior to January 1st of each year, utility operators shall provide the City with a schedule of known proposed construction activities for that year in, around or that may affect the rights-of-way.

2. At the City's request, utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the rights-of-way.

3. All construction locations, activities and schedules within the rights-of-way shall be coordinated as ordered by the Public Works Department to minimize public inconvenience, disruption or damages. [BC 4.15.080, added by Ordinance No. 4684, 5/4/16]

4.15.090 Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right-of-way of the City, a utility operator with permission to occupy the same right-of-way shall locate its facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 50,000 volts or to pedestals, cabinets or other above-ground equipment of any utility operator. No such above-ground equipment, or any aerial facilities other than electric energy transmission wires in excess of 50,000 volts, shall be constructed without the written approval of the City, in addition to the permit required by BC 4.15.080(B).

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the

general public or by other persons authorized to use or be present in or upon the rights-of-way. All use of the rights-of-way shall be consistent with City codes, ordinances, rules and regulations.

C. Relocation of Utility Facilities.

1. When requested to do so in writing by the City, a utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right-of-way, including relocation of aerial facilities underground.
2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements. However, the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
3. The City shall coordinate the schedule for relocation of utility facilities and based on such effort, shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, change, alter or underground any utility facility as requested by the City and by the date reasonably established by the City, the utility operator shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified workers in accordance with applicable State and Federal laws and regulations, the utility facility to be removed, relocated, changed, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City within 30 days for the costs the City incurred.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the Public Works Department, within 30 days following written notice from the City or such other time agreed to in writing by the Public Works Department, a utility operator and any other person that owns, controls or maintains any abandoned or unauthorized utility facility within a right-of-way shall, at its own expense, remove the facility and restore the right-of-way to City standards.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - a. The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one year. A utility operator may attempt to overcome this presumption by presenting plans for

future use of the facility to the Public Works Department, which will determine application of the presumption in its sole discretion.

c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this chapter.

d. The utility operator is in violation of a material provision of this chapter and fails to cure such violation within 30 days of the City sending written notice of such violation, unless the City extends such time period in writing.

E. Removal by City.

1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights-of-way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency.

2. If the utility operator fails to remove any facility when required to do so under this chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days. The obligation to remove shall survive the termination of the license or franchise.

3. The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to subsection C, D or E of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those subsections, unless such damage arises directly from the City's negligence or willful misconduct.

F. Engineering Designs and Plans. The utility operator shall provide the City with two complete sets of as-built plans in a form acceptable to the City showing the location of all its utility facilities in the rights-of-way after initial construction if the utility operator's engineered plans materially changed during construction. The utility operator shall provide two updated complete sets of as-built plans upon request of the Public Works Department, but not more than once per year. [BC 4.15.090, added by Ordinance No. 4684, 5/4/16]

4.15.100 Leased Capacity.

A utility operator may lease capacity on or in its systems to others; provided, that, upon request, the utility operator provides the City with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is prohibited by applicable law or

a valid agreement between the utility operator and the lessee, provided that the utility operator takes reasonable steps to ensure that its lessees are in compliance with this chapter. [BC 4.15.100, added by Ordinance No. 4684, 5/4/16]

4.15.110 Maintenance.

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable Federal, State and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days. [BC 4.15.110, added by Ordinance No. 4684, 5/4/16]

4.15.120 Vacation.

If the City vacates any rights-of-way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the rights-of-way unless: (A) the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no expense to the City; or (B) the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within 30 days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with State and Federal laws and regulations at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days. [BC 4.15.120, added by Ordinance No. 4684, 5/4/16]

4.15.130 Rights-of-Way Fee.

A. Except as set forth in subsection B of this section, every person that owns utility facilities in the City and every person that uses utility facilities in the City to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the rights-of-way fee for every utility service provided using the rights-of-way in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the rights-of-way are facilities mounted on structures within the rights-of-way, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the rights-of-way, shall pay the attachment fee set by City Council resolution for each attachment. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of the license within 30 days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable. The utility operator shall pay interest at a rate of nine percent per year for any payment made after the due date.

C. Rights-of-way fee payments required by this section shall be reduced by any franchise fee payments received by the City, but in no case will be less than \$0.00.

