AGENDA

CITY COUNCIL - CITY OF ONTARIO, OREGON

Monday, October 17, 2011, 7:00 p.m., M.T.

1) Call to order

Roll Call: Norm Crume _____ Jackson Fox _____ Charlotte Fugate _____ Dan Jones_____
David Sullivan _____ Ron Verini _____ Mayor Joe Dominick _____

2) Pledge of Allegiance

This Agenda was posted on Wednesday, October 12, 2011, and a study session was held on Thursday, October 13, 2011. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) Motion to adopt the entire agenda

4) Consent Agenda: Motion Action Approving Consent Agenda Items

A) Approval of Minutes of Regular Meeting of 09/19/2011 1-4
B) Approval of Minutes of Telephonic Meeting of 10/04/2011 5
C) Proclamation: Ontario Hunger Awareness Week - Oct 17-21, 2011 6
D) Approval of the Bills

5) Public Comments: Citizens may address the Council on items not on the Agenda. Council may not be able to provide an immediate answer or response, but will direct staff to follow up within three days on any question raised. Out of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

6) New Business

A) Change Order: Septage Receiving Facility 7-19
B) Bid Award: Demolish Goodman Oil Gas Station to MVCI ($8750) 20-24
C) Approve Letter of Intent w/Site Based Energy (SBE) to Install and Operate Solar Panels 25-68
D) Ordinance #2663-2011: Telecommunications Franchise Agreement w/Lightspeed Networks, dba LS Networks (1st Reading) 69-123

7) Topics for Discussion - Thursday

A) NW Washington / Park Blvd. Project Update
B) East Idaho Rehabilitation Project Update
C) Ontario Aquatic Center Restoration Project Update

8) Correspondence, Comments and Ex-Officio Reports

9) Executive Session:

A) ORS 192.660(2)(e): Real Property
B) ORS 192.660(2)(d): Labor Negotiations

10) Adjourn

The City of Ontario does not discriminate in providing access to its programs, services and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 889-7684 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made. T.D.D. available by calling 889-7266.

COUNCIL MEETING MINUTES
September 19, 2011

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, September 19, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, Dan Jones, David Sullivan and Ron Verini. Jackson Fox was excused.

Members of staff present were Henry Lawrence, Larry Sullivan, Mark Alexander, Lisa Hansen, and Marcy Skinner. The meeting was recorded on tape, and the tapes are available at City Hall.

Norm Crume led everyone in the Pledge.

AGENDA

Norm Crume moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

CONSENT AGENDA

Mayor Dominick abstained from voting due to a payment to his corporation on the bills.

David Sullivan moved, seconded by Norm Crume, to approve Consent Agenda Item A: Approval of the Regular Minutes of 09/06/2011; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-abstain. Motion carried 5/0/1/1.

PUBLIC COMMENT

Kathleen Brit, Ontario, stated she was representing her mother Merlyn Ashby, (2151 SW 2nd Avenue) who had been a resident of the City of Ontario for 37 years. Ms. Brit also had a statement that her mother had written and signed. Ms. Brit wanted to make the Council aware of an incident that had happened last week between the City Water Department and her mother. She was engaged in volunteering for a scheduled position at the hospital, when she received a call from a neighbor, advising her that her water had been turned off. She was very surprised and very concerned. She was not scheduled to be off of that position until 5:00, so she called the Water Department to try to resolve the issue, and to find out why the water had been turned off, and what she needed to do to get it turned back on. She was told that she needed to come down to the office here, and to bring her rental agreement and that the office closed at 5:00 p.m. She explained her schedule, but was told that if she needed water that evening, she needed to come down. So, she left that position, and Ms. Brit accompanied her down here to the Water Department, with the same inquiry as to why her water had been turned off, since no notice had been given to her, and how was she going to get it turned back on. She was told by the lady at the front desk that the water had been turned off because she wasn't paying the bill, and she explained that she had not received the bill and thought she had being paying on-line. She's been at that residence for three years. She was then told that it was showing as an inactive account and the City only reads the meters that are inactive once every three years, and that the water had been turned off by direction of the Director of Public Works, and that there was no requirement to notify her of an impending shut-off. She was told that she could take it up with him if she had a problem with it. She again explained that she thought she was paying the bill, and that she was able and willing to pay the bill, but she was concerned about it being turned off with no notice. She was then told that when people are stealing water, and she was quoting that, there was no requirement to notify them of a shut-off. This was quite upsetting to both her and her mother, as the Council could probably imagine, because, as already

mentioned, she thought she was paying the bill, and they were able and willing to pay the bill. Then they were buzzed through the door, at which time the girl that was helping them exchanged a smirk with a police officer that was walking through, like she was quite enjoying this disruption. That felt a little bit disrespectful to them. When they got back behind the counter, behind the door at the counter, my mother had set her purse on the counter, accidently knocking over the little ceramic name-holder that was there. She apologized to the woman, said, *"Gosh, I'm sorry, I'm not trying to attack you"*, and woman responded, saying *"I know you're not going to attack me. There's a police sergeant right there and a police detective as well"*. Ms. Brit explained that her mother had apologized. Her mother was 78 years old, she had two knee surgeries, and a foot recently fused. She could barely walk, let along threaten anybody. They stated they were trying to make an inquiry about what had gone on with the account. They continued to try to find out what needed to be done to get the water turned back on. Her mother was told that the water couldn't be turned back on without a deposit being made because she only had one-month credit history with the Department. Ms. Brit explained that there were other addresses that her mother had lived in in Ontario, as she had lived in Ontario for 37 years. Her mother was told that because those were in the name of Ms. Brit's stepfather, who passed away in 2005, the department could not count. Ms. Brit's mother explained that she paid the bills both before he passed away and after, so could an exception be made. They were refused. At this point, Ms. Brit's mother, Mrs. Ashby, was quite upset, and asked to speak to someone above this woman helping them. They ended up speaking with Bob Walker, who was very nice, and he did get her mother's water turned back on. They did, however, find out today that there still hadn't been an account set up. They were calling to find out how much it was so they could get it paid. So, now, they've probably started the cycle all over again, because there wasn't an account set up. In the week that had passed since that incident, they became aware of two other specific businesses that had similar experiences with the Water Department. One of them had gone a year with no notification, and a $2000 bill, and another had accrued over $6000 in bills. Both of these businesses had called to find out why they weren't getting billed. The $6000 bill account holder had been told that the landlord of the building was paying the bill, and not to worry about it. The other one had not had the meter read in over a year. Ms. Brit's mother's account had also not been read in three years. Her mom was upset, and as they were talking to people, she believed it was worth noting that there wasn't one person that they talked to, that didn't report a negative interaction with the Water Department at the front desk. Many of them refused to deal with the person sitting at the front desk, and there are a couple of them, but they wait until the other girl is available to help them. In summary, the three concerns they had were, first, the water being shut-off without notice to addresses where the building was obviously occupied or were residents were obviously residing. Had they been made aware, or given notice that a mistake had been made, they would have dealt with it immediately, without the need to have the water turned off. Her concerns were what if there had been a fire, or medical emergency, or if there was a small child there, and there was not water? She was really concerned, and she would wonder if there wasn't some type of liability, as well as was that in the best interest of the residents. Second issue was in the way they were treated when they came down to make an inquiry. She wondered if there was something's wrong within the procedures and the way they were working that when the result is a mistake was made and unpaid water was being used, the assumption seems to be made that people were trying to steal water, and she doubted that very many people were intentionally trying to steal water. Her concern was the culture that allowed that attitude, especially in a little town like Ontario, for the residents to be dealt with that way. That was their second issue. Their third issue was really just the passage of time before these issues are coming to the attention of the city and the business owners and residents. If the meters are being read monthly be computers, it didn't seem like it would be difficult to read all the meters, and have the system maybe flag or identify inactive ones for further investigation and notification. It seemed like an unfair burden on both the city and residents to have a mistake carry on for a long period of time before being remedied. The city shouldn't have to go without payment, and the business owners and residents really shouldn't be faced with a large, unexpected bill they had to make payment on within a short period of time. She wanted to own that she had some emotion with her interaction with the front desk with regards to the way her mother was treated, and Ms. Brit might not have used her best customer service skills, but the larger purpose in her being before the Council that night was to simply give the city feedback it might be able to use to identify problems that might have been incorrectly labeled, and to look at the policies and procedures that might currently be in place to make sure that they serve both the city and its business owners and residents the best, most effective way. Thank you for the opportunity to speak on her mother's behalf.

Mayor Dominick thanked Ms. Brit for her comments, and for adding some positive solutions to make it better. He asked for a copy of her letter, to be given to the City Manager, so he could look into the customer service policies. They had been working very hard over the past few years, and he was sorry to hear that they had slipped up a few times. They wanted to work on customer service, because the citizens were their customers, and they wanted to do the best for them. He apologized for their inconvenience, and was glad it got straightened out.

Henry Lawrence, City Manager, stated he had been taking notes. He had been unaware of the situation, so he would be looking into it.

NEW BUSINESS

Approve Purchase of Replacement Road Grader: CIP 13STR-08

Henry Lawrence, City Manager, stated the City of Ontario was in need of a newer Road Grader as the current 1973 John Deere 570A was 38 years old, and had become obsolete when trying to purchase replacement parts. In the last five years, staff had spent nearly $11,000 on repairs and since had records over $53,000.

During the 2011-2013 budget process, the Council approved funding of $50,000 for the purchase of a used road grader to replace the existing 1973 model John Deere. Staff had located a 1992 John Deere 770B Road Grader with 5800 hours on it. This Road Grader had been inspected and evaluated for the City by Cesco Equipment and was said to be in good condition, with a value of $33,000. The Road Grader was currently owned by Malheur County Road Department. Staff is also proposing to sell the current 1973 John Deere Road Grader, valued by Cesco at approximately $18,000, by sealed bids.

CAPITAL PROJECTS	PROPOSED AMOUNT	2011-2013 BUDGET	VARIANCE
045-090-712101	$16,500.00	$25,000.00	$ 8,500.00
105-160-712101	$ 8,250.00	$12,500.00	$ 4,250.00
110-165-712101	$ 8,250.00	$12,500.00	$ 4,250.00
TOTAL	**$33,000.00**	**$50,000.00**	**$17,000.00**

Councilor Jones asked how much Mr. Bishop was trying to buy it for?

Mr. Lawrence stated it was $31K or $32K. An old appraisal had it at $33K; a new one showed $31K. The County set the price at $33K.

Councilor Jones suggested started the offer below $30K. Had a discussion been held on what price to sell the old Grader for?

Mr. Lawrence stated it had been appraised by the same company that appraised the county's grader. There was no guarantee they would receive an offer that high, the $18K.

Councilor Jones stated it might have more value to remain in the fleet to be used for snow removal.

Mr. Lawrence stated that had been discussed at the Thursday work session, and Mr. Bishop's statement had been to get rid of it. It wasn't being used, and it continued to deteriorate. Mr. Michelson had added one could be rented, if necessary, if a second machine was needed.

Charlotte Fugate moved, seconded by Ron Verini, that the Council approve the purchase of a 1992 770B Road Grader with 5800 hours from Malheur County Road Department to replace the city's existing 1973 Road Grader. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Mayor Dominick stated they had started the process of the City Manager's evaluation a few weeks ago, and he asked that the evaluation sheets be completed and turned in to him no later than October 10th, so they could continue the discussion at the next work session, set for October 13th.

ADJOURN

David Sullivan moved, seconded by Norm Crume, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

APPROVED:

_____

Joe Dominick, Mayor

ATTEST:

_____

Tori Barnett, MMC, City Recorder

TELEPHONIC COUNCIL MEETING MINUTES
October 4, 2011

A special telephonic meeting of the Ontario City Council was called for Tuesday, October 4, 2011, I the office of the City Recorder, Ontario City Hall beginning at 3:00 p.m. Council members who participated were David Sullivan, Norm Crume, Ron Verini, Charlotte Fugate and Jackson Fox. Joe Dominick and Dan Jones were unavailable.

Staff present was City Recorder Tori Barnett. No questions regarding the bills had been received from Council.

Notice of the meeting was provided to the Argus Observer on September 14, 2011.

CONSENT AGENDA

The regularly scheduled meeting of Monday, October 3, 2011 was cancelled. To enable the City to pay vendors in a timely fashion, the Council needed to approve the submitted bills. The Ontario Finance Department had mailed the bills to Council for review on Friday, September 30, 2011.

Ron Verini moved, seconded by David Sullivan, to adopt the Agenda as presented. Vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 5/0/2.

Councilor Fox stated he had a question on the bills. He wanted to know how many part-time employees were being paid from American Staffing, as the invoice seemed exceedingly high.

Ms. Barnett stated she did not have the exact count, but would find out. She asked if Councilor Fox had asked any staff for that information after receiving the bills, but he indicated he had not. He would bring the question forward at the next work session. Ms. Barnett stated she would have Finance prepare that information and have it available for him at the session.

Ron Verini moved, seconded by David Sullivan, to approve the bills as presented. Vote: Crume-yes; Fox-no; Fugate-yes; Jones-out; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 4/1/2.

CONSENT AGENDA

Ron Verini moved, seconded by David Sullivan, that the meeting be adjourned. Vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 5/0/2.

APPROVED:

_____
Joe Dominick, Mayor

ATTEST:

_____
Tori Barnett, MMC, City Recorder

PROCLAMATION

Ontario Hunger Awareness Week

WHEREAS, Oregon Food Bank, Southeast Oregon Services (Ontario) distributes an average of 65,000 pounds of food per month and in these difficult economic times hundreds of families are seeking emergency and supplemental food for themselves and their families; and,

WHEREAS, Distribution of emergency food has increased more than 70% in Ontario and the surrounding area since 2005 and more than 1600 individuals in Ontario access meals from emergency and supplemental food programs on a monthly basis and more than 33% of those receiving emergency and supplemental food assistance are children; and,

WHEREAS, The Ontario Community welcomes and recognizes the work of the Oregon Food Bank Network, Oregon Food Bank, and especially Oregon Food Bank-Southeast Oregon Services in their ongoing efforts to end hunger and its root causes because no one should be hungry; and,

WHEREAS, I challenge every Ontario citizen to join in the fight against hunger by taking one positive action this week to help those in need; and,

WHEREAS, Ontario welcomes representatives of the Oregon Food Bank Network to our community during the month of October.

NOW, THEREFORE, I, Joe Dominick, Mayor of the City of Ontario, Oregon, do hereby proclaim October 17th through October 21, 2011 to be

Ontario Hunger Awareness Week

and encourage all Ontario citizens to join in this observance.

I have hereunto set my hand this 18th day of October, 2011.

THE CITY OF ONTARIO 1903 STATE OF OREGON

Joe Dominick, Mayor

AGENDA REPORT
October 13, 2011

TO: Mayor and City Council

FROM: Bob Walker, Deputy Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: SEPTAGE RECEIVING FACILITY CHANGE ORDER

DATE: October 10, 2011

SUMMARY:
Attached are the following documents:

- Proposal from Franklin Miller/W H Reilly Co. for addition of pH meter ($9,100) and engineering modifications required to move septage facility into existing head works building ($17,500)
- Change Order
- Project Cost Estimate
- Site drawings

The purpose of this agenda item is for approval from the City Council to authorize the City Manager to approve the $26,600 Change Order on the Septage Receiving Facility.

PREVIOUS COUNCIL ACTION:

09/16/2010 During the Council Work Session, Deputy Public Works Director Bob Walker requested an additional $65,000 to increase the budgeted amount for the Ontario Septage Receiving Facility from $240,000 to $305,000. Funding is to be provided from budgeted sewer projects which are complete and came in under budget. Request was approved.

04/14/2011 At the Council Work Session, City Council authorized the City Manager to award the Septage Receiving Facility Equipment to Franklin Miller Inc. in the amount of $149,900. This was for purchase of equipment only. Total project cost at this time was estimated at $296,900.

06/20/2011 Council approved the 2011-2013 budget, was included 11SEW-11 for $295,000.

BACKGROUND:
Currently, the septic disposal business owners in the area do not have adequate facilities to dispose of their wastewater. They presently use the Clay Peak Landfill in Payette, Idaho or the City of Caldwell Wastewater Treatment Plant in Caldwell, Idaho. There are several issues with the current disposal sites but the biggest one appears to be the inability to utilize these facilities

on weekends, during holidays, or after hours. As a large percentage of their business is emergencies which happen on weekends or after hours, the inability to dump their loads creates problems for the septic business owners. The proposed City of Ontario Septage Receiving Facility would allow access by an electronic card reader system 24 hours per day, 7 days per week. With this type of operation available, the septic business owners would make Ontario their prime disposal site.

In order to determine rates to be charged for use of the Ontario Septage Receiving Facility, we did a rate study of charges assessed by eight surrounding communities. Based upon this study, we are proposing to assess septic disposal business owners $0.08 per gallon. This rate was approved by the Public Works Committee at their December 16, 2010 meeting. If only three of the nine septic businesses in the surrounding area utilized the Ontario Septage Receiving Facility and had an average disposal rate of 25 loads/month at $0.08/gallon, then the monthly income to the City of Ontario would be approximately $6,000 or $72,000 per year. At this rate, it would require 4.1 years to pay back the investment. This is a conservative estimate as there are actually six septic businesses that would probably utilize the Ontario Facility.

After conferring with the City Council at the April 14 work session, we have modified the design and site layout for the septage receiving facility. We have eliminated paving of the existing access road behind the wastewater treatment plant, redesigned the equipment configuration in order to fit it into the existing headworks building, and eliminated the fill at the headworks site. By relocating the equipment into the existing headworks building we were able to eliminate the fill proposed on the south side of the existing headworks building as the septage truck will not have to drive in this area. In addition, the Bid request did not include a pH meter which is essential for this type of facility. The pH meter monitors the effluent from the septage trucks and if it is out of range, the equipment shuts down and will not allow the septage hauler to complete his download. This change order includes $9,100 for the addition of a pH meter and $17,500 to the manufacturer for redesign of the equipment. The $17,500 cost included a site visit by the manufacturer's engineers to determine modifications needed in order to fit equipment into existing head works building and redesign of equipment to work not only for septage hauler unloading but to accomidate waste from existing screens.

FINANCIAL IMPLICATIONS:
The revised cost estimate for this project after inclusion of this Change order is $295,000. The savings from not paving the road and eliminating the fill will be utilized to pay for this change order. This also provides for a contingency of $13,261. As indicated above, at a rate of $0.08/gallon, this project will have a payback in less than 5-years.

RECOMMENDATION:
The Public Works Department recommends that the City Council authorize the City Manager to sign the Change Order.

PROPOSED MOTION:
I move that the City Council authorize the City Manager to sign the Change Order for $26,600 to Franklin Miller for the revisions to the Septage Receiving Facility contract.