D. Unless otherwise agreed to in writing by the City, the fee set forth in subsection A of this section shall be paid quarterly, in arrears, for each quarter during the term of the license within 30 days after the end of each calendar quarter, and shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility operator shall pay interest at a rate of nine percent per year for any payment made after the due date.

E. The calculation of the rights-of-way fee required by this section shall be subject to all applicable limitations imposed by Federal or State law.

F. The City reserves the right to enact other fees and taxes applicable to the utility operators subject to this chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable State or Federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the rights-of-way fee or any other fees required by this chapter. [BC 4.15.130, added by Ordinance No. 4684, 5/4/16]

4.15.140 Audits.

A. Within 30 days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every provider of utility service shall furnish the City with information sufficient to demonstrate that the provider is in compliance with all the requirements of this chapter and its franchise agreement, if any, including but not limited to payment of any applicable registration fee, rights-of-way fee or franchise fee.
2. Every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents maintained by the utility operator with respect to its facilities within the rights-of-way or public utility easements. Access shall be provided within the City unless prior arrangement for access elsewhere has been made with the City.

B. If the City's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrates that the utility operator or provider has underpaid the rights-of-way fee or franchise fee by three percent or more in any one year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to BC 4.15.130(D) or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within 30 days of the City's notice to the utility service provider of such underpayment. [BC 4.15.140, added by Ordinance No. 4684, 5/4/16]

4.15.150 Insurance and Indemnification.

A. Insurance.

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents and employees:

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

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

ii. Three million dollars for property damage resulting from any one accident; and

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

b. Motor vehicle liability insurance for owned, nonowned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.

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

2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, as additional insureds the City and its officers, agents and employees. The coverage must apply as to claims between insureds on the policy. The utility operator shall provide the City 30 days' prior written notice of any cancellation or material alteration of said insurance. If the insurance is canceled or materially altered, the utility operator shall maintain continuous uninterrupted coverage in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The utility operator shall maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise granted or a license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, and for compliance with the terms of this chapter, including any costs, expenses, damages or loss to the City because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by BC 4.15.080(C).

C. Indemnification.

1. To the fullest extent permitted by law, each utility operator shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any

person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failure to act or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors or lessees in the construction, operation, maintenance, repair or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement. The acceptance of a license under BC 4.15.070 shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights-of-way or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct. [BC 4.15.150, added by Ordinance No. 4684, 5/4/16]

4.15.160 Compliance.

Every utility operator shall comply with all applicable Federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the term of any license granted under this chapter. [BC 4.15.160, added by Ordinance No. 4684, 5/4/16]

4.15.170 Confidential/Proprietary Information.

If any person is required by this chapter to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records, maps or information to the extent permitted by the Oregon Public Records Law; provided, that all documents are clearly marked as confidential by the person at the time of disclosure to the City. The City shall not be required to incur any costs to protect such documents, other than the City's routine internal procedures for complying with the Oregon Public Records Law. [BC 4.15.170, added by Ordinance No. 4684, 5/4/16]

4.15.180 Equal Employment Opportunity/Diversity in Workforce/Minority Business Enterprises.

A. Equal Employment Opportunity.

1. The utility operator shall fully comply with applicable equal employment opportunity requirements of Federal, State and local law.
2. The utility operator shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, sexual orientation or disability.

B. Diversity in Workforce. The utility operator is expected to make a determined and good-faith effort to employ and advance in employment women, minorities and persons with disabilities.

C. Minority, Female and Emerging Small Business Enterprises. The utility operator is expected to make determined and good-faith efforts to use minority-owned, women-owned and emerging small businesses (MWESBs), along with service disabled veteran businesses, in its contracted expenditures, including, without limitation, contracts for the acquisition of goods, services, materials, supplies and equipment used in the construction, maintenance and operation of its utility facilities. In furtherance of the utility operator's efforts in this area, the City will be available to consult with the utility operator in providing information on, and support regarding, certified MWESB enterprises. [BC 4.15.180, added by Ordinance No. 4684, 5/4/16]

4.15.190 Penalties.

A. The City shall give the utility operator written notice of any violations and provide a reasonable time (no less than 20 and no more than 40 days) for the utility operator to remedy the violations. If the Public Works Director determines the utility operator is guilty of violating any of the provisions of this chapter or the license after the time to remedy has passed, the Public Works Director shall consider the standards found in BC 4.15.070(M)(2)(a) through (e) and fine the utility operator not less than \$100.00 nor more than \$1,000 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

B. A determination made by the Public Works Director is a quasi-judicial decision and is not appealable to the City Council. Appeals from any determination made by the Public Works Director shall be solely and exclusively by writ of review to the Circuit Court of Washington County, as provided in ORS 34.010 to 34.100.

C. Nothing in this chapter shall be construed as limiting any judicial or other remedy the City may have at law or in equity for enforcement of this chapter. [BC 4.15.190, added by Ordinance No. 4684, 5/4/16]

4.15.200 Severability and Preemption.

A. The provisions of this chapter shall be interpreted to be consistent with applicable Federal and State law, and shall be interpreted, to the extent possible, to cover only matters not preempted by Federal or State law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter is for any reason declared or 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 this chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by Federal or State laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any Federal or State law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City. [BC 4.15.200, added by Ordinance No. 4684, 5/4/16]

4.15.210 Application to Existing Agreements.

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utility operators by the City. [BC 4.15.210, added by Ordinance No. 4684, 5/4/16]



DATE: February 13, 2019

TO: Finance Committee

FROM: Shannon Beaucaire, City Manager

SUBJECT: ORCPP

Attached, is information regarding the Intergovernmental Agreement (IGA) Council recently authorized. The City Manager will review the costs, benefits, and reasons for entering into the IGA.

**Department of Administrative Services (</das/Pages/index.aspx>) > Procurement
(</das/Procurement/Pages/Index.aspx>) > About ORCPP**

About ORCPP

Oregon Cooperative Procurement Program (ORCPP) uses an intergovernmental agreement with its partnering entities to provide its members with access to the following resources:

- Over 340 statewide price agreements to purchase goods and services
- Unlimited advertising in the Oregon Procurement Information Network (ORPIN (<https://orpin.oregon.gov/>))
- Thousands of archived solicitations in ORPIN, to help you build new solicitations
- Training opportunities through DAS
- **State of Washington Contracts**
(<https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx>) - Entities must determine whether these contracts meet their own purchasing rules and ORS 279 requirements.
- **ORCPP Link** (<mailto:info.orcpp@oregon.gov>) - Our program managers keep you connected with emails concerning trainings, updates to price agreements, specials from **DAS Surplus** (</das/Surplus/Pages/Index.aspx>) and other resources.

Who is eligible?

ORCPP eligible entities include:

- Units of local government - cities, counties, school districts, etc.
- Special districts - fire, water, vector control, health, etc.
- Oregon university and community colleges
- Qualified rehabilitation facilities
- American indian tribes and agencies of American indian tribes
- Certain qualifying, public benefit corporations
- State agencies not subject to **ORS 279A.050**
(https://www.oregonlegislature.gov/bills_laws/ors/ors279A.html) and DAS-implemented administrative rules, such as: Oregon Lottery, Treasury, Secretary of State, etc.

How much does it cost?

Participation in the program may include an annual fee based on your total organizational budget.

View the fee chart (</das/Procurement/Pages/Orcppfee.aspx>)

For more information

E-mail: info.orcpp@oregon.gov (<mailto:info.orcpp@oregon.gov>)

Program Coordinators

DAS Statewide Price Agreements

What is a DAS Statewide Price Agreement?

A DAS Statewide Price Agreement (Price Agreement) is a master agreement for the procurement of products or services at agreed upon terms for use by all state entities. Price Agreements benefit agencies by obtaining price discounts and leveraging other concessions through volume purchases. Additionally, an agency avoids administrative, procurement and contract management burdens. DAS manages these processes for certain products and services to leverage the state's buying power and reduce the need for multiple agencies to conduct solicitations and establish and manage individual contracts.

A Price Agreement comprises a group of common items or services competitively bid to set the prices contractually for a specified time period. The prices are frequently "ceiling" prices and an agency should seek to negotiate further discounts as applicable. A supplier awarded a Price Agreement contract is obligated to provide the specified products or services, at or below the contracted price and terms, to all agencies using the contract.