Franklin Miller Inc.
60 Okner Parkway
Livingston, NJ 07039 USA

Tel: 973.535.9200
Fax: 973.535.6269
info@franklinmiller.com

Quote No: 20797B

October 11, 2011

Org ID: ONT002

Attention: **Bob Walker**

Ontario City Public Works
444 Sw 4Th St.
Ontario, OR 97914 USA
Phone: 541-881-3231

email: bob.walker@ontariooregon.org

Your Local Representative:
William H. Reilly & Co.
Attn: Bill Reilly Jr.
Tel: 503-223-6197
email: billjr@whreilly.com

Salesperson:
Thomas Zangoglia, Salesman
tomz@franklinmiller.com

Dear Bob ,

We are pleased to quote on the following Septage Receiving Station:

Qty	Units	Total

Ref: Matl: SEPTAGE Max: 700 GPM

1

SPIRALIFT® SR30 Septage Receiving Station as follows:

SPIRALIFT Model SR30 Septage Receiving and Screening including:
- Tank Enclosure, T304SS construction
- 4" inlet flange constructed of heavy stainless steel
- Hinged Access cover with interlock

Spiral Screen including:
- Stainless Steel tank housing
- Alloy Steel Shaftless Auger and Stainless outer flighting in Screen area
- 27" Dia. Stainless Steel perforated screen basket.
- Heavy-duty Nylon segmented bolt-on screen brushes attached to Auger.

- Shaft-mounted Gear Reducer and 2HP TEFC 3/60/230/460 Motor

Spray Wash Manifold: for sprays in
- screen front and rear
- Rotary Nozzle for tank cleanup
- Includes solenoid valve

Automatic Plug Valve: 4"
- Iron Construction,
- Automatic actuator,
- Epoxy Coated.

Flow Meter
- Mounted between TM851204TT and plug valve 9

Franklin Miller Inc.
60 Okner Parkway
Livingston, NJ 07039 USA

Tel: 973.535.9200
Fax: 973.535.6269
info@franklinmiller.com

Quote No: 20797B

October 11, 2011

Qty	Units		Total
		Ultra-Sonic Level Sensor: - Mounted in SR tank for activating system upon high level detection.	
		TASKMASTER® Model TM851204TT, grinder with tramp-trap housing including: - "Cutter Cartridge" technology, 7 Tooth Cam Cutters, - T.C. Mech. Seals, - 5HP TEFC 3/60/230/460 motor - Cleanout valve - 4" inlet and outlet flanges - Interconnecting piped to screen unit	
1	EA	**S270-SRH Septage Receiving Controller** - Provides control and integration of all system components - Card Reader - for Hauler authentication - Receipt Printer - HMI Interface - Nema 4X Stainless Steel Enclosure - PLC Controlled - IEC Starters, & Long Lasting LED Indicators - Includes System Flow Meter and Integration **NOTE: Any deviations, changes or additions to this standard controller will result in an increase in price.**	
1	EA	**Startup and Training services by Franklin Miller service technician**	
1	EA	**Extended Warranty-three (3) years from date of startup within the limits of our standard warranty.**	

Lump Sum: $149,900.00

Grand Total: $149,900.00

Prices are Valid Until Thursday, November 10, 2011

Terms: Net 30 days from shipment. Freight Allowed to Jobsite.

(1) PH Meter and Associated Hardware

Add-On Price.....$ 9,100.00

Value Added Engineering Consisting Of:
-Engineering hours design meeting
-Engineering hours mechanical design options
-Engineering hours for electrical design
-Travel and living expenses for design meeting

Add-On Price.....$ 17,500.00

Grand Total.....$176,500.00

ALL CREDIT TERMS SUBJECT TO APPROVAL.
delivery 16-18 weeks after receipt of final submittals.

Thank you for this opportunity to be of service.

FRANKLIN MILLER INC.

TERMS AND CONDITIONS
DATED 7/31/08

1. ENTIRE AGREEMENTAny order resulting from a Franklin Miller (SELLER) proposal shall be bound by the following Terms and Conditions. Any exception to these Terms and Conditions by the BUYER shall not be binding on Franklin Miller unless agreed to in writing upon the parties hereto, their successors and assigned.

2. LIMITED WARRANTYSELLER warrants the goods sold hereunder to be free from defects in material and workmanship under normal use and service not arising from misuse, negligence or accident, or unauthorized modification of the equipment, in connection with the use, installation, and transportation of the goods by BUYER, its agents, servants, employees or by carriers. SELLER's obligations under this warranty are limited to remedying any deficiencies in the goods at such place or places in the United States of America as may be designated by SELLER. This warranty shall pertain to any part or parts of any goods to which BUYER has, within (12) months after date of shipment given written notice of a claimed defect to the SELLER. The BUYER shall be required to furnish SELLER with details of such defects and this warranty shall be effective as to such goods which upon SELLER's examination shall disclose to its satisfaction to have been defective and which at SELLER's option shall be repaired in place if required for a warranty repair. The BUYER at his expense shall make available in a suitable location for repair by SELLER or promptly thereafter be returned to SELLER, at BUYER's, or its nominees expense. If upon examination it is determined by the SELLER that the repair or replacement does not fall within the Warranty as set forth in this clause, an estimate for cost of repair will be provided to the BUYER. This warranty is expressly in lieu of all other warranties expressed or implied. In no event shall the SELLER be liable to the BUYER or to any other person for any loss or damage, direct or indirect, arising out of or caused by the use or operation of the goods, or for the loss of profits, business, or good will. Under no circumstance will SELLER be liable for any of the following: (1) third party claims against BUYER for losses or damages including liquidated damages: (2) loss of or damage to BUYER's records or data; or (3) economic consequential damages (including loss of profits or savings) or incidental damages even if SELLER is informed of their possibility. Excluded from the warranty herein are (a) defects in parts or components not manufactured directly by SELLER; Franklin Miller will, however, pass on the remaining balance of the purchased equipment manufacturer's warranty; (b) or not part of SELLER's standard design or are supplied pursuant to special BUYER's requirements; © certain parts which are subject to wear and tear from abrasive action or use thereof; and (d) any part that has been subjected to misuse. SELLER's liability is limited to furnishing or repairing at SELLER's option parts determined by SELLER to be defective. No express warranties and no implied warranties, whether of merchantability or fitness for any particular use, or otherwise (except as to title), other than those expressly set forth above which are made expressly in lieu of all other warranties, shall apply to products sold by us, and no waiver, alteration, or modification of the foregoing conditions shall be valid unless made in writing and signed by an executive officer of our corporation. If the buyer is in default of Clause 6 (Payment of Purchase Price) this warranty is null and void unless reinstated by SELLER.

3. FORCE MAJEUREThe obligation of SELLER hereunder shall be modified or excused as the case may be, for reasons of Act of God, War, Governmental law or regulations, strikes or lock-outs, fire, breakdown of machinery, whether in its own business enterprise, or if for any other cause beyond SELLER's control, the goods cannot be delivered or their delivery becomes delayed in whole or in part. In the above instances, time for delivery shall be extended for the period of the delay caused, with the proviso, however, that either party may cancel in writing the undelivered portion of the order or contract if the delay exceeds six (6) months from the delivery date originally confirmed by SELLER. In no event shall SELLER become liable in the aforesaid instances to BUYER or any third party for consequential damages, liquidated damages, particularly described in ARTICLE 2 herein.

4. DELIVERY (a) All quoted delivery dates and/or periods are approximate. Unless otherwise agreed, delivery of the goods is F.O.B. Factory or (EX WORKS - INCOTERMS 2000) to any common carrier shall constitute delivery to BUYER, and thereafter the risk of loss or damage to the goods shall be upon BUYER.

5. SHORTAGE OR DAMAGE OF DESTINATION SHIPMENTS
(a) Any claims of shortage or damage on destination shipments must be made in writing within ten (10) days after delivery of the goods (as to which such claim is made) to SELLER or its nominees, but in no event shall the claim be later than within the time limit provided by the carrier or insurance company, otherwise such claim shall be deemed waived.

6. PAYMENT OF PURCHASE PRICE
(a) Time of payment is of the essence under this contract. Unless stated elsewhere, the terms are Net 30. Upon default by BUYER in any of the terms of this contract, or failure to comply with any of the conditions hereof, or upon seizure of the property under execution or other legal process, or if BUYER becomes bankrupt or insolvent, or any petition for reorganization or for a state court receivership is filed against BUYER, or if the BUYER makes any assignment for the benefit of his creditors or otherwise sells, encumbers or disposes of the merchandise, or if for any other reason the SELLER should deem itself insecure, the full amount of the purchase price then remaining unpaid shall at once become due and payable at the option of the SELLER. Then, at its option, SELLER may take possession of any goods theretofore sold to BUYER, in connection with which the full purchase price has not been paid, analogous to the terms and provisions set forth herein.

(b) TERMS OF PAYMENT - All orders are subject to credit approval by the SELLER. If approved for full open account, terms are strictly unless stated elsewhere and Net thirty (30) days from date of shipment. Retainage if required by OWNER shall be no more than 5% of the purchase price. Retainage shall be released and paid in full no later than 120 days after satisfactory start up of the SELLER's equipment. All shipments, including partial shipments, will be billed a pro rate amount as of date shipped. If the account remains unpaid after sixty (60) days, interest at the rate of 1-1/2% per month (18% per annum) will be added to the outstanding balance computed from date of shipment. All costs of collection will be added to the outstanding balance including legal fees, court costs and such other costs as may be required to effect collection. Acceptance of partial payments on account does not constitute any change in the payment terms and conditions herein and is not to be considered to extend the due date for payment.

7. SECURITY INTEREST AND TITLE
In states and localities which are governed by the Uniform Commercial Code, this contract shall serve as the security agreement, reserving in SELLER a security interest until full payment of purchase price. The provisions of the Uniform Commercial Code regarding security interest shall have preference and apply if inconsistent with other terms of the conditions of sale herein. In states and localities where the Uniform Commercial Code does not apply, title to the merchandise shall remain in the SELLER or its assigns until full payment of the purchase price. BUYER agrees to execute forthwith any and all documents in such form as SELLER may require for filing or recording the security interest under the Uniform Commercial Code with the proper registers or offices, or for filing or recording the conditional sales contract.

8. VARIATIONS IN DUTIES AND TAXES & RATE OF EXCHANGE
The prices on the products specified are exclusive of all city, state or federal taxes. BUYER shall bear any increases, after the date of this contract, in or any new imposition of duties, levies or taxes relating to the product sold hereunder. Unless a Sales Tax Exemption Certificate is provided, Franklin Miller, Inc. will invoice for the New Jersey Sales Tax on all items sold in New Jersey. Franklin Miller, Inc. is not authorized to collect sales tax for any other jurisdiction.

9. CANCELLATION
An order once placed with and accepted by SELLER can be cancelled only with our consent and upon terms that will indemnify SELLER against loss.

10. STOP WORK ORDER OR DELAY:
If an engineering approval, release to manufacturer, shipment or work on any part of this contract is held or delayed by buyer for greater than 120 days from the date of contract, SELLER is entitled to an increase in contract price to cover cost escalations caused by such delay.

FRANKLIN MILLER INC.

TERMS AND CONDITIONS
DATED 7/31/08

11. MISCELLANEOUS PROVISIONS

(a) If for any reason a provision of the contract is legally invalid, then in such event the rest of the contract shall remain in full force and effect.

(b) Any amendment to any contract or contracts shall require the consent in writing of both parties.

(c) The within terms shall govern in any instance where they conflict with the provisions of any forms used by BUYER.

12. BUYER'S RESPONSIBILITY AS TO MAINTENANCE

BUYER shall use and shall require its employees and agents to use all safety devices and guard safe operating procedures and shall maintain the same in proper working order BUYER shall further obey and have its employees and agents obey safety instructions given by SELLER. BUYER agrees to indemnify and save SELLER harmless from any liability or obligation with regard to any personal injuries or property damages directly or indirectly connected with the operation of the equipment. BUYER further agrees to notify SELLER promptly and in any event not later than ten (10) days after notice or knowledge of any accident or malfunction involving SELLER's equipment which has caused personal injury or property damages and to cooperate fully with SELLER in investigating and determining the causes of such accident and malfunction.

13. REPAIR OBLIGATION FOR CONTAMINATED EQUIPMENT

Nothing herein shall be deemed to require SELLER to accept for repair, modification or alteration, if, in fact, such repair, modification or alteration is required of SELLER pursuant to the terms of this agreement or otherwise and, if, in fact, SELLER unless the units shall first have been decontaminated and free from any contamination whatsoever.

14. NOISE LEVEL REQUIREMENTS

Although SELLER's machines have been designed to satisfy the general requirements of BUYER's specifications, SELLER cannot represent or certify that they satisfy the noise level requirements for a specific application, location or operation since these circumstances are unknown to SELLER and are beyond SELLER's control and because of the general nature of size reduction equipment. If required to test for this noise level requirement, testing will be with no product fed to the machine and FMI will provide a quote for each test to be performed. If corrections are required after completion of the tests, the costs for these modifications will be negotiated.

15. OSHA CONDITIONS

Although SELLER's machines and guards have been designed to satisfy the general intentions of OSHA requirements, SELLER cannot present or certify that they satisfy the requirements of OSHA for a specific application, location, or operation since these circumstances are unknown to SELLER and are beyond SELLER's control. The SELLER shall not be liable for any costs of compliance or other costs or fines resulting from non-compliance with any OSHA requirement.

16. DOCUMENTS REQUIRED

Prices quoted include the required number copies required by the specifications. If not stated, Franklin Miller, Inc. shall provide our standard Operations and Maintenance Manuals. Any additional manuals are not included in the quoted price and shall be charged to BUYER.

17. PATENT AND LICENSE & LIABILITY INDEMNIFICATION

BUYER agrees to indemnify SELLER, its agents, successors and assigns against any loss, damage and liability, including costs and expenses arising out of any claim against SELLER for actual or alleged infringement on any patent, copyright or trademark arising out of the use or sale by BUYER, its agents, servants, employees or customers of the product provided by SELLER, as used by BUYER, in conjunction with any other equipment, product or system. BUYER agrees to indemnify SELLER, its agents, successors and assigns against any loss, damage and liability, including costs and expenses arising out of any claim against SELLER for actual or "Bodily injury" or "property damage" arising from the actual, alleged or threatened discharge, dispersal, release or escape of pollutants from any source whatsoever. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
vapor, soot, fumes,

18. TRADEMARKS AND COPYRIGHTS

BUYER acknowledges that it has no right, title or interest in the trademarks or copyrights in the products, and BUYER covenants that it will take no action to register or otherwise interfere with such rights.

19. INDEPENDENT CONTRACTORS

SELLER and BUYER are independent contractors. BUYER is not authorized to and shall not make any representations on behalf of which are binding upon SELLER.

20. NON-ASSIGNMENT BY BUYER

Contract or contracts may not be assigned by the BUYER without prior written consent of the SELLER.

21. APPLICABLE LAW

Any contracts herein are governed by the applicable laws of the State of New Jersey.

22. BUYER APPROVALS

If BUYER approval is required of the Franklin Miller submittals, specifications and/or operating instructions submissions, upon receipt of such approval, the approved documents shall supersede the BUYER's description of requirements on this purchase order and the description on the original Franklin Miller proposal. Franklin Miller will provide equipment, spares and data in accordance with the approved submittals.

23. STANDARD PRODUCTS

All of Franklin Miller machines are built to best commercial practices and as part of our standard product line, which may be modified to meet BUYER's Specifications. However, no manufacturing drawings or procedure, formal inspection plans, welding procedures, quality control plans, sub-supplier information, etc. will be supplied. No formal schedule, progress reports, copies of sub-supplier orders, etc. will be supplied. Erection, safety, operation and maintenance instructions are contained in our manual to be supplied with the machines.

24. SIZES AND DIMENSIONS

The samples, measurements, dimensions and weights contained in the SELLER's catalogs, sales manuals, photographs and drawings constitute only an approximate guide. The SELLER reserves the right to make any changes which the SELLER, in its absolute discretion, considers necessary.

25. ARBITRATION

Actions by the SELLER for nonpayment by the BUYER of the undisputed purchase price of goods sold by the SELLER, or for redress for other undisputed breaches by the purchaser of the contract of sale, may be brought by the Seller before any judicial court of competent jurisdiction without need for prior arbitration. All other disputes, controversies, or claims arising out of or relating to this agreement or the performance or breach thereof shall be settled by arbitration by an arbitrator mutually agreeable to be held in the County of Essex, State of New Jersey in accordance with the rules and procedure then obtaining of the American Arbitration Association.

26. FORUM.

ALL JUDICIAL PROCEEDING AND/OR ARBITRATION BROUGHT AGAINST BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW JERSEY, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT BUYER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS AND FORUM FOR ARBITRATION AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. Buyer hereby agrees that service of process sufficient for personal jurisdiction in any action against Buyer in the State of New Jersey may be made by registered or certified mail, return receipt requested, to Buyer at its address as provided by Buyer. Buyer hereby acknowledges that such service shall be effective and binding in every respect.

Change Order No. 1

Date: October 13, 2011

Project: Septage Receiving Facility

Contract Date: May 4, 2011 Owner: City of Ontario

Contractor: Franklin Miller Inc.

Franklin Miller Inc., contractor, is hereby directed to make the changes noted below in the Subject Contract:

By: _____
(Owner and Date)

Henry Lawerence, City Manager
(Printed Name)

Nature of the Changes: See attached sheets for changes and prices.
Justification for the Changes: See attached sheets for change justifications.