The DAS Statewide Price Agreement program efficiently leverages the state's buying power to lower acquisition costs and strengthen terms and conditions. DAS recovers the cost to administer the program through fees that are included in Price Agreements. Administrative fees range from .5 to 2 percent of the cost of the product or service, depending on factors such as volume and usage. These fees are collected and reported by the suppliers for the contracts they are awarded. Fees are monitored throughout the year to determine if the program is generating revenue at levels needed to recover operating costs.



Resource: DAS maintains a webpage that lists existing statewide software license agreements.

When to use DAS Statewide Price Agreements

Agencies must make their Buy Decision in the priority order specified in administrative rule. DAS Price Agreements are the fourth priority source and an agency may not elect to procure through a lower priority source, unless the agency determines that the procurement need cannot be met through use of a Price Agreement.

If DAS offers an applicable Price Agreement, and if it is a mandatory use agreement, the agency must use the Price Agreement to fulfill its procurement need. If the Price Agreement is not mandatory use, the decision to use an existing Price Agreement or to acquire the needed products and services from other sources is at the agency's discretion.

Agencies should use the Price Agreements where possible because this is the most efficient acquisition method. However, if an agency chooses to procure needed products and services outside of the Price Agreements available, it is



OREGON COOPERATIVE PROCUREMENT PROGRAM

AGREEMENT No. _____

This agreement for participation in the Oregon Cooperative Procurement Program ("Agreement") is between the State of Oregon ("State") acting by and through its Department of Administrative Services, Enterprise Goods and Services Division, Procurement Services ("DAS PS") and _____ ("ORCPP Member"), each a "Party" and, together, the "Parties".

1 DEFINITIONS.

1.1 **"Contract"** means a legally binding contract that results between ORCPP Member's issuance of, and a contractor's acceptance of, an Ordering Instrument pursuant to a Designated Price Agreement to which the contractor is a party.

1.2 **"Designated Price Agreement"** means an agreement between DAS and one or more contractors for goods or services, or both, that are offered at a set price with either (1) no guarantee of a minimum or maximum purchase or (2) an initial order or minimum purchase of the goods or services combined with a continuing contractor obligation to provide additional goods and services, and that identifies ORCPP Members as authorized purchasers.

1.3 **"ORCPP"** means the Oregon Cooperative Procurement Program.

1.4 **"Ordering Instrument"** means a document that complies with the Designated Price Agreement and that ORCPP Member must use to order goods, services, or both, under the Designated Price Agreement. An Ordering Instrument may be referred to as, for example, "Purchase Order," "Work Order" or other name assigned by DAS PS or ORCPP Member.

1.5 **"Oregon Cooperative Procurement Program"** means the purchasing program operated by DAS PS that allows its members to purchase from Designated Price Agreements.

2 QUALIFIED ENTITIES.

DAS PS has established and operates the Oregon Cooperative Procurement Program to improve service and cost efficiencies for each entity qualified to participate in the ORCPP ("Qualified Entity") by authorizing the Qualified Entity through agreement with DAS PS to purchase goods, services, or both, using Designated Price Agreements and to access various procurement resources available through DAS PS.

The following entities are Qualified Entities authorized to enter into this Agreement with DAS PS:

2.1 Units of local government as defined in ORS 190.003, state contracting agencies as defined in ORS 279A.010 (1)(nn) and exempted from application of the Public Contracting Code under ORS 279A.025, semi-independent state agencies listed in ORS 182.454, special government

bodies as defined in ORS 174.117 and special districts as defined in ORS 198.010, United States governmental agencies with offices in Oregon and American Indian Tribes located in Oregon; and

2.2 The entities specified in and meeting the requirements of ORS 279.855(1), (2) and (3) and OAR 125-055-0045.

3 ORCPP MEMBER AS QUALIFIED ENTITY.

ORCPP Member represents that it is, and warrants that it will remain, a Qualified Entity throughout the effective period of this Agreement. ORCPP Member shall immediately provide all information that DAS PS requests to establish to DAS PS' satisfaction that ORCPP Member is a Qualified Entity. ORCPP Member represents and warrants that all information ORCPP Member provides to DAS PS to establish that ORCPP Member is a Qualified Entity is true and correct. If at any time during the term of this Agreement ORCPP Member has reason to believe, or ORCPP is notified that DAS PS has reason to believe, ORCPP Member is no longer a Qualified Entity, ORCPP Member shall immediately cease purchasing under Designated Price Agreements until ORCPP Member establishes to DAS PS' satisfaction that ORCPP Member is a Qualified Entity.

4 EFFECTIVE DATE, TERM AND TERMINATION.

This Agreement is effective on the latest signature date ("Effective Date").

4.1 This Agreement remains in effect until terminated by either Party by delivery of a written termination notice to the other Party's Authorized Representative or their designee, at least forty-five (45) days prior to the termination date specified in the written notice.

4.2 DAS PS may terminate this Agreement for non-payment of the annual fee as outlined in section 9 of this Agreement.

5 AUTHORIZED REPRESENTATIVES.

5.1 DAS PS Authorized Program Managers:

Name and Title (print/type):

Kelly Stevens-Malnar, Statewide Outreach Coordinator – Phone:

503-378-3976 Adam Helvey, Statewide Outreach Coordinator – Phone:

503-373-2106 Address: 1225 Ferry Street SE, Salem OR 97301-4285

Fax: 503-373-1626

Email: info.orcpp@oregon.gov

5.2 ORCPP Member Authorized Representative:

Name (print/type): _____ Title: _____

Entity Name: _____

Address: _____

Work Phone: _____ Email: _____

Accounts Payable Contact:

Name (print/type): _____

Work Phone: _____ Email: _____

5.3 A Party may designate a new Authorized Representative at any time by written notice to the other Party.

6 ORCPP MEMBER BENEFITS AND REQUIREMENTS.

6.1 Designated Price Agreements. ORCPP Member may purchase goods, services, or both, from any Designated Price Agreement identified by DAS PS according to the terms of this Agreement. Designated Price Agreements may expire or terminate, and DAS PS does not promise or guarantee the effectiveness of any particular Designated Price Agreement at the time ORCPP Member desires to make a purchase.

6.1.1 Designated Price Agreements Use Restrictions. ORCPP Member shall accept the terms and conditions of a Designated Price Agreement without modification, including use of a specific Ordering Instrument as described in the applicable Designated Price Agreement. Only DAS has the authority to change, modify, or amend Designated Price Agreements.

6.1.2 Ordering Instruments. All Ordering Instruments must incorporate the applicable Designated Price Agreement by reference and include the following statement:

"THIS PURCHASE IS PLACED AGAINST STATE OF OREGON PRICE AGREEMENT #_____. THE GENERAL TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T's & C's) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T's & C's EXPRESS OR IMPLIED."

6.1.3 Contracts. DAS PS is not a party to nor does DAS PS assume any liability under Contracts.

6.2 Use of Oregon Procurement Information Network. The Oregon Procurement Information Network ("ORPIN") is an internet-based, on-line system that is the State's official publication forum for procurement notices and advertisements. ORPIN provides registered suppliers with access to procurement information issued by the State and ORCPP Members. Registered suppliers can express interest, download documents and respond to procurement opportunities posted on ORPIN.

ORCPP Member is granted unlimited use of ORPIN, subject to the ORPIN terms of use, to upload, issue and advertise ORCPP Member's solicitation documents and procurement notices, subject to the following:

6.2.1 ORCPP Member assumes full and complete responsibility and liability for the content, substance and accuracy of all information contained in any ORCPP Member documents uploaded and displayed on the ORPIN system;

6.2.2 ORCPP Member is authorized to use future enhancements to the ORPIN system, such as electronic bidding and solicitation document types, as they become available on ORPIN; and

6.2.3 ORCPP Member shall not distribute or share its active, ORPIN user login credentials or access information with outside entities or individuals who are not ORCPP Members.

6.3 Training. ORCPP Member and its employees are eligible to register for and attend any DAS PS-sponsored and scheduled procurement-related training and certification programs at the same cost as State agency participants. Registration information for DAS PS procurement classes and workshops is available by logging into iLearn at <http://iLearn.oregon.gov>.