These changes result in the folowing adjustment of Contract Price and Contract Time:

Contract Price Prior to This Change Order:	$	149,900
Net (Increase) ~~(Decrease)~~ Resulting from this Change Order:	$	26,600
Current Contract Price Including This Change Order	$	176,500
Contract Time Prior to This Change Order		September 13, 2011 (Days or Date)
Net (Increase) ~~(Decrease)~~ Resulting from this Change Order:		98 (Days)
Current Contract Time Including This Change Order		December 20, 2011 (Days or Date)

The Changes Are Approved:

By: _____
Owner Date

City Manager

By: _____
Contractor Date

_____
(Printed Name)

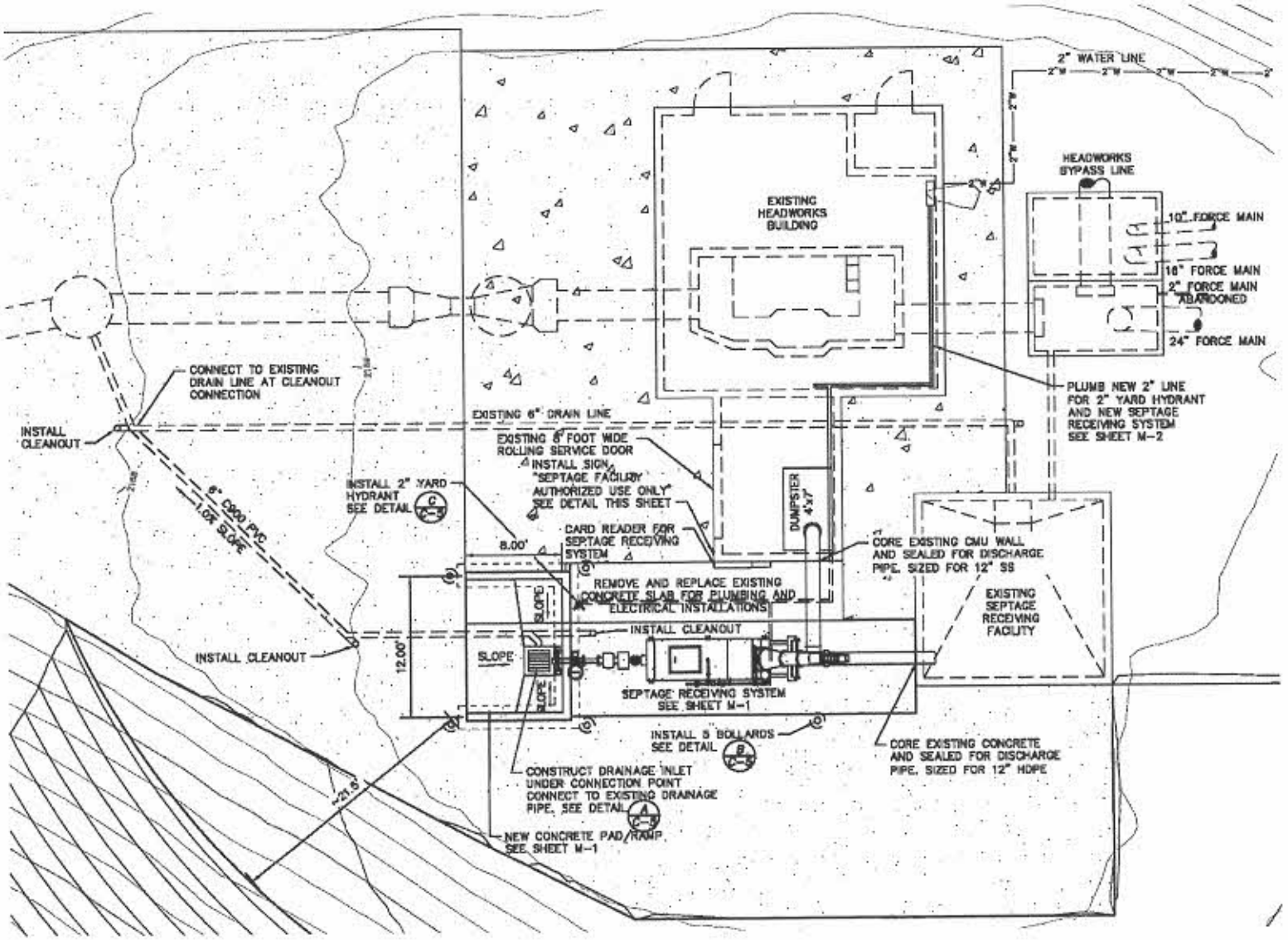
REVISED COST ESTIMATE
CITY OF ONTARIO
SEPTAGE RECEIVING FACILITY

Description	Supplier/Contractor	Cost
Septage Receiving Facility Equipment	Franklin Miller/W H Reilly Co.	$149,900
Change Order:		
pH Meter	Franklin Miller/W H Reilly Co.	$9,100
Additional Engineering	Franklin Miller/W H Reilly Co.	$17,500
Subtotal Equipment Costs		**$176,500**
Site Work	To Be Bid	$52,239
Equipment Installation	To Be Bid	$35,000
Electrical/SCADA; Security System; Surveying	To Be Bid	$18,000
Subtotal Installation		**$105,239**
Contingency		**$13,261**
TOTAL PROJECT COST		**$295,000**

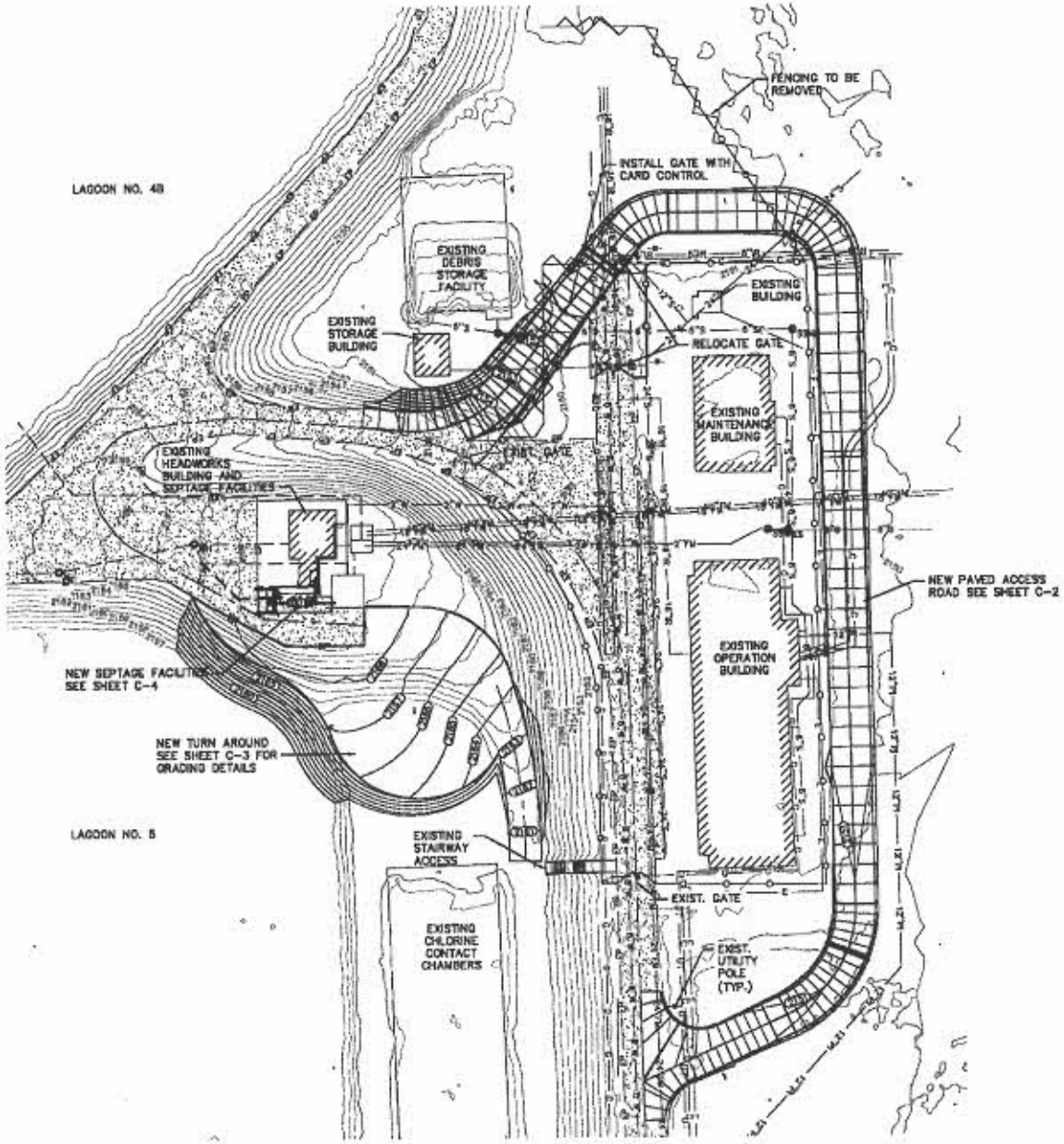
HISTORY:

Original Budget	$240,000
Revision - September 16, 2010	$305,000
Revised Total Cost - Equipment Award	$296,900
2011 - 2013 Budget	$295,000
Current Estimate	$295,000

Septage Receiving Facility
(Original Drawing)

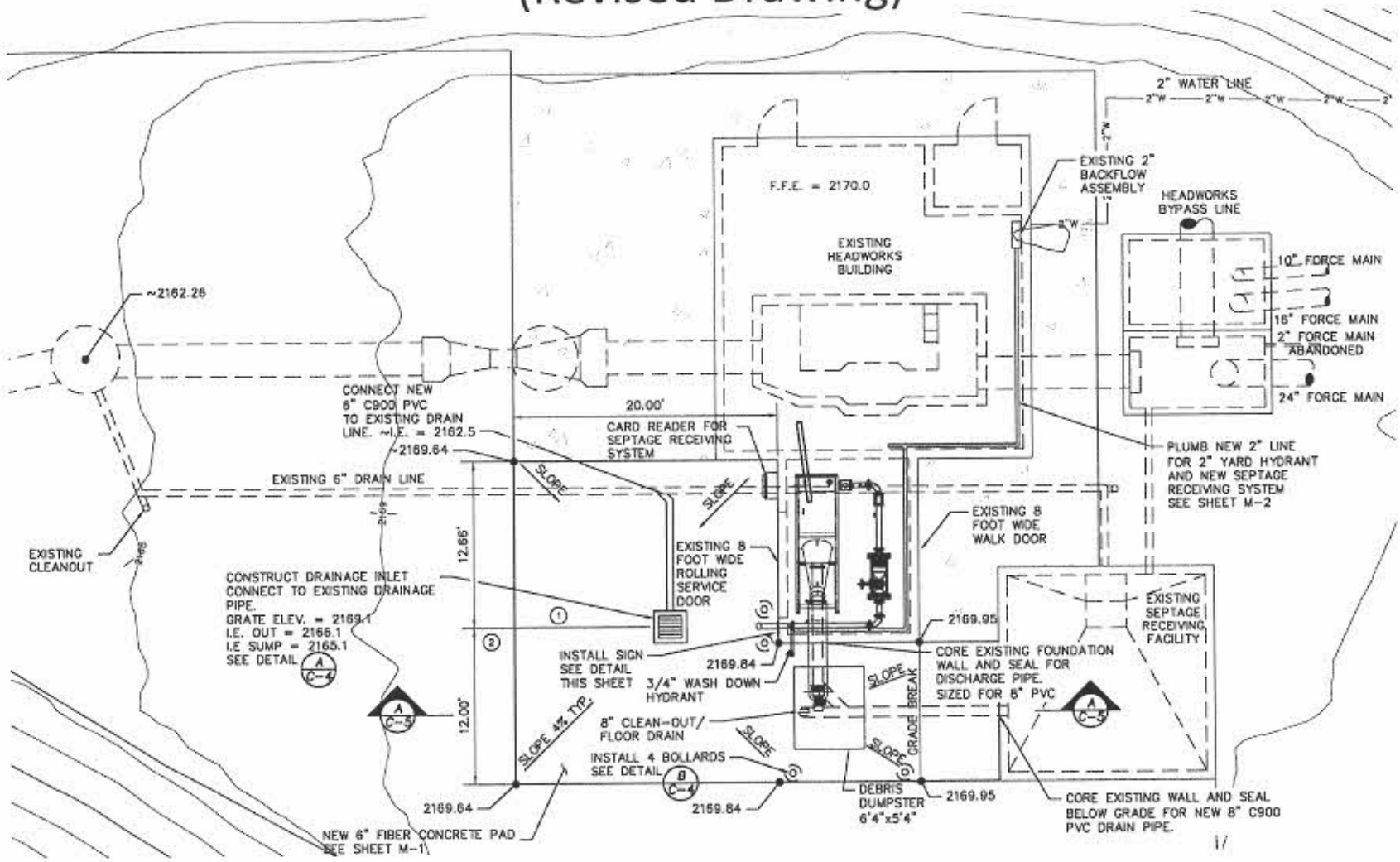


Septage Receiving Facility – Original Drawing

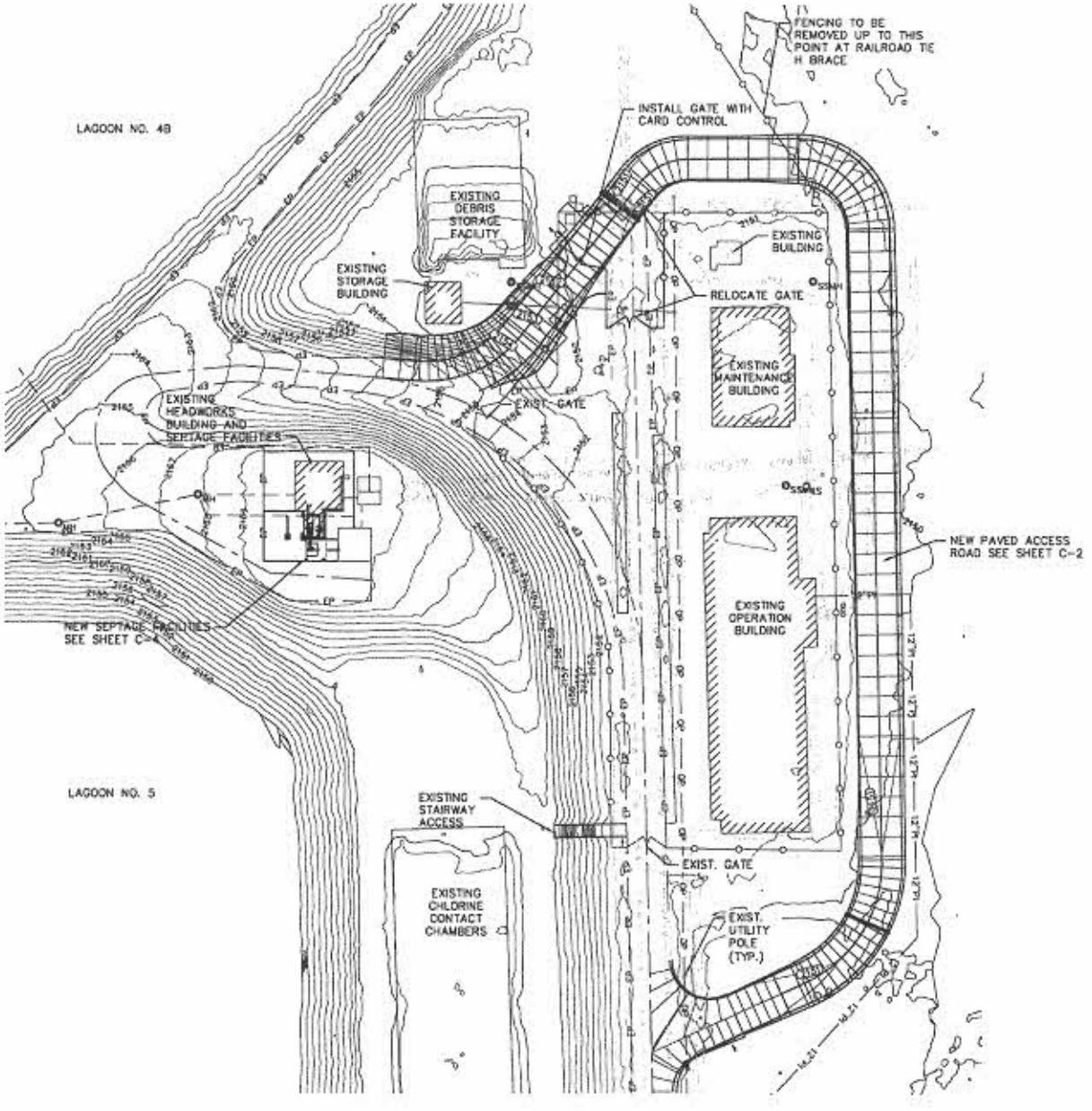


Septage Receiving Facility

(Revised Drawing)



Septage Receiving Facility – Revised Drawings



AGENDA REPORT
October 17, 2011

TO: Mayor and City Council

FROM: Henry Lawrence, City Manager

SUBJECT: CONTRACT AWARD IN THE AMOUNT OF $8,750 TO MVCI,LLC FOR DEMOLITION OF THE OLD GOODMAN OIL GAS STATION BUILDING

DATE: October 10, 2011

SUMMARY:
Attached are the following documents:

- Request for Quotation/Bids
- Attachment A: Scope of Work

BACKGROUND:
The intent of this project is to remove the existing dilapidated and unsightly block building, including the sign, pumps and awning, located at 268 4th SW 4th Avenue. Due to contamination below ground, work will be completed with minimal disruption to the subsurface soil. Existing slabs, foundations and below ground storage tanks will remain undisturbed. All debris from the demolition will be removed from the site. See attached Request for Quotations/Bid and Attachment A: Scope of Work.

The Ontario Facilities Manager solicited three bids from qualified licensed contractors for the demolition of the old Goodman Oil gas station building located adjacent to city hall. The bid results were as follows:

MVCI, LLC	$8,750.
Duane L. Bellows, Construction, Inc.	$14,650.
Warrington Construction Corp.	$24,400.

The City Attorney has arranged with the owner for the City to lien the property up to approximately $12,000 for the demolition and other costs incurred by the City.

FINANCIAL IMPLICATIONS:
8,750

RECOMMENDATION:
Approve.

PROPOSED MOTION:
I move that the City Council award a contract to MVCI, LLC, in the amount of $8,750, for the demolition of the Goodman Oil site located at 268 SW 4th Avenue, and authorize staff to take any necessary actions to lien the property for the full costs of demolition, bidding, administrative, attorney fees, and related fees and costs.

CITY OF ONTARIO
Request for Quotation/Bid
Inquiry Only - This Is Not an Order

Requested By: Yorick de Tassigny
Facilities Manager
City of Ontario
444 SW 4th Street
Ontario, OR 97914

Date: 9/29/11
Phone No.: 541-889-4814
Fax: 541-889-7121
Email: facilities@ontariooregon.org

On this form, please quote your best price for completing the work described below.

Substitute offers will be considered if differences in specifications are explained on this form or submit separate letter.

Return the completed form by 2:00 PM on October 06, 2011 electronically or via mail or fax

Contractor Information/Quotation Information

Please fill in all highlighted areas on this form

Company Name: _____
Address: _____
_____
CCB#: _____

Name: _____
Title: _____
Date: _____

All Pricing Must Be Held Firm for 60 Days

Work Description

Gas Station Building Demolition

GENERAL DESCRIPTION OF WORK: The intent of this project is to remove the existing dilapidated and unsightly block building, including the sign, pumps and awning, located at 268 SW 4th Avenue in Ontario, Oregon. Work to be completed with minimal disruption to the subsurface soil. Existing slabs, foundations and below ground storage tanks to remain undisturbed. All debris from the demolition work will be removed from the site and disposed of at a properly licensed solid waste facility in accordance will all applicable laws and regulations. Existing chain link fence to be removed as needed to complete the work. Removed fencing materials to be salvaged to the extent possible and reused to fully enclose the perimeter of the existing building and pump island. Re-use existing gate to provide access into the enclosure. See Attachment A - Scope of Work for a more detailed description of the work. Contractor will be responsible for securing all applicable permits and the associated costs. Work must be substantially completed thirty (30) days following the issuance of the Notice to Proceed.

ASBESTOS: The City has commissioned a professional to conduct an asbestos inspection of the building (inspection report attached). The **City** will be responsible for the abatement of asbestos-containing canvas vibration isolators prior to the commencement of the work. The **Contractor** will be responsible for the lawful removal and disposal of the asbestos-containing grayish asphalt roof coating present on roof penetrations and remaining below the newer drip edge as described in the report.

CONTRACTOR QUALIFICATIONS: Contractor must be properly licensed through the Oregon Construction Contractors Board (CCB), as well as be insured and bonded. Contractor must also be properly trained in the handling and disposal of asbestos-containing materials not requiring an abatement contractor.

(Continued on next page)

Work Description

In the spaces below, please provide your best price for completing the work specified herein.

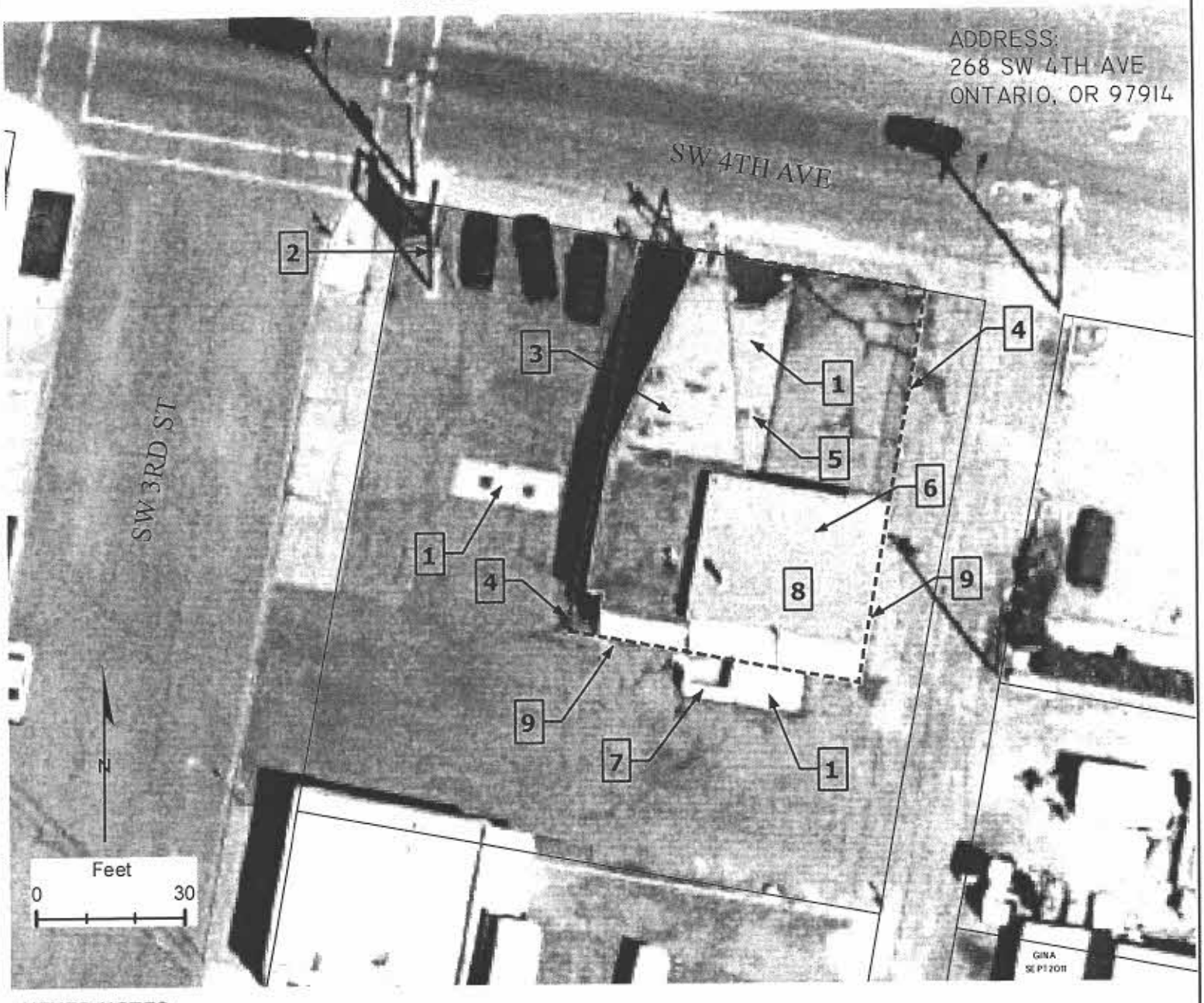
Bid amount (numerical): $_____

Bid amount (spelled out): _____

Signature of bidder: _____

Date: _____

ATTACHMENT A - SCOPE OF WORK



KEYED NOTES:

1. EXISTING CONCRETE PAD AND BELOW GROUND TANKS TO REMAIN.
2. REMOVE AND DISPOSE OF EXISTING SIGN AND SIGN POST.
3. REMOVE AND DISPOSE OF EXISTING AWNING AND POSTS.
4. REMOVE EXISTING FENCE AS NEEDED FOR DEMOLITION WORK. STORE MATERIALS FOR REINSTALLATION.
5. REMOVE AND DISPOSE OF EXISTING PUMPS, CAP LINES AS NEEDED.
6. REMOVE AND DISPOSE OF EXISTING BLOCK BUILDING AND BUILDING CONTENTS. SLAB AND FOUNDATION TO REMAIN.
7. REMOVE AND DISPOSE OF EXISTING TRASH ENCLOSURE.
8. INTERIOR HOIST AND COLLECTION TANK TO REMAIN.
9. INSTALL NEW FENCE AROUND PERIMETER OF BUILDING AS SHOWN. REUSE AS MUCH OF THE OLD FENCE MATERIALS AS POSSIBLE.

GENERAL NOTES:

1. ASBESTOS ROOF COATING (GRAYISH IN COLOR) PRESENT ON PENETRATIONS AND REMAINING BELOW NEW DRIP EDGE (SEE ATTACHED REPORT) CONTRACTOR RESPONSIBLE FOR REMOVAL.
2. CONTRACTOR RESPONSIBLE FOR PERMIT AND PERMIT COSTS.
3. ALL MATERIALS, INCLUDING ASBESTOS, TO BE DISPOSED OF FOLLOWING ALL APPLICABLE LAWS AND REGULATIONS.
4. DISCONNECT/CAP ALL UTILITIES AS NEEDED.
5. CONTRACTOR MUST BE INSURED, BONDED AND HAVE A CURRENT OREGON CONSTRUCTION AND CONTRACTORS BOARD LICENSE IN ORDER TO SUBMIT A QUOTE AND PERFORM THE WORK INCLUDED IN THIS PROJECT.

AGENDA REPORT
October 17, 2011

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: IDAHO POWER SOLAR PILOT PROGRAM

DATE: October 11, 2011

SUMMARY:
Attached are the following documents:

- Idaho Power Email dated October 10, 2011
- Idaho Power Solar Pilot Program Overview
- Idaho Power Schedule 88
- Draft SBE Financing Proposal
- Sample Energy Sales Agreement

The purpose of this agenda item is to determine whether the City of Ontario should participate in a solar power pilot program conducted by Idaho Power.

BACKGROUND:
A 2009 Oregon statute requires power companies operating in Oregon, including Idaho Power Company, to participate in pilot programs for the generation of solar power. Idaho Power's pilot program is described in detail in the attached Overview. Essentially, Idaho Power pays its customers for the power generated by the solar (photovoltaic) panels installed on the property of its customers who participate in the pilot program at a rate of $0.317/kWh for the entire 15 year life of the agreement (Schedule 88). The customer continues to pay for electricity used as they currently do during that 15 year period. Once the agreement has expired, the customer can choose to negotiate a net metering agreement with Idaho Power that will offset electricity consumed at the location by that produced by the solar system.

Participation in the program required the submission of applications by no later than October 3, 2011. Because of the short timeline given by Idaho Power, staff was required to determine whether to submit applications for participation in the pilot program without Council input. Staff submitted applications for the installation of ten solar panels under the program, which were approved by Idaho Power that same day.

The locations selected for this project are as follows: Ontario Aquatic Center; Wastewater Treatment Plant (3 meters); City Hall; Public Works Shop; Water Treatment Plant (2 meters) and; Ontario Golf Club (2 meters).

The next step in the pilot program was for each successful applicant to pay Idaho Power, within seven days, an application fee equal to $500 per meter/installation. Under the City's application, this fee would be $5,000 for the ten meters selected. Staff had seven days from October 3, 2011, within which to pay the $5,000 application fee or forfeit participation in the program. The payment to Idaho Power had to be postmarked by October 10, 2011.

Staff negotiated with an outside financing company, Site Based Energy (SBE) of Hailey, Idaho, to pay that fee on the City's behalf. SBE agreed to do so in an email sent to City staff on October 10, 2011. A copy of the email is attached.

The $5,000 fee to Idaho Power is refundable so long as the City completes installation of the solar panels within the 12 month deadline discussed in the Idaho Power Overview. If a financing contract between SBE and the City is approved by the Council, SBE will purchase the panels at SBE's expense, hire contractors to install the panels and maintain the panels in accordance with Idaho Power's specifications and timelines. SBE will lease the space required for the project from the City at the cost of $1 per year until full ownership of the project is transferred to the City. Idaho Power will also refund the $5,000 application fee if Idaho Power decides not to award a Capacity Reservation to the City as discussed in the Overview.

At this point, if the City Council decides not to proceed with the Idaho Power Pilot Program, the City will have to repay SBE the $5,000 paid by SBE on the City's behalf.

Along with its email, SBE sent staff a spreadsheet showing anticipated returns to the City for participating in the program. SBE's proposed financing arrangement would allow the City to own the solar panels paid for by SBE after approximately eight years, after repaying SBE from the Idaho Power payments received by the City under the pilot program. After the panels are owned by the City beginning in the ninth year after installation, SBE projects that the City will receive annual payments totaling $299,894 over the remaining 17 year lifespan of the panels. Staff recognizes that this projection is based on assumptions that may prove to be inaccurate.

RECOMMENDATION:

Staff is requesting Council authority as follows:

1) For staff to proceed with the preliminary steps necessary to participate in the Idaho Power Pilot Program. This authority will be limited to negotiations and completion of required paperwork but will not include execution of formal contracts with Idaho Power. Staff will bring such contracts to the Council for its approval.

2) For staff to undertake negotiations with SBE to finance the City's participation in the Idaho Power Pilot Program. Staff will bring any proposed contracts with SBE to the Council for its approval.

PROPOSED MOTIONS:

1) "I move that the City Council authorize City staff to take the preliminary steps necessary to participate in Idaho Power's Oregon Solar Photovoltaic Pilot Program."

2) "I move that the City Council authorize City staff to negotiate with SBE, of Hailey, Idaho, to finance the City's participation in Idaho Power's Oregon Solar Photovoltaic Pilot Program."

From: "Larry Sullivan" <sullivan@valelawyers.com>
To: "Tori Barnett" <Tori.Barnett@ontariooregon.org>
CC: "Henry Lawrence" <henry.lawrence@ontariooregon.org>
Date: 10/11/2011 12:20 PM
Subject: FW: Idaho Power Solar FIT application questions
Attachments: Estimated Revenue for City of Ontario.xlsx; Letter of Intent - Solar FIT Contract - City of Ontario (2).DOC

Tori,

Here is the SBE letter of intent and email from SBE explaining their proposal to pay the initial $5,000. I suggest printing up the email, Excel spreadsheet and letter of intent for the Council.

Larry

From: Leif Elgethun [mailto:leif@sitebasedenergy.com]
Sent: Monday, October 10, 2011 1:50 PM
To: Yorick.deTassigny@ontariooregon.org; sullivan@valelawyers.com; 'Paul Conrad'; 'Jonathan riley'; 'Kelsey J. Nunez'
Subject: RE: Idaho Power Solar FIT application questions

SBE would like to address the concerns brought forth by the City of Ontario regarding the proposed terms in the letter of intent. First, we are very aware of the time constraints inherent to Idaho Power's application process due today. SBE has done our best to iron out as many details for this agreement as possible and acknowledge there is a certain degree of risk that both parties are undertaking by completing the application process due today. Our intention is to minimize the risk to both parties, especially the financial risk posed by the $5,000 deposit due today. SBE proposes to pay that deposit today on behalf of the City of Ontario and we are willing to assume the risk of losing that investment if the final terms of the deal do not meet the term laid out in the Letter of Intent, namely that we will hand the project over to the City no later than 8 years from installation date. This puts SBE at risk of losing the $5,000 if we can't perform per our terms and also puts our internal time and expenses at risk if the City is unable to sole source the projects and awards the project to another party. This minimizes the City's risk as they are only at risk if we put together a deal that fits within the terms and the City decides to not enter into a contract to build the projects. Even if the City uses another contractor, they will not lose this funds as the deposit is refundable upon project completion. We are confident that we will develop this project that is beneficial to the City and that we can produce the project in a manner that brings long term revenue to the City. Currently, we predict the project to bring approximately $188,400 to the city through the first 15 years of operation when it will be under contract with Idaho Power and $299,900 over the 25 year life span of the system (see attached spreadsheet for breakdown). These costs include all O&M and major equipment replacement. The equipment also can be expected to last up to 40 years, so these estimates are conservative for the lifetime benefit to the City.

It was also brought to our attention that provision 10, Ownership of the Contracted System, does not specifically spell out the terms of transferring the system to the City. It is our intention to either donate the system in its entirety or sell it to the City for $1, dependent on the legal requirements for property transfer at that time. It was not our intention to make this provision vague and the language will reflect the maximum purchase price of $1 in the final agreement.

We would like to set up a conference call here shortly to review these notes as well as any other concerns you may have. I don't have Henry's email so please forward this to him as well.

Leif Elgethun, PE, LEED AP
C: 208.301.2293
F: 888.330.8602
leif@sitebasedenergy.com

cid:3393927964_931816
www.sitebasedenergy.com <http://www.sitebasedenergy.com/>
P.O. BOX 3432
21 Comet Lane
Hailey, ID 83333
O: 208.928.7583

IDAHO POWER.
An IDACORP Company

Oregon Solar Photovoltaic Pilot Program

Overview, Instructions and Process

In 2009, the Oregon Legislative Assembly passed legislation to encourage the development and use of solar energy. ORS 757.365 (2009), as amended by House Bill 3690 (2010), mandates the development of pilot programs for each electric company to demonstrate the use and effectiveness of volumetric incentive rates (VIRs) and payments for electricity delivered by solar photovoltaic (SPV) systems.

Idaho Power is subject to this mandate and has established the Idaho Power Oregon Solar Photovoltaic Pilot Program. Idaho Power Oregon Schedule 88 specifies the specific details of this program. This schedule and other details of this program can be viewed on our website at www.idahopower.com/oregonsolar.

Under the program, Idaho Power will offer VIR rates established by the Oregon Public Utility Commission (OPUC) for residential SPV systems that meet the eligibility requirements and that have a nameplate capacity of less than or equal to 10 kW.

The next capacity reservation period of this program will begin October 3, 2011 and offer approximately 300 kW of SPV capacity.

Capacity reservation applications will be accepted via the web based application process no earlier than 8:00 am MDT of the opening date of the capacity reservation period (October 3, 2011) and only until the offered SPV capacity has been fully subscribed. Customers will be accepted into this program on a first come first served basis. Any unallocated SPV capacity shall be made available to customers until March 31, 2015.

Information regarding the Idaho Power Oregon SPV Pilot Program is available on Idaho Power Company's website at www.idahopower.com/oregonsolar. The website provides general information on the program and provides links to all applicable documents including:

- Idaho Power Company's Oregon Schedule 88
- The Capacity Reservation/Interconnection Application form (online form)
- The standard Energy Sales Agreement established under this pilot program

IDAHO POWER.
An IDACORP Company

Customer Application Process

1. Customer reviews the program information, application forms, program requirements detailed in Idaho Power's Oregon Schedule 88, and the Energy Sales Agreement.

    a. Contact Idaho Power with any questions:

        - Send E-mail inquiries to: Oregonsolar@idahopower.com
        - Idaho Power, Oregon Solar dedicated phone number – (208)388-5933

2. Applicant completes the **Capacity Reservation/Interconnection Application** located at www.idahopower.com/oregonsolar and submits this Application electronically via the web.

    a. This Application will be available to applicants beginning at 8:00 a.m. (MDT) on October 3, 2011.

    b. Applications will **only** be accepted through the online application process. Please note - These forms will only be accepted after all **required** fields have been completed.

3. After electronically submitting the Capacity Reservation/Interconnection Application, the Applicant will receive an email from Idaho Power Company.

    a. The email confirmation will be sent to the email address provided by the Applicant on the Capacity Reservation/Interconnection Application form.

    b. The email confirmation will include a signature line, information regarding the Capacity Reservation/Interconnection Application fee and mailing instructions for return of this information to Idaho Power.

        - Application fee – an Application fee of $20 per kW of the planned installed Nameplate Capacity (DC) or $500, whichever is larger, is required.

4. Within seven (7) business days from the date of the confirmation email, the applicant must deliver or mail a signed copy of the confirmation email and the Capacity Reservation Application fee to Idaho Power.

IDAHO POWER.
An IDACORP Company

Hand delivery or overnight delivery
Idaho Power Company
Attn: Oregon Solar Program
1221 W Idaho
Boise, ID 83703

U.S. Mail delivery
Idaho Power Company
Attn: Oregon Solar Program
P O Box 70
Boise, ID 83707

The Oregon SPV Pilot Program capacity reservations are awarded on a first-come, first-served basis. Online submittal of the Capacity Reservation/Interconnection Application form establishes the Applicant's initial position in the allocation of the capacity reservations available. This position in the capacity reservation allocation process will be based upon the precise date and time the Capacity Reservation/Interconnection Application is submitted online.

However, if the additional and complete information specified in item 4 above is not received by Idaho Power with the seven (7) business days of the electronically submitted Capacity Reservation/Interconnection Application, the Applicant's position in the capacity reservation allocation process will be forfeited, and any Applicant fees that have been submitted will be returned to the Applicant.

a. Corrections to an incomplete application received prior to the end of the 7 day period identified above will be accepted. Idaho Power recommends that the Applicant submit this additional information as early as possible so that Idaho Power and the Applicant can cooperate to resolve any incomplete information prior to this 7 day period expiring. If the application is found to be incomplete after the end of this 7 day period, the Applicant's position in the capacity reservation allocation process will be forfeited, and any fees that have been submitted will be returned to the Applicant.

Application fee – an Application fee of $20 per kW or of the planned installed Nameplate Capacity (DC) or $500, whichever is larger, is required at the time of completing the Application. This Application fee will be refunded to the Applicant if the Applicant is not awarded a Capacity Reservation or the Applicant is awarded a Capacity Reservation and the Eligible System becomes operational. This Application fee will not be refunded if the Applicant is awarded a Capacity Reservation fee and the Eligible System does not become operational within 12 months of the date the Capacity Reservation is awarded.

5. Within fifteen (15) business days after receipt of the completed information as specified in item 4, Idaho Power Company will notify the Applicant regarding the status of their application:

a. If an applicant is awarded a Capacity Reservation, a package of documents including Idaho Power Schedule 88 and a draft copy of an Energy Sales Agreement for the Applicant's proposed system will be forwarded to the applicant.

b. If the applicant is not awarded a Capacity Reservation, a letter detailing the reasons and the Capacity Reservation Application fee will be returned to the Customer.