6.4 Data and Procurement Participation. From time to time, DAS PS may request ORCPP Member to provide historical or projected usage and spend data for certain solicitations for goods or services to help achieve maximum volume discounts for the benefit of all State agencies and ORCPP Members. DAS PS also may request ORCPP Member to participate on a procurement sourcing team or evaluation committee that will result in a Designated Price Agreement and use by State agencies and ORCPP Member(s). ORCPP Member agrees to provide information and participate pursuant to DAS PS request, to the extent reasonably possible.

7 DAS PS OBLIGATIONS.

7.1 DAS PS agrees to:

7.1.1 Provide a Program Manager that will respond to ORCPP Member questions regarding ORCPP membership and resources;

7.1.2 Maintain a list of Designated Price Agreements available for ORCPP Member reference on the DAS Procurement Services and Policy website. To access the Designated Price Agreement list, go to <http://www.oregon.gov/DAS/EGS/ps/Pages/index.aspx> and click on the Oregon Cooperative Procurement Program icon;

7.1.3 Educate contractors under Designated Price Agreements on the process to confirm that ORCPP Member is an "Authorized Purchaser" as defined in the Designated Price Agreements and on the process for transacting with ORCPP Member under the Contract;

7.1.4 Provide program education and outreach to ORCPP Member through trade shows, statewide events and the ORCPP listserv;

7.1.5 Manage ORPIN access and user permissions for ORCPP Member and its authorized users;

7.1.6 Provide ORCPP Member with Contract spend and usage reports and other ORCPP information upon ORCPP Member's request.

7.2 DAS PS' performance under this Agreement is conditioned upon ORCPP Member's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated by reference herein. ORCPP Member shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

8 MEMBERSHIP FEE.

ORCPP Member shall pay DAS PS an annual membership fee for the period July 1 through June 30 of each year this Agreement is effective, based on the entity type, annual budget and corresponding fee, as specified in Exhibit A, Standard ORCPP Membership Fee Schedule.

8.1 The initial membership fee when this Agreement takes effect anytime from July 1 through December 31 is 100% of the annual fee. The initial fee when this Agreement takes effect anytime from January 1 through April 30 is 50% of the annual fee. The initial fee is waived when this Agreement takes effect anytime from May 1 through June 30.

8.2 From time to time, DAS PS may request, and ORCPP Member shall provide, ORCPP Member's budget information to determine the applicable annual membership fee. If DAS PS determines that the annual membership fee has changed based upon ORCPP Member's then-current budget, DAS PS will notify ORCPP Member in writing of the new annual membership fee, and ORCPP Member shall pay that amount when the next annual fee is due.

9 INVOICES AND PAYMENT.

DAS PS will invoice ORCPP Member each year in July for the next annual membership fee. ORCPP Member shall remit payment to DAS within 45 days of receipt of the invoice by one of the following methods:

9.1 Credit Card. The preferred method of payment for the ORCPP annual fee is to be paid by credit card. The payment portal can be found at the below web address.
<https://apps.oregon.gov/DAS/Procurement/EPS>

9.2 Electronic Funds Transfer. ORCPP Member shall coordinate with DAS PS on the process and documentation required to set up an account and remit payment electronically if this is the payment method of choice.

9.3 Check. Payments made by check must include the Agreement number from page 1 and be issued to the Oregon Department of Administrative Services and sent to:

DAS Shared Financial Services
Attention: Cashier
155 Cottage Street NE
Salem, OR 97301

DAS PS may terminate this Agreement for non-payment if the annual fee is not received within ninety (90) days of the issue date of the invoice.

10 INDEMNIFICATION.

10.1 Non-State Agency ORCPP Member as Qualified Entity under Section 2.1. Subject to limitations of ORCPP Member's organic law if ORCPP Member is a unit of local government as defined in ORS 190.003, a United States governmental agency with offices in Oregon or American Indian Tribes located in Oregon, ORCPP Member shall save, defend, hold harmless and indemnify, the State and its divisions, officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or related to (1) the acts and omissions of the ORCPP Member, or its officers, employees and agents under this Agreement or (2) services or benefits DAS PS provides under this Agreement pursuant to a representation of ORCPP Member's Qualified Entity status and State's reliance thereon.