6. To retain the awarded Capacity Reservation, an Applicant must:

   a. Complete all requirements for interconnection. Application Part B must be completed within 60 days of the Capacity Reservation.

   b. Energy Sales Agreement

      - Provide all information required to complete an Energy Sales Agreement.
      - Execute and return a completed Energy Sales Agreement no later than 30 days prior to the project beginning generation.

   c. Complete installation and construction of the Eligible System within 12 months of the date the Capacity Reservation was awarded.

   d. Complete and maintain all requirements specified within the executed Energy Sales Agreement and the associated Schedule 88.

Interconnection Process

Upon receipt of the complete Capacity Reservation/Interconnection Application the interconnection information will be submitted to the Idaho Power interconnection group for inclusion in the standard small net metering interconnection process.

1. Capacity Reservation/Interconnection Application will be reviewed and the Applicant will be notified of any deficiencies.

   a. The Interconnection process will not begin until the Applicant has resolved all deficiencies identified in the Capacity Reservation/Interconnection Application.

b. The Applicant will be notified in approximately 10 business days of any interconnection requirements.

2. Upon the Applicant's acceptance of the interconnection requirements, costs and associated payments, if any, Idaho Power will arrange for any equipment and coordinate the installation of the Idaho Power interconnection and metering equipment.

    a. As specified by the Energy Sales Agreement and Schedule 88, a dedicated, Idaho Power supplied meter is required to be installed at a location specified by Idaho Power and placed between the customer's existing meter and the inverter.

    b. In addition, automated electronically transmitted meter data is required to be provided from the customer's usage and Eligible System's generation meter.

    c. The customer is responsible for all cost, if any, of interconnection except the cost of the actual meters and telemetry equipment.

    d. In addition to the routine interconnection and metering equipment, the customer will be required to install a disconnect switch as specified in Schedule 88.

    e. Throughout the construction and installation of the customer's eligible system and the Idaho Power interconnection and meter installation process, the customer and Idaho Power will coordinate the construction and installation to accommodate both parties' schedules whenever possible.

    f. A final electrical inspection is required from the State or local jurisdiction after system installation and before Idaho Power can complete Idaho Power's final review of the system and install the generation meter.

3. Upon completion of this final state or local inspection, the customer shall contact Idaho Power and request Idaho Power to complete its final review of the Eligible System.

    a. If other state or local code requires additional inspections, only after those inspections are complete shall Idaho Power conduct its final review of the Eligible System.

4. Upon completion of final state and local required inspections of customer's Eligible System and installation of any Idaho Power interconnection equipment, the customer

shall contact the Company and request a final review by Idaho Power. This review will be conducted on site and will include:

a. Documentation of the final electrical inspection from the State of Oregon or the local jurisdiction.

b. Review of the Eligible system components to ensure they are in compliance with the Energy Sales Agreement and that the nameplate ratings and installation is consistent with what the participant specified in the Capacity Reservation/Interconnection Application.

c. Operating the system disconnect to ensure system disconnection and timed out reconnection for UL1741 compliance.

d. Inspection of Idaho Power owned equipment for changes and upgrades that may have been required and documentation of all system parts.

5. After completion of a successful review by Idaho Power;

a. Arrangements will be made with the customer to install the Idaho Power meter dedicated to the Eligible System.

b. The customer will be advised that the interconnection is complete and upon receipt of an Operation Date as specified with the Energy Sales Agreement the Eligible System may begin generation operations.

Energy Sales Agreement

A copy of the standard Energy Sales Agreement will be available for review at www.idahopower.com/oregonsolar. In addition, a copy of the Energy Sales Agreement will be provided to the customer at the time the customer is awarded a Capacity Reservation.

1. Execution of the Energy Sales Agreement may occur:

a. Any time after the customer has been awarded a Capacity Reservation, and;

b. When the customer has supplied all information required to complete the Energy Sales agreement and has requested a final Energy Sales Agreement be completed, and;

c. No later than 30 days prior to the Operation Date

2. Only after both parties have executed an Energy Sales Agreement and the customer has completed the requirements within the Energy Sales Agreement may the customer begin operations of the Eligible System.

3. The executed Energy Sales Agreement will specify the ongoing terms and conditions applicable to an Eligible System, including but not limited to: Term, VIR, and Payment process and calculation of generation eligible for payment.

   a. Calculation of generation eligible for Payment – at the end of the customer's monthly electrical billing period both the Eligible System generation meter and the customer's standard electrical usage meter will be read by Idaho Power and the kWhs of generation ("Generation") and the kWhs of consumption ("Consumption") shall be calculated.

      i. Only Generation not exceeding Consumption shall be eligible for payment under this program.

         For example – Consumption equals 1,500 kWh
         Generation equals 2,000 kWh

         Eligible System generation eligible for payment equals: 1,500 kWh

      ii. If the month's Generation exceeds the Consumption, then the excess Generation will be carried forward to the next month's billing period and will be available for payment only if the Consumption for that billing period exceeds the Generation in that same billing period.

      iii. If the month's Consumption exceeds the Generation then the excess Consumption <u>will not</u> be carried forward to the next billing period and will not be available to be used in the calculation of Generation eligible for payment under this program.

      iv. At the end of each annual period of this Agreement, any excess Generation accumulated over that annual period will be forfeited by the Participant and Idaho Power shall donate this excess Generation to a low income energy assistance program.

site based energy

21 Comet Lane
P.O. Box 3432
Hailey, ID 83333
208.928.7583
sitebasedenergy.com

DRAFT
10/10/2011

Date: October 7, 2011

AGREEMENT:
Idaho Power Solar PV Pilot Program

PARTIES:
Developer: Site Based Energy LLC ("Developer")
Program Applicant/Participant: City of Ontario ("Program Participant")

In consideration of the mutual covenants and conditions contained herein and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Developer and Program Participant (collectively, the "Parties") hereby agree as follows:

1. Purpose of Agreement. Pursuant to the requirements of Idaho Power Company's ("Idaho Power") Oregon Solar Photovoltaic Pilot Program ("Program"), only eligible Idaho Power customers can apply for the Program and execute an energy sales agreement pursuant to the Program with Idaho Power ("Eligible Participants"). The Contracted System must be constructed on the property of the Eligible Participant. The Program permits Eligible Participants to contract with third parties on the design, finance, procurement, construction, operation, and maintenance of the Contracted System and to assign the payments due to Eligible Participants under the Program to Qualified Assignees. This purpose of this Agreement is to set forth the understanding of the Parties to minimize future differences, promote the Parties' interests, and secure the Parties' interests by imposing the following restrictions and obligations and establishing the preliminary terms and conditions of the Parties' shared role in applying for and implementing the Program. The Parties intend for this Agreement to be binding and enforceable and acknowledge that further agreements will be necessary to effectuate this Agreement and complete Program implementation, including without limitation a lease agreement and an assignment agreement ("Related Agreements").

2. Summary of Program Implementation. Program implementation will proceed in the following stages. The initial stage was completion of Part A of the Capacity Reservation/Interconnection Application Process on October 3, 2011 ("Capacity Reservation Stage"). Within sixty (60) days of successful completion of the Capacity Reservation Stage, Part B of the Capacity Reservation/Interconnection Application Process must be completed ("Interconnection Application Stage"). In the event that both the Capacity Reservation Stage and Interconnection Application Stage (collectively, the "Application Process") are successful and Program Participant becomes an Eligible Participant under the Program, the design, finance, procurement, construction, operation, and maintenance of the Contracted System will proceed, pursuant to the terms and conditions generally described herein and the details of which will be further agreed upon by the Parties in the Related Agreements prior to the expiration of the Interconnection Application Stage.

3. Exclusivity of Agreement. Program Participant agrees that while Developer is engaged in Program implementation as provided in this Agreement and the Related Agreements, Program Participant will not purchase, lease or otherwise acquire any assets or equipment necessary for the Constructed System other than as contemplated herein or enter into any agreement similar to this Agreement with any other party.

4. Good Faith Requirement. Parties agree to implement this Agreement and negotiate and implement the Related Agreements in good faith and in a commercially reasonable manner.

5. Completion of Application Process.

5.1. Shared Responsibility. Pursuant to the Program requirements, Program Participant is responsible for completing the Application Process. Developer agrees to assist Program Participant with preparing the application materials and completing the Application Process in accordance with the Program requirements. Program Participant authorizes Developer to serve as the primary contact with the Oregon Public Utilities Commission ("OPUC") and Idaho Power during the Application Process, to communicate information to OPUC and Idaho Power, and to deliver or provide all necessary information and execute any necessary documents on behalf of Program Participant.

5.2. Reimbursement of Application Fee. If Developer pays the Five Hundred Dollar ($500) Application Fee associated with the Application Process on behalf of Program Participant, Program Participant shall reimburse Developer for such payment through the terms of the Related Documents, as discussed herein; provided that if Program Participant fails to enter into such Related Documents, acts in bad faith, fails to complete the Application Process, or fails to execute the energy sales agreement discussed in Section 6 below, Program Participant shall reimburse Developer for the Application Fee in cash within five (5) days of the date established for completion of the Application Process. Notwithstanding any other provision in this Agreement, Parties agree that this Section 5.2 is binding and enforceable on the Parties and shall survive the termination of this Agreement.

6. Execution of Energy Sales Agreement. Upon successful completion of the Application Process, Program Participant agrees to execute Idaho Power's standard 15-year energy sales agreement pursuant to the requirements of the Program. Execution of such energy sales agreement shall be a condition of the lease agreement, discussed herein, and failure to execute such energy sales agreement shall constitute an event of default in the lease agreement.

7. Lease of Program Participant's Property to Developer. Program Participant agrees to lease a portion of Program Participant's property to Developer to design, finance, procure, install, construct, operate, and maintain the Contracted System on behalf of Program Participant for the purpose of the Program on commercially reasonable terms agreed to by the Parties. Parties agree to negotiate the terms of such lease agreement in good faith and execute such lease agreement prior to completion of the Application Stage.

8. Construction, Operation, and Maintenance of Contracted System. The terms of the lease agreement discussed in Section 7 above shall provide that Developer agrees to design, finance, procure, install, construct, operate, and maintain the Contracted System to ensure the Contracted System complies with the Program requirements and is capable of producing the electricity required by the Program requirements, up on commercially reasonable terms agreed to by the Parties, and that Parties agree to cooperate to ensure compliance with all local, state and federal laws related to the Contracted System.

8.

9. Assignment of Payments. OPUC Order No. 11-280 (July 29, 2011) established the Volumetric Incentive Rate for Eligible Customers with Contracted Systems at $ 0.317/kWh. The Program allows Eligible Participants to assign the Volumetric Incentive Payments under the Program to a Qualifying Assignee. Parties intend that this Agreement and the Related Agreements will establish a relationship between Developer and Program Participant such that Developer is a Qualifying Assignee. Parties agree to negotiate in good faith and pursuant to commercially reasonable terms agreed to by the Parties an assignment agreement assigning all or a portion of the Volumetric Incentive Payments to Developer in exchange for Developer's investment and services related to the Contracted System and to execute such assignment agreement prior to the completion of the Application Process.

10. Ownership of the Contracted System. Parties agree that Developer will own the Contracted System and that, upon completion of the Developer's financing obligations related to the Contracted System, Parties shall ~~may, but are not required to,~~ negotiate and execute a purchase and sale agreement upon commercially reasonable terms agreed to by the Parties for the sale of the Contracted System from Developer to Program Participant. Developer intends to complete its financing obligations within approximately eight (8) years, although Parties agree that such time frame is subject to variation depending upon market conditions and unforeseen circumstances.

11. Post-Conveyance Operation and Maintenance. In the event that Developer conveys all or a portion of the Contracted System to Program Participant, Parties may, but are not required to, negotiate and execute an operation and maintenance agreement upon commercially reasonable terms agreed to by the Parties whereby Developer continues to operate and maintain the Contracted System for the purposes of the Program or any other lawful purpose.

12. Property Tax. Oregon Revised Statute § 307.175(1) states, "Property equipped with solar . . . energy systems for the purpose of . . . generating electrical energy shall be exempt from ad valorem taxation in an amount that equals any positive amount obtained by subtracting the real market value of the property as if it were not equipped with such systems, from the real market value of the property so equipped." To the extent that this exemption changes or any additional ad valorem taxes are assessed related to the value of the Contracted System, such taxes shall be paid by Program Participant.

13. Federal Tax Benefits and Financial Incentives. Program Participant agrees that all Federal tax benefits and financial incentives available for the Contracted System, including but not limited to the U.S. Treasury Grant, the Investment Tax Credit, and the Production Tax Credit, shall belong to Developer to the extent permitted by law. Program Participant agrees to execute any and all documentation necessary to assist Developer in taking advantage of such tax benefits and financial incentives.

14. Renewable Energy Certificates. Pursuant to the Program requirements, Idaho Power is entitled to any renewable energy certificates (a.k.a. renewable energy certificates, green tags, green certificates, and RECs) generated by the Contracted System. In the event that this Program requirement changes, Parties agree to negotiate in good faith the ownership of such any renewable energy certificates generated by the Contracted System.

15. Compliance with Program Requirements. Parties intend for this Agreement and the Related Agreements to comply with the Program Requirements and agree to take any further action necessary to remain in compliance.

16. Insurance. Parties agree to comply with the Program requirements for insurance coverage.

17. Defined Terms. All capitalized terms not defined in this Agreement are given the meaning of such terms contained in Idaho Power's Schedule 88.

18. Miscellaneous.

    18.1. Idaho law. The provisions of this Agreement shall be governed in all respects by and construed in accordance with the laws of the state of Idaho, without regard to the conflict of law provisions.

    18.2. Binding effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, custodians, administrators, successors and permitted assigns.

18.3. Assignment. Developer may transfer or assign some or all of its interests in this Agreement and future agreements contemplated by this Agreement. Developer shall provide Program Participant with prompt, written notification at the time of such transfer or assignment.

18.4. Notices. All notices under this Agreement shall be in writing and shall be effective upon personal delivery, facsimile with receipt, overnight delivery service, or if sent by first class mail, postage prepaid addressed to the address herein of the Party to whom the notice is being given.

If to Developer:

Site Based Energy LLC
21 Comet Lane
Hailey, ID 83333
Fax: 208-928-7584

If to Program Participant:

City of Ontario
[~physical address and fax number]

18.5. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect in any jurisdiction, the validity, legality, and enforceability of such provision or provisions shall not in any way be affected or impaired thereby in any other jurisdiction and the validity, legality and enforceability of the other provisions contained herein shall not in any way be affected or impaired thereby.

18.6. Effect of Waiver. The failure or delay of either Party in exercising any rights granted hereunder shall not constitute a waiver of any such right and any single or partial exercise of any particular right by either Party shall not exhaust the same or constitute a waiver of any other right provided herein.

18.7. Modifications and Amendments. This Agreement may be modified or amended only by a written document signed by the Parties.

[*signature page follows*]

IN WITNESS WHEREOF, this Agreement is executed by Developer and Program Participant as of the date first written above.

Site Based Energy LLC

By: Paul Conrad- President

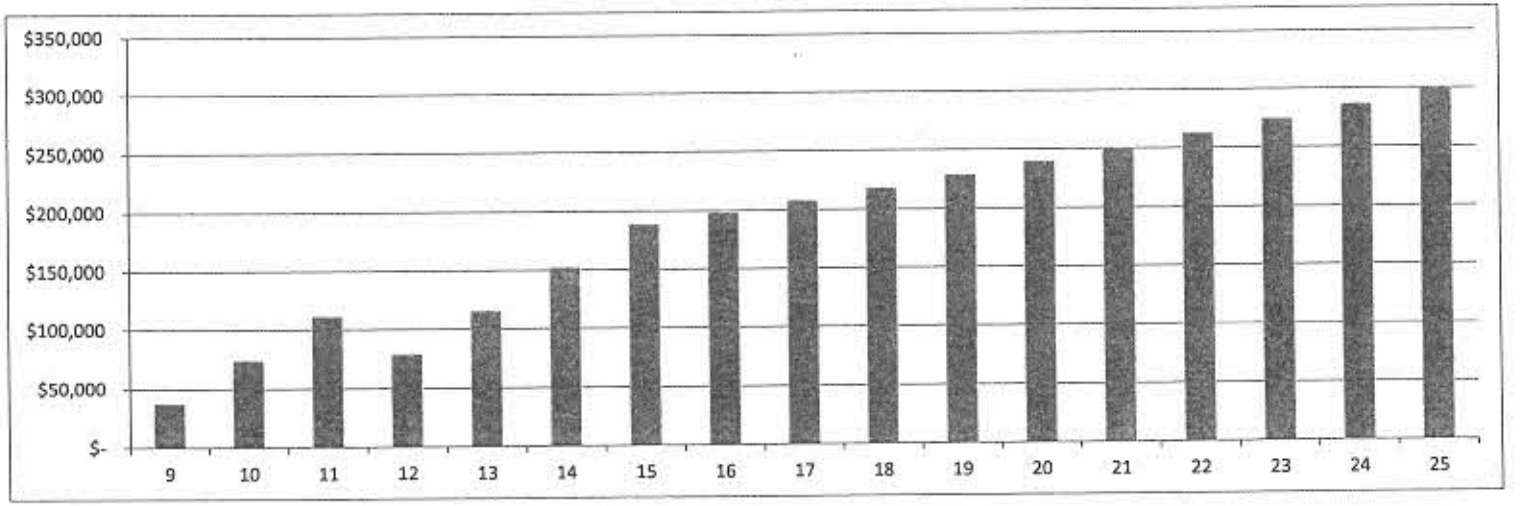
Program Participant

By:

State Lic.RCE # 30676
Western Community Insurance General Liability # 8D027604

City Of Hailey Business License # 1419

Cash Flow in Year	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
O & M Cost	(500)	(500)	(500)	(70000)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)
Energy Revenue from FIT	$ 38,270	$ 37,983	$ 37,698	$ 37,415	$ 37,135	$ 36,856	$ 36,580										
Net Metering (@ 3% annual utility cost increase)								$ 10,142	$ 10,406	$ 10,718	$ 11,040	$ 11,371	$ 11,712	$ 12,063	$ 12,425	$ 12,798	$ 13,281
Net Annual Cash Flow	$ 37,770	$ 37,483	$ 37,198	$ (32,585)	$ 36,635	$ 36,356	$ 36,080	$ 9,642	$ 9,906	$ 10,218	$ 10,540	$ 10,871	$ 11,212	$ 11,563	$ 11,925	$ 12,298	$ 12,782
Cumulative Cash Flow	**$ 37,770**	**$ 75,253**	**$ 112,451**	**$ 79,867**	**$ 116,502**	**$ 152,858**	**$ 188,938**	**$ 198,580**	**$ 208,485**	**$ 218,704**	**$ 229,243**	**$ 240,114**	**$ 251,326**	**$ 262,889**	**$ 274,815**	**$ 287,113**	**$ 299,894**



OREGON SOLAR PHOTOVOLTAIC

PILOT PROGRAM

ENERGY SALES AGREEMENT

BETWEEN

IDAHO POWER COMPANY

AND

TABLE OF CONTENTS

Article	TITLE
1	Definitions
2	Term and Operation Date
3	Certifications and Warranties
4	Obligations of the Parties
5	Volumetric Incentive Rates
6	Renewable Energy Certificates
7	Interconnection
8	Temporary Disconnection
9	Participant's Additional Cooperation
10	Metering
11	Billings, Computations, and Payments
12	Defaults and Remedies
13	Indemnification and Liability
14	Insurance
15	Force Majeure
16	Assignments
17	Disputes
18	Miscellaneous
19	Entire Agreement
20	Notices

Exhibit A Eligible System Description
Exhibit B Payee and/or Assignee Information
Exhibit C Example - VIR Payment Calculation

OREGON SOLAR PHOTOVOLTAIC
PILOT PROGRAM
ENERGY SALES AGREEMENT

Project Name: _____

Project Number: _____

THIS AGREEMENT is entered into on this ____day of _____ 20__ between _____ (Participant), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

RECITALS:

WHEREAS, the Participant intends to maintain at their premises a solar photovoltaic energy system that meets the eligibility requirements of Oregon Administrative Rule ("OAR") 860-084-120. ("Eligible System")

WHEREAS, the specific location and additional details of the Eligible System are specified in Exhibit A.

WHEREAS, Participant certifies:

a. The Eligible System will be permanently installed at the Participant's address, in the State of Oregon, at which the Participant receives retail electric service from Idaho Power.

b. No investor in the Eligible System has accepted or will accept incentives from the Energy Trust of Oregon or Oregon state residential or business tax credits for the Qualifying System covered by this Agreement.

c. The Eligible System and its individual components are new and have not been previously installed, and meet quality, reliability, and installation criteria approved by the Commission.

d. The Eligible System is the only solar photovoltaic system on the Participant's premises that is being used to offset the Participant's electrical energy consumption and/or delivering energy to Idaho Power.

e. The sum of the Nameplate Capacity of all solar panels comprising the Eligible System shall be less than or equal to 10 kW, and in compliance with OAR 860-084-0100 (2) (e), the Eligible System will be sized so that the estimated annual energy generation (kWh) shall not exceed 90 percent of the three year (or less) rolling average of the usage at the premises at which the Eligible System will be installed. If less than one year of usage history is available, three year's usage of a similarly situated customer may be used, as determined by Idaho Power.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and the appendices attached hereto, the following terms shall have the following meanings:

1.1 "**Applicant**" means an Idaho Power customer that has submitted an application to participate in the Idaho Power Oregon Solar Photovoltaic Pilot Program but has not yet executed an Energy Sales Agreement.

1.2 "**Contract Year**" means the period commencing each calendar year on the same calendar date as the Operation Date and for one calendar year thereafter.

1.3 "**Commission**" means the Public Utility Commission of Oregon.

1.4 "**Effective Date**" shall have the meaning set forth in Section 2.1.

1.5 "**Eligible Generation**" means the Eligible System's metered generation, net of system requirements that was generated during the applicable customer billing period.

1.6 "**Eligible System**" shall have the meaning set forth in the Recitals.

1.7 "**Excess Generation**" (kWh) means the Eligible Generation in excess of the Participant's retail electricity consumption at the same location during the same billing period. Excess Generation calculated in one billing period shall be carried forward to the next billing period and will be available for use in calculating the Eligible Generation for the next billing period but only during that Generation Year.

1.8 "**Expiration Date**" shall have the meaning set forth in Section 2.3.

1.9 "**Generation Interconnection Process**" means Idaho Power's generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards.

1.10 "**Generation Year**" means the period ending _____ *(month end calendar date)* or each year of the term of this Agreement. By default this date shall be March 31 unless another date is provided by the Participant at the time this Agreement is executed.

1.11 "**Interconnection Facilities**" means facilities and equipment installed in order to accommodate the interconnection of the Eligible System.

1.12 "**Nameplate Capacity**" means the DC capacity rating of a specific piece of equipment as specified by the manufacturer (measured in watts) or if the manufacturer's specification is not readily available it shall be the maximum rated output of a solar photovoltaic system, measured at an irradiance level of 1,000 watts per square meter (W/m^2), with reference air mass 1.5 solar spectral irradiance distribution and cell or module junction temperature of 25°C.

1.13 "**Nameplate Capacity$_{AC}$**" means 85% of the Nameplate Capacity.

1.14 "**Operation Date**" means the date that the Eligible System and the Interconnection Facilities are deemed by Idaho Power to be fully operational and able to begin

operations in a safe and reliable manner. The Operation Date shall be established as specified in Section 2.3

1.15 "**Payable Generation**" means Eligible Generation (kWh) during a billing period plus any previous month's Excess Generation (if any), up to Participant's actual retail usage (kWh) for the same billing period.

1.16 "**Program Year**" means the period ending March 31 or each year of the term of this Agreement.

1.17 "**Qualified Assignee**" means a person to whom Participant may assign Volumetric Incentive Rate payments. Idaho Power or its affiliate or any other regulated utility is not a qualifying assignee. Qualifying Assignees include, but are not limited to:

(a) A lender providing up front financing to Participant,

(b) A company or individual who enters into a financial agreement with Participant to own and operate the Eligible System on behalf of Participant in return for compensation,

(c) A company or individual who contracts with Participant to locate the Eligible System on property owned by Participant, or

(d) Any entity identified by Participant to receive payments that Idaho Power is obligated to pay to Participant.

1.18 "**Renewable Energy Certificates**" is defined in Section 6.

1.19 "**Reservation Start Date**" means the date customer secured a capacity reservation under Idaho Power's Oregon Solar Photovoltaic Pilot Program.

1.20 "**Solar Photovoltaic Pilot Program**" or "**Pilot**" means the Commission's implementation of ORS 757.365 (2009) (as amended by House Bill 3690(2010)) via the Solar Photovoltaic Pilot Program Rules, including any subsequent revisions thereto.

1.21 "**Solar Photovoltaic Pilot Program Rules**", or "**Rules**", means Oregon Administrative Rules ("OAR") Chapter 860, Division 84 and related Commission orders interpreting or augmenting the Rules.

1.22 "**Solar Photovoltaic Pilot Program Application**" means the application form to be completed by Participant. This application will be available on the Idaho Power website at www.idahopower.com and must be completed and submitted online to establish a position in the capacity reservation allocation process.

1.23 "**Volumetric Incentive Rate**" means the incentive price paid by Idaho Power for Eligible Generation set forth in Schedule 88 in effect as of the Reservation Start Date so long as the Participant completes all requirements to maintain the Reservation Start Date.

ARTICLE II: TERM AND OPERATION DATE

2.1 This Agreement shall become effective after execution by both Parties ("Effective Date").

2.2 Except as otherwise provided herein, this Agreement shall expire at midnight exactly 15 years after the Operation Date ("Expiration Date").

2.3 Operation Date – Upon completion of the Interconnection Process as specified in Article VII and completion of construction and installation of the Eligible System, the Participant shall supply Idaho Power written confirmation that all permits, inspections and information as required by this Agreement, the Generation Interconnection Process, Schedule 88 and any other agencies having jurisdiction over the Eligible System have been completed and is therefore requesting an Operation Date be granted by Idaho Power. Upon receiving this request, Idaho Power will review the provided documentation and will provide written confirmation to the Participant either establishing the Operation Date or providing details as to why an Operation Date cannot be established.

ARTICLE III: CERTIFICATIONS AND WARRANTIES

Participant certifies and warrants to Idaho Power that:

3.1 The information provided by the Participant in the Participant's Idaho Power Oregon Solar Photovoltaic Pilot Program Application, the Interconnection Application (Part A and

Part B) is accurate, to the best of Participant's knowledge.

3.2 Participant's Eligible System is and shall for the term of this Agreement continue to be an Eligible System under OAR 860-084-120.

3.3 The Eligible System complies with siting, design, interconnection, installation, and electric output standards and codes required by the laws of Oregon, to the best of Participant's knowledge.

3.4 The Eligible System meets quality, reliability, and system installation requirements established by the Commission. (*See* OAR 860-084-0240(2) (e) (B); OAR 860-084-0120).

3.5 Participant (and any subsequent owner of the Eligible System) will have a retail electricity customer account with Idaho Power at the same location of this Eligible System during the full term of this Agreement.

3.6 Participant will notify Idaho Power within 30 days of any material changes to the Eligible System.

ARTICLE IV: OBLIGATIONS OF THE PARTIES

4.1 The Parties' performance of this Agreement is subject to the requirements set forth herein and subject to the requirements of Idaho Power's Schedule 88 tariff, as may be amended from time to time. In the event that the provisions of this Agreement conflict with the Oregon Solar Photovoltaic Pilot Program Rules or the Idaho Power tariff, the Commission's rules and Idaho Power's tariffs shall take precedence in that order.

4.2 Payable Generation. Commencing on the Operation Date, unless otherwise provided herein, Idaho Power will pay the Participant for Payable Generation from the Eligible System based upon the rates and calculations contained within this Agreement.

4.3 Excess Generation. At the end of each Generation Year, Participant shall forfeit accumulated Excess Generation, if any, and Idaho Power shall make a corresponding donation to Idaho Power's low-income energy assistance program at the Average

Monthly Retail Rate in effect at the time of the transfer. Idaho Power may retain for its benefit any Renewable Energy Certificates associated with Excess Generation.

ARTICLE V: VOLUMETRIC INCENTIVE RATES

5.1 Idaho Power shall pay Participant the Participant's Volumetric Incentive Rate ("VIR") as set forth in Idaho Power's Schedule 88 tariff for all Payable Generation. The Participant will continue to be responsible for full payment of all retail customer charges.

ARTICLE VI: RENEWABLE ENERGY CERTIFICATES

6.1 Idaho Power shall own all the Renewable Energy Certificates associated with the Eligible System and Participant shall reasonably cooperate as needed to help Idaho Power perfect its ownership thereof. Renewable Energy Certificates or "RECs" mean all right, title and interest in and to Environmental Attributes, plus the REC Reporting Rights. "Environmental Attributes" means any and all credits, benefits, claims, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of the Specified Energy by the Resource and the delivery of the Specified Energy to the electricity grid, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the "CAMD"), but specifically excluding only (i) the wind production tax credits, if any, and (ii) matters designated by Idaho Power as sources of

liability or adverse wildlife or environmental impacts. "REC Reporting Rights" means the right to report to any agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international or foreign emissions trading program, exclusive ownership of the Environmental Attributes. "Specified Energy" means the number of megawatt-hours of electrical energy generated or to be generated by the Eligible System within the vintage period. One REC represents the Environmental Attributes attributable to the generation of 1 MWh of Specified Energy by the Eligible System and the delivery thereof to the electricity grid (except as otherwise allowed by state law or Commission rule, e.g. under Oregon HB 3690).

ARTICLE VII: INTERCONNECTION

7.1 At the time the Applicant submits an application requesting a capacity reservation in the Idaho Power Oregon Solar Pilot Program, the Applicant must also submit a complete Interconnection Application - Part A.

7.2 Within two months of the Reservation Start Date, the Applicant must submit a complete Interconnection Application - Part B to Idaho Power.

7.3 Failure to submit either parts of the Interconnection Application within the time frames specified above will result in either a capacity reservation not being granted to the Applicant and/or a previously granted capacity allocation being terminated.

7.4 Upon receipt, Idaho Power will evaluate the complete Interconnection Application (Part A and Part B) in accordance with OAR 860-084-0260, 860-084-0270 and 860-084-0280 and the Idaho Power established Generation Interconnection Process.

7.5 The Participant shall be responsible for all interconnection costs (if any) identified in this Generation Interconnection Process, except for the cost of the additional meter and automated telemetry system required under this program. These interconnection costs must be paid by the Participant as specified in the Generation Interconnection Process.

7.6 If, upon receipt and review of the Generation Interconnection Process results (i.e. required equipment and costs) the Participant elects not to move forward with the completion of this Eligible System, this Agreement may be terminated upon written notice from the Participant. This option to terminate shall expire at the time the Participant accepts the interconnection results and elects to continue development of this Eligible System.

7.7 Access. As provided in the Solar Photovoltaic Pilot Program Rules, Participant shall provide Idaho Power access to any required disconnect switch at the Eligible System at all times. Idaho Power will provide reasonable notice to Participant when possible prior to using its right of access. Additionally, both the retail meter and the Eligible System metering shall be located as specified by Idaho Power and Idaho Power shall have access to these meters at any time.

ARTICLE VIII: TEMPORARY DISCONNECTION

8.1 Idaho Power or Participant may temporarily disconnect the Eligible System from Idaho Power's system for so long as reasonably necessary in the event one or more of the following conditions or events occurs:

8.1.1 Emergency conditions. Idaho Power or Participant may immediately and temporarily disconnect the Eligible System in the event of an emergency.

8.1.2 Scheduled maintenance, repair or construction. Idaho Power or the Participant may disconnect the Eligible System during maintenance of the Eligible System or Idaho Power's electrical system.

8.1.3 Likelihood of harm to other customers. Idaho Power may disconnect the Eligible Facility if it will likely cause disruption or deterioration of service to other customers, or if operating the Eligible System could cause damage to Idaho Power's electrical system. In such event, Idaho Power shall

provide the Participant supporting documentation used to reach the decision to disconnect the Eligible Facility upon the Participant's request.

8.1.4 Unauthorized modifications. Idaho Power may disconnect the Eligible Facility if the Participant makes any change to the Eligible System, other than minor equipment modifications, without prior written authorization of Idaho Power.

8.1.5 Nonconformance with this Agreement. Idaho Power may disconnect the Eligible System if it determines that the Eligible System is noncompliant with this Agreement, the Rules or its tariffs.

8.2 If the Eligible System must be physically disconnected for any reason, and Idaho Power is unable to operate the manual disconnect dedicated to the Eligible System, Idaho Power may disconnect all electrical services to the premises where the Eligible System is located.

8.3 The Parties shall cooperate with each other to restore the Eligible System, Interconnection Facilities, and Idaho Power's system to their normal operating state as soon as reasonably practicable following any disconnection pursuant to this Section 8.

ARTICLE IX: PARTICIPANT'S ADDITIONAL COOPERATION

9.1 Agreement to Release Information. Participant hereby agrees to allow Idaho Power to release information concerning its participation in the Solar Photovoltaic Pilot Program, including lists of all Participants in the Pilot to the Oregon Department of Revenue, the Oregon Department of Energy, the Commission and the Energy Trust of Oregon ("ETO"). Idaho Power shall use reasonable efforts to pursue appropriate confidentiality terms with the above agencies and organizations. As required by OAR 860-084-0240 (1) (f), Idaho Power shall provide descriptions of the confidentiality requirements that those receiving this information must follow.

9.2 Agreement to Participate in Surveys. Participant hereby agrees to complete up to three

surveys on the effectiveness of the Pilot program in order to remain eligible for participation in the Pilot. Information to be provided may include, but is not limited to: understanding the various factors contributing to participation in the program; understanding decision processes used to choose between the volumetric incentive rate solar program and the existing net-metering solar program; and satisfaction with and recommendations for improving the Pilot program processes. Participant agrees that Idaho Power may release information concerning Participant obtained from the surveys to the Commission and the ETO. If Participant does not participate in surveys as required hereby, Idaho Power may cease making payments hereunder until such time as such surveys are completed.

ARTICLE X: METERING

10 .1 Idaho Power shall install, own and maintain, at its sole expense but subject to Section 10.4, a meter in addition to the Participant's existing consumption meter. This additional meter will be dedicated to record the generation from the Eligible System in accordance with OAR 860-084-0280.

10.2 Participant shall provide, at its sole expense, adequate facilities, including, but not limited to, a current transformer enclosure (if required), meter socket(s) and junction box, for the installation of the meter and associated equipment. Participant hereby consents to the installation and operation by Idaho Power and at Idaho Power's expense, of one or more additional meters to monitor the flow of electricity in each direction. Such meters shall be located on the premises of Participant and at a location specified by Idaho Power.

10.3 Idaho Power may periodically inspect, test, repair and replace its metering equipment. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate

measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) billing periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

10.4 Monthly Meter Charge. In accordance with Commission Order No. 10-198, Participant shall pay a $10 monthly meter fee for the term of this Agreement.

ARTICLE XI: BILLINGS, COMPUTATIONS AND PAYMENTS

11.1 On or before the forty-fifth (45th) day following the end of the Participant's billing period, Idaho Power shall send to the Participant or a Qualifying Assignee payment for Participant's Payable Generation, together with computations supporting such payment. The Participant shall elect one of the following payment options upon execution of this Agreement and may change this payment option only within 5 business days of the end of each Contract Year and only after written notice is received by Idaho Power.

☐ Option 1 - Payments will be paid directly to the Participant or a Qualifying Assignee as designated by the Participant and the Participant will continue to receive a standard monthly bill for electricity purchased and other standard charges as specified by the applicable tariff.

☐ Option 2 - Payments under this Agreement will be netted against the Participant's standard monthly bill for electricity purchased and other standard charges as specified by the applicable tariff and the Participant shall be responsible to pay any resulting amounts due as indicated on the billing.

A sample of these payment calculations is attached in Exhibit C.

11.2 The Participant may assign the Payment as calculated in Option 1 to a single Qualifying

Assignee and this assignee may be changed by the Participant at any time. Idaho Power shall charge the Participant a $25 fee to process the Participant's requested change in assignees.

11.3 Prior to Idaho Power making any payments as specified within this Agreement the Participant must provide the payment information as specified within Exhibit B and a completed IRS Form W-9.

11.3.1 This information must be provided no later than 30 days prior to the Participant's Eligible System being assigned an Operation Date, and;

11.3.2 At any time the Participant assigns the payments to a different party than the party currently receiving the payments, and;

11.3.3 At any time the Participant wishes to revise any payee information previously provided.

Upon receipt of the payee information specified in Exhibit B, Idaho Power will provide the Participant with the IRS Form W-9 or it successor.

11.4 Idaho Power may deduct from any Participant's Payable Generation payment, amounts owing and delinquent more than 45 days on Participant's monthly utility bill or owing under this Agreement.

11.5 Corrections. Idaho Power shall have the right to adjust any payment made pursuant to Section 11.1. If Idaho Power determines an adjustment is required, Idaho Power shall provide written documentation to the Participant.

ARTICLE XII: DEFAULTS AND REMEDIES

12.1 Events of Default. The following events shall constitute defaults under this Agreement:

12.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement or breach by a Party of a representation or warranty set forth in this Agreement.

12.1.2 Non-delivery. The Eligible System's failure to generate any energy during any

12-month period shall constitute a default.

12.1.3 Participant is found by the Commission to have made a false certification hereunder.

12.2 Notice; Opportunity to Cure. For a default under Section 12.1.1, a defaulting Party shall have sixty (60) days to cure after receipt of written notice from the non-defaulting Party. If the default is not capable of cure within the 60-day period, the defaulting Party must begin to cure the default within twenty (20) calendar days after receipt of the written default notice, and must continuously and diligently complete the cure within six (6) months of the receipt of the notice.

12.3 Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party. Upon termination, the Eligible System will be disconnected at Participant's expense. The termination of this Agreement will not relieve either Party of its liabilities and obligations, owed or continuing at the time of termination. In the event this Agreement is terminated because of Participant's default, neither Participant nor the Eligible System shall be eligible, at any location in Oregon, for subsequent volumetric incentive rates, other feed-in tariffs, or pilot programs prior to the Expiration Date. The non-defaulting Party may contest a termination by seeking dispute resolution with the Commission within 30 days of termination, else termination shall be final. The provisions of this Section 12.3 shall survive termination or expiration of this Agreement.