10.2 ORCPP Member as Qualified Entity under Section 2.2. If ORCPP Member is an entity specified in and meeting the requirements of ORS 279.855(1), (2) and (3) and OAR 125-055-0045, ORCPP Member shall save, defend, hold harmless and indemnify, the State and its divisions, officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or related to (1) the acts or omissions of the ORCPP Member, or its officers, employees and agents under this Agreement and (2) services or benefits DAS PS provides under this Agreement pursuant to a representation of ORCPP Member's Qualified Entity status and State's reliance thereon.

10.3 Defense Obligation. With respect to any obligation to defend described in sections 10.1 and 10.2, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State, its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) important governmental interests are at stake; or (iii) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and/or that of its officers, employees, or agents under (i) and (ii) above.

11 SUCCESSORS AND ASSIGNMENT.

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Neither Party shall assign or transfer its interest in this Agreement without the prior written consent of the other. Any such attempted assignment or transfer shall be void.

12 MERGER; AMENDMENT; WAIVER.

This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent or modification of the Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent or modification, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Agreement shall not constitute a waiver by the State of that or any other provision.

13 LIMITATION OF LIABILITY.

ORCPP Member acknowledges and agrees that the State shall not be liable for any damages, including direct, indirect, incidental or consequential damages sustained by ORCPP Member, which arise out of or are in any way related to goods or services obtained from contractors under any Contract entered by ORCPP Member pursuant to this Agreement. State makes no representation or warranty regarding the suitability, durability, merchantability or fitness for a particular purpose of any goods or services purchased under any Contract.

14 COMPLIANCE WITH APPLICABLE LAW.

ORCPP Member shall comply with all federal, state and local laws, rules, regulations, and ordinances applicable to this Agreement or to ORCPP Member's obligations under this Agreement.

15 GOVERNING LAW; VENUE.

15.1 Governing Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

15.2 Designation of Forum. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

15.3 Federal Forum. Notwithstanding Section 15. 2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

16 TAX CERTIFICATION.

By signature on this Agreement for ORCPP Member, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the ORCPP Member and that ORCPP Member is, to the best of the undersigned's knowledge, not in violation of any applicable Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

17 SIGNATURES.

Each Party to this Agreement, and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance obligations have been fully

authorized and approved, and that no further approvals or consents are required to bind such Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its
Department of Administrative Services,
EGS-Procurement Services

ORCPP Member acting by and through its

(name of entity)

By: _____

By: _____

Printed Name

Printed Name

Title

Title

Date

Date

(Additional signature lines may be added as necessary)

EXHIBIT A

Standard ORCPP Membership Fee Schedules

Fee Schedule 1 is the ORCPP membership fee for a Qualified Entity other than a special district as defined in ORS 198.010, and is based on the entity's adopted organizational annual budget.

Fee Schedule 2 is the ORCPP membership fee for special districts such as; irrigation districts, rural fire protection districts, water districts, utility districts, and other special districts as defined in ORS 198.010 with an adopted organizational annual budget under \$3,000,000.

1. Fee Schedule 1: Qualified Entity

(Provide a one-page summary of the entity's adopted annual budget with signed Agreement)

ORCPP Member (initial and date)	DAS PS (initial and date)	Organizational Budget MORE than	Organizational Budget LESS than	Annual Membership Fee
		\$ 0.00	\$ 3,000,000	\$0.00
		\$ 3,000,000	\$ 7,500,000	\$ 500.00
		\$ 7,500,001	\$ 21,000,000	\$ 900.00
		\$ 21,000,001	\$ 30,000,000	\$ 1,000.00
		\$ 30,000,001	\$ 68,000,000	\$ 2,000.00
		\$ 68,000,001	\$ 90,000,000	\$ 3,000.00
		\$ 90,000,001	\$ 150,000,000	\$ 4,000.00
		\$ 150,000,001	and over	\$ 5,000.00
		* Oregon K-12 Schools, Charter Schools, ESDs, qualifying Oregon Child Nutrition Sponsors, and qualifying, Early Learning Service Providers, and Qualified Rehabilitation Facilities		\$ 0.00



DATE: February 13, 2019

TO: Finance Committee

FROM: Shannon Beaucaire, City Manager

SUBJECT: Potential FY20 Insurance Increase

The City Manager will brief the Finance Committee of a potential insurance increase in the next fiscal year.