12.4 This Agreement shall terminate automatically if the Eligible System has not achieved an Operation Date within twelve (12) months of the Reservation Start Date.

ARTICLE XIII: INDEMNIFICATION AND LIABILITY

13.1 Indemnities

13.1.1 Indemnity by Participant - Participant shall release, indemnify and hold harmless

Idaho Power, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy generated by the Participant's Eligible System under this Agreement, (b) any facilities on Participant's side of the Participant's retail consumption meter, (c) Participant's operation and/or maintenance of the Eligible System, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to Idaho Power, Participant or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Idaho Power, its directors, officers, employees, agents or representatives.

13.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Idaho Power as an independent public utility corporation or Participant as an independent individual or entity.

13.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY,

STATUTE OR OTHERWISE.

ARTICLE XIV: INSURANCE

14.1 Certificates. Prior to connection of the Eligible System to Idaho Power's electric system, Participant shall secure and continuously carry insurance in compliance with the requirements of this Section 14. Participant shall provide Idaho Power insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Participant's compliance with the insurance requirements hereunder.

14.2 Required Policies and Coverages. During the term of this Agreement, the Participant shall secure and continuously carry the following insurance coverage:

14.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to $1,000,000, each occurrence, combined single limit.

14.2.2 The above insurance coverage shall be placed with an insurance company with an A.M. Best Company rating of A- or better and shall include a provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

ARTICLE XV: FORCE MAJEURE

15.1 As used in this Agreement, a Force Majeure Event shall mean "any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or wrongdoing.

15.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event ("Affected Party") shall

promptly notify the other Party of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, the expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance, and if the initial notification was verbal, it should be promptly followed up with a written notification. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Interconnection Appendix (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be reasonably mitigated. The Affected Party will use reasonable efforts to resume its performance as soon as possible. The Parties shall immediately report to the Commission should a Force Majeure Event prevent performance of any non-waivable obligations required by Commission rules.

ARTICLE XVI: ASSIGNMENT

16.1 This Agreement may be assigned to an Idaho Power retail consumer that is residing at the same address where the Eligible System is installed and said consumer is eligible to participate in this program.

ARTICLE XVII: DISPUTES

17.1 Nothing in this Agreement shall restrict or enlarge the rights of any Party to file a complaint with the Commission under relevant provisions of the Commission's rules.

ARTICLE XVIII: MISCELLANEOUS

18.1 Amendment. The Parties may amend this Agreement only by a written instrument duly executed by both Parties in accordance with the provisions of the applicable Commission rules and Orders, or by the Commission for good cause shown.

18.2 No Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, or where permitted, their successors in interest or their assigns.

18.3 Counterparts. This Agreement may be executed in one or more counterparts, whether electronically or otherwise, and each counterpart shall have the same force and effect as an original Agreement and as if all the Parties had signed the same document.

18.4 No Partnership. This Agreement will not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.5 Severability. If any provision or portion of this Agreement shall for any reason by held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of the Agreement shall remain in full force and effect.

18.6 Several Obligations. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Participant includes two or more parties, each such party shall be jointly and severally liable for Participant's obligations under this Agreement.

18.7 Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

18.8 Subcontractors. Nothing in this Agreement shall prevent a Party from using the services of any subcontractor, or designating a third-party agent as one responsible for a specific obligation or act required in the Agreement (collectively subcontractors), as it deems appropriate to perform its obligations under the Agreement; provided, however, that each Party will require its subcontractors to comply with all applicable terms and conditions of the Agreement in providing such services and each Party will remain primarily liable to the other Party for the performance of the subcontractor.

18.8.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made. Any applicable obligation imposed by the Agreement upon the hiring Party shall be equally binding upon, and will be construed as having application to, any subcontractor of such Party.

18.8.2 The obligations under this Section will not be limited in any way by any limitation of a subcontractor's insurance.

ARTICLE XIX: ENTIRE AGREEMENT

19.1 This Agreement (including all Exhibits and Appendices, and attachments thereto) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding Idaho Power's purchase of Payable Generation from the Eligible System.

ARTICLE XX: NOTICES

20.1 All written notices under this Agreement shall be directed as follows and shall be considered delivered when deposited in the U. S. Mail, first-class postage prepaid, as follows:

To Participant: _____
_____
_____

To Idaho Power:

Oregon Solar Photovoltaic Pilot Program
Idaho Power Company
P. O. Box 70
Boise, Idaho 83707

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 22. Payee and/or Qualified Assignee changes shall be provided as specified in Article 11 and Exhibit B and submitted to the Idaho Power notification address as specified in section 20.1 above.

IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed in their respective names on the dates set forth below:

Idaho Power Company _____

By _____ By _____

Date _____ Date _____

"Idaho Power" "Participant"

EXHIBIT A

PROJECT NO. _____

Eligible System Name: _____

Eligible System Description

All information required by this Exhibit must be provided prior to Idaho Power establishing an Operation Date for this Eligible System.

A-1 DESCRIPTION OF ELIGIBLE SYSTEM

Nameplate Capacity: _____ Total Installed Cost: _____

Photovoltaic Module Cost: _____ Total Financing Cost: _____

Federal Tax Credit: _____

Financing Term: (including fees paid, loan term, and interest rate secured):
_____

Non-photovoltaic Module Cost (including inverters, other hardware, labor, overhead and regulatory compliance cost): _____

Building Integrated, Stationary Rack mounted or Tracking System Installation:
_____

Crystalline Silicon or Thin Film: _____

Expected In Service Date: _____

Expected Annual Energy Output: _____

Customer Retail Electrical Service Class: _____

Additional Description: _____
_____

EXHIBIT A (Continued)

A-2 PARTICIPANT'S ADDRESS WHERE ELIGIBLE SYSTEM IS PERMANANTLY INSTALLED:

Street: _____

Address: _____

City: _____ State: _____ Zip: _____

GPS Coordinates: _____

A-3 NAME AND ADDRESS OF SOLAR INSTALLER OR CONTRACTOR

Business Name: _____

Contact: _____

Street: _____

Address: _____

City: _____ State: _____ Zip: _____

A-4 NAME AND ADDRESS OF QUALIFING SYSTEM FINANCIER

Business Name: _____

Contact: _____

Street: _____

Address: _____

City: _____ State: _____ Zip: _____

EXHIBIT B

PROJECT NO. _____

Eligible System Name: _____

Payee and/or Assignee Information

This information must be provided prior to Idaho Power making any payments to the Participant or a Qualified Assignee identified by the Participant.

At any time during the term of this Agreement, if the Participant wishes to change the payment information as previously provided, the new payment information must be provided on this form.

Payee Name: _____

Payee Address: _____

Payee City: State: Zip:

Yes No Is the above designated Payee a party a different party then the Participant?

Yes No Is the above designated Payee a Qualifying Assignee as defined within this Agreement?

If Yes, please provide information that validates the Qualifying Assignee's qualifications:

_____

The information provided above is true and accurate.

Participant's Name: _____
(Please print – must be the Participant to this Agreement)

Participant's Signature:_____ Date:_____

EXHIBIT C

PROJECT NO.

Eligible System Name:

Example - VIR Payment Calculation

	Customer Usage	Current Standard Customer Base Rate	Current Monthly Charge
Service Charge	1	$8.00	**$8.00**
Energy Charge			
0-300 kWh	300	$0.057970	$17.39
All kWh over 300	1,700	$0.071601	$121.72
Total	2,000 kWh		**$139.11**
		Total Base Charges	**$147.11**
Additional Charges			
EE Rider	$147.11	3.00%	$4.41
PSA	2,000 kWh	$0.002848	$5.70
APCU	2,000 kWh	$0.004585	$9.17
Oregon Solar Investment	$147.11	1.50%	$2.21
	Total Customer Monthly Bill		**$168.60**
Less: Volumetric Incentive Net Metering Credit			
	Measured Generation	Average Retail Rate	
	1,000 kWh	$0.069556	($69.56)
	Customer Billing		**$99.04**

EXHIBIT C (Continued)

Average Retail Rate Calculation

Total Energy Charges	$139.11
Total Consumption	2,000 kWh
Average Retail Rate	**$0.069556**

Volumetric Payment Calculation

	Use	Current Standard Customer Base Rate	Current Monthly Charge
Meter Charge	1	$10.00	**$10.00**
Volumetric Incentive Rate (VIR)		$0.550000	(per Schedule 88)
Less: Average Retail Rate		$0.069556	
Applicable VIR		$0.480444	

Eligible System Generation Payment

	Measured Generation 1,000 kWh	$0.480444	$480.44
	Total VIR Payment to the Customer		**$470.44**

AGENDA REPORT
October 17, 2011

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: **ORDINANCE NO. 2663-2011, AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS, AND DECLARING AN EMERGENCY (FIRST READING)**

DATE: October 11, 2011

SUMMARY:
Attached are the following documents:

- Ordinance 2663-2011
- LS Networks Application for Telecommunications Franchise

This ordinance is a telecommunications franchise agreement with Lightspeed Networks, Inc., dba LS Networks.

PREVIOUS COUNCIL ACTION:
None.

BACKGROUND:
LS Networks is an Oregon corporation duly registered with the Oregon PUC as a telecommunications carrier. It has a contract with the State of Oregon to connect the existing fiber optic network in Ontario to SRCI.

The proposed franchise agreement follows the same format as other telecommunications franchise agreements that the City Council has recently approved, including a provision for a franchise fee of 7% of gross revenues for local service rendered subscribers within City limits. In this case, there are no subscribers within the City limits. This franchise agreement will not result in the payment of any franchise fee to the City until LS Networks acquires such subscribers.

LS Networks has requested that the franchise ordinance be enacted with an emergency clause, for the following reasons stated in an email from company president Michael Weidman:

> The Department of Corrections has an urgent need to have high speed fiber installed into the Snake River Prison facility in Ontario Oregon. The need is necessitated by an application that is critical to the establishment of a state wide prison management system and in support of the Oregon Correction Enterprises call center within the prison. LS Networks has been asked to provide services in a compressed timeframe that does not allow for standard intervals in permitting, construction and franchising. LS Networks has been fortunate in working with the power company and construction crews in expediting the process for engineering and construction work and is asking the City of Ontario for consideration in expediting the franchising process.

If the Ordinance is enacted with an emergency clause after a second reading, it will be effective on the date of the second reading on November 7, 2011, rather than on after the standard thirty day waiting period on December 7, 2011.

RECOMMENDATION:
Staff recommends the Council approve a first reading of Ordinance No. 2663-2011.

PROPOSED MOTION:
I move that the Mayor and City Council approve Ordinance No. 2663-2011, **AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC.THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS, AND DECLARING AN EMERGENCY**, on First Reading by Title Only.

ORDINANCE NO. 2663-2011

AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC. THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS AND DECLARING AN EMERGENCY

WHEREAS, Lightspeed Networks, Inc., dba LS Networks, an Oregon corporation (hereinafter "PROVIDER") desires to provide broadband transmission services within the City of Ontario, Oregon (hereinafter "CITY") and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of CITY; and

WHEREAS, Chapter 2 of Title 3 of the Ontario City Code governs the application and review process for Telecommunication Franchises in CITY; and

WHEREAS, CITY, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive Franchise to operate a telecommunications network in CITY.

WHEREAS, PROVIDER has a contract with the State of Oregon to connect fiber optic cable from within the City limits to the Snake River Correctional Institution for the establishment of a call center.

WHEREAS, An emergency is hereby declared for enactment of this Ordinance, in order to allow PROVIDER'S contract to be completed on an expedited basis as requested by the State of Oregon.

NOW THEREFORE, The Common Council for the City Of Ontario ordains as follows:

SECTION 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 **Agreement.** Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.

1.2 **Ordinance.** Chapter 2 of Title 3 of the Ontario City Code (hereinafter the "Telecommunications Code") is attached to this Agreement as Exhibit "A" and incorporated herein by reference. PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Code. The parties agree that the provisions and requirements of the Telecommunications Code are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Code. The definitions in the Telecommunications Code shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require PROVIDER to comply with any provision of the Telecommunications Code which is determined to be unlawful or beyond CITY's authority.

1.3 **Ordinance Amendments.** CITY reserves the right to amend the Telecommunications Code at any time. CITY shall give PROVIDER notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between PROVIDER's rights and obligations under the Telecommunications Code as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, PROVIDER agrees to comply with any such amendments.

1.4 **Franchise Description.** The Telecommunications Franchise provided hereby shall confer upon PROVIDER the nonexclusive right, privilege, and Franchise to construct and maintain a telecommunications network in, upon, under, above and across the present and future public Rights-of-Way in CITY. Such poles, wires and other appliances and conductors comprising the telecommunications network may be strung upon poles or other fixtures above ground, or at the option of PROVIDER, may be laid underground, and such other apparatus may be used as may be necessary or property to operate and maintain the same. The Franchise does not grant to PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude PROVIDER from (1) permitting those with a cable Franchise who are lawfully engaged in such business to utilize PROVIDER's System within CITY for such purposes, or (2) from providing such service in the future if an appropriate Franchise is obtained and all other legal requirements have been satisfied.

1.5 **Licenses.** PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Code.

1.6 **Registration.** PROVIDER acknowledges and agrees that, as part of this Agreement, PROVIDER must file written registration with CITY, pursuant to the Telecommunications Code. Said registration is attached as Exhibit "B" and incorporated herein by reference.

1.7 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

SECTION 2. FRANCHISE FEE.

2.1 **Franchise Fee.**

(a) For the Franchise granted herein, PROVIDER shall pay to CITY a franchise fee of 7% per annum of its Gross Revenues for local service rendered subscribers within CITY limits as defined in ORS 401.710.

(b) All payments shall be made to CITY, and sent as follows, unless PROVIDER is otherwise notified of a change in address in writing by CITY:

City of Ontario
Attn: Finance Department
444 SW 4th Street
Ontario, Oregon 97914

(c) The fee required by this section shall be due and payable within 45 days after the end of each applicable financial quarter.

2.2 **Equal Treatment.** CITY agrees that if any service forming part of the base for calculating the Franchise fee under this Agreement is, or becomes, subject to competition from a third party, CITY will work to impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of CITY. Any such fee imposition will be subject to local, state, and federal rules and regulations.

SECTION 3. TERM.

3.1 **Term.** The Franchise granted to PROVIDER shall be for a period of five (5) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided.

3.2 **Rights of PROVIDER Upon Expiration or Revocation.** Upon expiration of the Franchise granted herein, whether by lapse of time, by agreement between PROVIDER and CITY, or by revocation or forfeiture, PROVIDER shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of PROVIDER, immediately upon such removal, to restore the Rights-of Way from which such System is removed to as good condition as the same was before the removal was effected.

SECTION 4. POLICE POWERS.

CITY expressly reserves, and PROVIDER expressly recognizes, CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

SECTION 5. CHANGING CONDITIONS AND SEVERABILITY.

5.1 **Meet to Confer.** PROVIDER and CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way PROVIDER conducts its business and the way CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, PROVIDER and CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

5.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Code is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for CITY is its ability to collect the Franchise fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement and the Telecommunications Code in Exhibit "A". For PROVIDER, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement and the Telecommunications Code.

SECTION 6. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

6.1 **Grounds for Termination.** CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) PROVIDER fails to make timely payments of the Franchise fee as required under Section 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by CITY of such failure;

(b) PROVIDER, by act or omission fails to comply with requirements set forth in the Telecommunications Code;

(c) PROVIDER, by act or omission, materially violates a material duty herein set forth in any manner particularly within PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving PROVIDER notice of such determination, PROVIDER, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, CITY may declare the Franchise forfeited and this Agreement terminated, and thereupon, PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of PROVIDER; or

(d) PROVIDER becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by PROVIDER within sixty (60) days.

6.2 **Reserved Rights.** Nothing contained herein shall be deemed to preclude PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of CITY. By accepting this Agreement, PROVIDER reserves all rights under the law including, but not limited to, those rights arising under section 253 of the Federal Telecommunications Act and the law of the State of Oregon.

6.3 **Remedies at Law.** In the event PROVIDER or CITY fails to fulfill any of its respective obligations under this Agreement, CITY or PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

6.4 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of CITY and PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

SECTION 7. PARTIES' DESIGNEES.

7.1 **CITY Designee and Address.** The City Manager or his/her designee(s) shall serve as CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Code, all notices from PROVIDER to CITY pursuant to or concerning this Agreement, shall be delivered to CITY's representative at 444 SW 4th Street, Ontario, Oregon, 97914, or such other officer and address as CITY may designate by written notice to PROVIDER.

7.2 **PROVIDER Designee and Address.** The Corporate President or his/her designee(s) shall serve as PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Code, all notices from CITY to PROVIDER pursuant to or concerning this Agreement, shall be delivered to 921 SW Washington St., Suite 370, Portland, OR 97205, or such other office as PROVIDER may designate by written notice to CITY.

7.3 **Failure of Designee.** The failure or omission of CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppel by CITY or PROVIDER.

SECTION 8. INSURANCE AND INDEMNIFICATION

8.1 **Insurance.** Prior to commencing operations in CITY pursuant to this Agreement, PROVIDER shall furnish to CITY evidence that it has adequate general liability and property damage insurance, automobile insurance, worker's compensation insurance, and comprehensive hazards insurance, all as set forth in Telecommunications Code Section 3-2-54 in Exhibit "A" attached hereto. The evidence may consist of a statement that PROVIDER is effectively self-insured if PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the state of Oregon. Any and all insurance, whether purchased by PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to CITY.

8.2 **Performance Bond and Surety.** PROVIDER shall satisfy the performance bond and surety requirements in Section 3-2-23 of the Telecommunications Code in Exhibit "A".

8.3 **Indemnification.** Both parties to this Franchise agree to indemnify and hold the other respective party and its officers, employees, agents and representatives harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the indemnifying party's acts or omissions, actual or alleged, pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred in defense of such claims. The indemnified party shall promptly give written notice to the indemnifying party of any claim, demand, lien, liability, or damage with respect to which the indemnified party seeks indemnification and, unless in the indemnified party's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the indemnified party may permit the indemnifying party to assume the defense of such with counsel of the indemnifying party's choosing, unless the indemnified party reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the indemnified party harmless to the extent any claim, demand, lien, damage, or liability arises solely out of or in connection with negligent acts or omissions of the indemnified party.

SECTION 9. CONSTRUCTION PROVISIONS

9.1 **Construction Permit Fee.** Pursuant to Section 3-2-15 of the Telecommunications Code in Exhibit "A".

9.2 **Oregon Utility Notification.** CITY agrees to locate underground facilities owned and operated by CITY in accordance with Oregon Administrative Rules, in particular section 952-001-0070, entitled "Operators to Mark Underground Facilities or Notify Excavators that None Exist." Furthermore, it is agreed and understood that there are existing sewer service lines that run from the user to CITY's main line that are defined as un-locatable underground facilities pursuant to paragraph 17 of the "Definitions" section 952-001-0010. In these cases, and in CITY's judgment, CITY has no record of location or practical way of locating these sewer service lines. PROVIDER will assume all responsibility for damages to these lines and all damages to property related to damaging these lines by PROVIDER or its agents.

SECTION 10. GENERAL PROVISIONS.

10.1 **Binding Agreement.** The parties represent that (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

10.2 **Governing Law.** This Agreement shall be interpreted pursuant to the provisions of the Constitution and laws of the United States, the State of Oregon, and the ordinances and Charter of the City.

10.3 **Time of Essence.** Time shall be of the essence of this Agreement.

10.4 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

10.6 **Binding on Successors.** This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

10.7 **Confidentiality.** CITY agrees to use its best efforts to preserve the confidentiality of information as requested by PROVIDER, to the extent permitted by the Oregon Public Records Law.

10.8 **Transfer of Franchise.** PROVIDER shall not, directly or indirectly, transfer, assign, or dispose of by sale, lease, merger, consolidation or other act of PROVIDER, ownership or control of a majority interest in the telecommunications system, without the prior consent of CITY, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

10.9 **Emergency; Acceptance of Franchise.** An emergency having been declared for the passage of this ordinance, this ordinance is effective immediately upon final passage. Within 30 days from the effective date of this ordinance, PROVIDER shall file with the City Recorder a written unconditional acceptance of this Franchise and all of its terms and conditions, and if PROVIDER fails to do so, this ordinance shall be void and of no effect.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2011, by the following vote:

AYES:
NAYS:
ABSENT:

APPROVED by the Mayor this ____ day of _____, 2011.

ATTEST:

_____
Joe Dominick, Mayor

_____
Tori Barnett, MMC, City Recorder

ACCEPTANCE BY PROVIDER:

Ordinance No. 2663-2011 is accepted this _____ day of _____, 2011.

LIGHTSPEED NETWORKS, INC.

By: _____
Michael Weidman, President and CEO

ATTEST:

_____
Secretary

Chapter 2 - TELECOMMUNICATIONS

Sections:

Article I. - Purpose and Intent
Article II. - Definitions
Article III. - Registration of Telecommunications Carriers
Article IV. - Construction Standards
Article V. - Location of Telecommunications Facilities
Article VI. - Telecommunications Franchise
Article VII. - General Franchise Terms
Article VIII. - General Provisions

Article I. - Purpose and Intent

3-2-1 - Purpose.
3-2-2 - Jurisdiction and management of the public rights-of-way.
3-2-3 - Regulatory fees and compensation not a tax.

3-2-1 - Purpose.

The purpose and intent of this Chapter is to:

(A) Comply with the provisions of the 1996 Telecommunications Act as they apply to local governments, telecommunications carriers and the services those carriers offer;

(B) Promote competition on a competitively neutral basis in the provision of telecommunications services;

(C) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to businesses institutions and residents of the City;

(D) Permit and manage reasonable access to the public rights-of-way of the City for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of those public rights-of-way held in trust by the City;

(E) Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public rights-of-way are fully compensated by the persons seeking such access and causing such costs;

(F) Secure fair and reasonable compensation to the City and its residents for permitting private use of the public right-of-way;

(G) Assure that all telecommunications carriers providing facilities and/or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City;

(H) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;

(I) Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

(Ord. 2427 § 1, 1999)

3-2-2 - Jurisdiction and management of the public rights-of-way.

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

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

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

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

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

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

(Ord. 2427 § 2, 1999)

3-2-3 - Regulatory fees and compensation not a tax.

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

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

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

(Ord. 2427 § 3, 1999)

Article II. - Definitions

3-2-4 - Definitions.

3-2-4 - 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. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

ABOVEGROUND FACILITIES. See OVERHEAD FACILITIES.

AFFILIATED INTEREST shall have the same meaning as ORS 759.010.

CABLE ACT means the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq., as now and hereafter amended.

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

CITY means the City of Ontario, Malheur County, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

CITY COUNCIL means the governing body of the City of Ontario, Oregon.

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

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

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

facilities.

CONTROL or CONTROLLING INTEREST means actual working control in whatever manner exercised.

DAYS means calendar days unless otherwise specified.

DUCT means a single enclosed raceway for conductors or cable.

EMERGENCY has the meaning provided for in ORS 401.025.

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

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

GRANTEE means the person to which a franchise is granted by the City.

OREGON PUBLIC UTILITIES COMMISSION or OPUC means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.

OVERHEAD or ABOVEGROUND FACILITIES means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

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

PRIVATE TELECOMMUNICATIONS NETWORK means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

PUBLIC RIGHTS-OF-WAY means and includes, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public rights-of-way" shall also include utility easements as defined below.

STATE means the State of Oregon.

TELECOMMUNICATIONS means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TELECOMMUNICATIONS ACT means the Communications Policy Act of 1934, as amended by

subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. Sections 151 et seq.) and as hereafter amended.

TELECOMMUNICATIONS CARRIER means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the City.

TELECOMMUNICATIONS FACILITIES means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.

TELECOMMUNICATIONS SERVICE means two (2) way switched access and transport of voice communications but does not include: (a) services provided by radio common carrier; (b) one-way transmission of television signals; (c) surveying; (d) private telecommunications networks; or (e) communications of the customer which take place on the customer side of on-premises equipment.

TELECOMMUNICATIONS SYSTEM. See TELECOMMUNICATIONS FACILITIES above.

TELECOMMUNICATIONS UTILITY has the same meaning as ORS 759.005(1).

UNDERGROUND FACILITIES means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

USABLE SPACE means all the space on a pole, except the portion below ground level, the twenty feet (20') of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet (6') of a pole is buried below ground level.

UTILITY EASEMENT means any easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

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

(Ord. 2427 § 4, 1999)

Article III. - Registration of Telecommunications Carriers

3-2-5 - Purpose.
3-2-6 - Registration required.
3-2-7 - Registration fee.
3-2-8 - Exceptions to registration.

3-2-5 - Purpose.

The purpose of registration is:

(A) To assure that all telecommunications carriers who have facilities and/or provide services within the City comply with the ordinances, rules and regulations of the City;

(B) To provide the City with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the City, or that own or operate telecommunications facilities within the City;

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

(Ord. 2427 § 5, 1999)

3-2-6 - Registration required.

Except as provided in Section 3-2-8 hereof, all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register. The appropriate application and license from: (a) the Oregon Public Utility Commission (PUC); or (b) the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

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

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

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

(Ord. 2427 § 6, 1999)

3-2-7 - Registration fee.

Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council.

(Ord. 2427 § 7, 1999)

3-2-8 - Exceptions to registration.

The following telecommunications carriers are excepted from registration:

(A) Telecommunications carriers that are owned and operated exclusively for its own use by the State or a political subdivision of this State.

(B) A private telecommunications network, provided that such network does not occupy any public rights-of-way of the City.

(Ord. 2427 § 8, 1999)

Article IV. - Construction Standards

3-2-9 - General.
3-2-10 - Construction codes and standards.
3-2-11 - Construction permits.
3-2-12 - Permit applications.
3-2-13 - Applicant's verification.
3-2-14 - Construction schedule.
3-2-15 - Construction permit fee.
3-2-16 - Issuance of permit.
3-2-17 - Notice of construction.
3-2-18 - Compliance with permit.
3-2-19 - Noncomplying work.
3-2-20 - Completion of construction.
3-2-21 - As-built drawings.
3-2-22 - Restoration of public rights-of-way and City property.
3-2-23 - Performance and completion bond.

3-2-9 - General.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right-of-way except as provided in Sections 3-2-12 through 3-2-28, and with all applicable codes, rules, and regulations.

(Ord. 2427 § 9, 1999)

3-2-10 - Construction codes and standards.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code. All work undertaken pursuant to a permit shall conform to the City's standard specifications and drawings set forth in the Idaho Standards for Public Works Construction and the Development Policy Manual 2002 with amendments thereto, and according to the plans, specifications and construction details approved by the Director, and any other conditions or requirements set forth in the permit, and shall further conform to the following:

A. Qualifications: The permittee shall at all times employ sufficient and qualified personnel and use equipment of sufficient size and in such mechanical condition as is required to properly complete all permitted work within the time frame specified in the permit.

B. Diligence in Prosecution of Work: Unless otherwise specified in the permit, all permitted work shall be diligently pursued to completion and, at a minimum; all trenches shall be worked continuously for eight hours each working day until backfilled. The maximum length of open trench in the street or highway permissible at any time shall be three hundred feet (300') (92m) or as specified by the Director at his discretion.

C. Traffic Control Requirements: During the course of all permitted work, the permittee shall be responsible to provide, erect, and maintain all traffic control devices, including but not limited to

signs, temporary striping, barricades, arrow boards, and lighting, in conformance with the latest edition of the MUTCD and the City's supplemental specifications in effect as of the date of issuance of the permit, or as is necessary to provide for the safety of the public and for the protection of private property as may be required by the Director.

D. Highway Closures: No improved street or highway shall be closed to public use by reason of any permitted work except by the express permission of the Director. Any request for such a closure must be contained in the application for a permit, or if such a closure was not reasonably anticipated at the time the application for permit was made, at least two (2) working days in advance of the proposed closure. During the period of any authorized closure, the permittee shall be responsible for providing such access as is necessary for the passage of any emergency vehicle, equipment or personnel. Prior to initiating any such closure, or commencing any work, which may hinder or delay any emergency vehicle, equipment or personnel, the permittee shall advise all applicable emergency organizations of the location and nature of such closure or work and make any modifications to the proposed closure or work as may be deemed necessary by the emergency organization or the Director. Except when closures have been authorized pursuant to the provisions of this subsection, the permittee shall be responsible for keeping the improved street or highway clear and maintained for public travel.

E. Alignment of Facilities: All facilities to be placed in the street or highway shall be laid, to the extent reasonably possible, in a straight line either parallel to adjacent property lines or perpendicular to the adjacent property lines in order to minimize the risk of damage to any such facility from any future work in the street or highway. The location and depth shall follow City and state standards.

F. Clean Up and Restoration: During the course of the performance of all permitted work, the street or highway shall be maintained reasonably clear of all refuse, rubbish, excess earth, rock, unused material and other debris as may be reasonably ordered by the Director. Upon completion of any permitted work, or when directed by the Director, the permittee shall immediately clean up and remove from the street or highway all refuse, rubbish, excess earth, rock, unused material and other debris of any kind resulting from said work and restore the surface of the street or highway so as to leave the project area in a condition as good as or better than that prior to the commencement of the work, to the reasonable satisfaction of the Director. In the event the permittee fails to do so, any necessary clean up and restoration work may be performed or contracted by the City and the cost thereof charged to the permittee, which cost may be recovered by the City by making claim against the permittee's performance bond posted in accordance with the provisions of Code Section 3-2-23. No refuse, rubbish, excess earth, rock, unused materials or other debris shall be flushed into storm drains nor placed or maintained on a street or highway during the performance of any permitted work in such a manner as to constitute a hazard to the traveling public, pedestrians, or the City. Any such refuse, rubbish, excess earth, rock, unused materials or other debris shall immediately be removed upon the order of the Director.

G. Avoidance of Nuisance: All permitted work shall be conducted and carried out in such manner as to avoid unnecessary inconvenience, annoyance or nuisance to the general public and occupants of neighboring property. Appropriate measures shall be taken to reduce noise, dust, mud and unsightly debris. No tool, appliance, or equipment producing noise of sufficient volume to disturb the peace or repose of occupants of neighboring property shall be used in the performance of any permitted work between the hours of ten o'clock (10:00) P.M. and six o'clock (6:00) A.M., except with the express written permission of the Director, or in the case of an emergency.

H. Street or Highway Cuts: Any pavement, curb, sidewalk or other structure on a street or highway which is removed or damaged during the course of any permitted work shall be restored to its original condition or better. In the event an existing improved street or highway is cut and trenched in the performance of such work, the trench and cut shall be back filled and at least a temporary surface repair provided as follows: 1). For residential streets a temporary patch for a crosscut shall be made within three (3) days, 2). For collector streets a temporary patch for a crosscut shall be made within two (2) days. 3). For arterial streets a temporary patch for a crosscut and long cuts shall be made the same day. Any such cut or trench shall, after the back filling thereof, be restored to a condition suitable for the passage of vehicles, pedestrians or other public uses in such a manner that it will not pose a hazard or cause damage thereto, provided the location and existence of such surface conditions shall be posted with signs in accordance with the provisions of the MUTCD or as otherwise required by the Director. Permanent surface repairs shall be provided within thirty (30) calendar days of opening such cuts, unless otherwise authorized by the Director. During the winter months or during periods of weather conditions which prevent the making of permanent surface repairs to street or highway cut areas, the Director may require that temporary patches or surface repairs be placed as may be necessary to restore the traveled way until such time as permanent repairs can be made. Temporary patches or surface repairs shall be made by the use of any material which is not permeable to water, does not become unstable as a result of the common use of the particular area, provides a surface smoothness consistent with posted vehicle speed, and does not constitute a hazard to the public. Notwithstanding anything contained herein to the contrary, any permanent repair to street or highway cuts parallel to the centerline of an improved street or highway must be restored by a paving machine at the discretion of the Director.

I. Installation of Facilities Under New Street or Highway Surfaces: Notwithstanding anything contained in subparagraph H above to the contrary, where an improved street or highway surface has been in service for five (5) years or less, any facility to be installed thereunder shall be bored and no cutting thereof shall be permitted, except with the written approval of the Director. Any person who is aggrieved by a decision of the Director may take an appeal thereof to the City Council.

J. Drainage Requirements: Provision shall be made for the prompt and proper collection and removal of all surplus water, muck, silt, slurry or other runoff pumped from excavations or resulting from sluicing or other permitted work. All gutters shall be maintained free and unobstructed for the depth of the adjacent curb and for at least one foot away from the face of such curb at the gutter line. Where a gutter crosses an intersecting improved street or highway, an adequate waterway shall be provided and at all times maintained. When no gutter exists, the flow line for natural drainage at the improved street or highway edge shall be maintained during construction and at the completion thereof, restored to its original condition. A settling basin or box with adequate capacity to entrap all silt, sand, muck and other such materials shall be provided during any pumping or excavation activities in which surplus water, muck, silt or other runoff is produced. Best management practices (BMPs) for erosion and sediment control shall be employed at all times.

Other Requirements: The Director may impose such different or additional requirements on any permitted work as may be reasonable under the circumstances. In the performance of any permitted work, permittee shall comply with all applicable laws, ordinances and regulations of any government agency with jurisdiction thereof.

(Ord. 2427 § 10, 1999)

(Ord. No. 2625-2009, § 6, 2-17-09)

3-2-11 - Construction permits.

No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit, and paying the construction permit fee established in Section 3-2-15 of this Chapter. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

A. Unless the telecommunications carrier has first filed a registration statement with the City pursuant to Sections 3-2-5 through 3-2-8 of this Chapter; and if applicable,

B. Unless the telecommunications carrier has first applied for and received a franchise pursuant to Sections 3-2-29 through 3-2-37 of this Chapter.

(Ord. 2427 § 11, 1999)

(Ord. No. 2625-2009, § 7, 2-17-09)

3-2-12 - Permit applications.

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

(A) That the facilities will be constructed in accordance with all applicable codes, rules and regulations;

(B) That the facilities will be constructed in accordance with the franchise agreement;

(C) The location and route of all facilities to be installed aboveground or on existing utility poles;

(D) The location and route of all new facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction;

(E) The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way;

(F) The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

(Ord. 2427 § 12, 1999)

3-2-13 - Applicant's verification.

All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and

regulations.

(Ord. 2427 § 13, 1999)

3-2-14 - Construction schedule.

All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by City public works department.

(Ord. 2427 § 14, 1999)

3-2-15 - Construction permit fee.

Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City Council. Such fees shall be designed to defray the costs of City administration of the requirements of this Chapter.

(Ord. 2427 § 15, 1999)

3-2-16 - Issuance of permit.

If satisfied that the applications, plans and documents submitted comply with all requirements of this Chapter and the franchise agreement, the City public works department shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

(Ord. 2427 § 16, 1999)

3-2-17 - Notice of construction.

Except in the case of an emergency, the permittee shall notify the City public works department not less than two (2) working days in advance of any excavation or construction in the public rights-of-way, and in addition shall call the one-call underground utility locate number for utility locates where excavation will occur.

(Ord. 2427 § 17, 1999)

3-2-18 - Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City public works department and their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

(Ord. 2427 § 18, 1999)

3-2-19 - Noncomplying work.

Subject to the notice requirements in Section 3-2-22, all work which 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 at the sole expense of the permittee.

(Ord. 2427 § 19, 1999)

3-2-20 - Completion of construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the City rights-of-way and other public and private property. All construction work within City rights-of-way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate City official as contemplated by Section 3-2-14 of this Chapter.

(Ord. 2427 § 20, 1999)

(Ord. No. 2625-2009, § 8, 2-17-09)

3-2-21 - As-built drawings.

If requested by the City, the permittee shall furnish the City with two (2) complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or his designee within sixty (60) days after completion of construction, in a hard copy format and in an electronic format mutually acceptable to the permittee and the City.

(Ord. 2427 § 21, 1999)

3-2-22 - Restoration of public rights-of-way and City property.

(A) When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or his designee.

(B) If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the City.

(C) If the permittee fails to restore rights-of-way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after said notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

(D) A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

(Ord. 2427 § 22, 1999)

3-2-23 - Performance and completion bond.

Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of constructing permittee's telecommunications facilities within the public rights-of-way of the City, shall be provided before construction is commenced.

(A) The surety shall remain in full force and effect for a period of one year after the date of completion and acceptance of the work and the acceptance of the condition of the street or highway by the City. This bond shall be waived by the Director for work being done by a licensed contractor or utility company bonded in the State of Oregon for the work being performed.

(B) The surety shall guarantee, to the satisfaction of the City:

1. Timely completion of construction;

2. Construction in compliance with applicable plans, permits, technical codes and standards;

3. Proper location of the facilities as specified by the City;

4. Restoration of the public rights-of-way and other property affected by the construction; and

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

(Ord. 2427 § 23, 1999)

(Ord. No. 2625-2009, § 9, 2-17-09)

Article V. - Location of Telecommunications Facilities

3-2-24 - Location of facilities.
3-2-25 - Interference with the public rights-of-way and other properties.
3-2-26 - Relocation or removal of facilities.
3-2-27 - Removal of unauthorized facilities.
3-2-28 - Coordination of construction activities.

3-2-24 - Location of facilities.

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

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

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

(C) All monuments or property markers set for the purpose of locating or preserving in lines of any street or highway or property adjoining a street or highway, all precise reference points, survey benchmarks, elevation markers, or other similar monuments, points or markers, whether temporary or permanent, shall be protected from damage during the performance of any permitted work. No such monument or marker may be removed, disturbed or destroyed, or caused to be removed, disturbed or destroyed without first obtaining the written permission of the Director. This prohibition does not apply to construction stakes belonging to the utility or agency doing the work. Permission to remove, disturb or destroy any such monuments or markers shall be made upon such conditions as shall be reasonably required by the Director, including but not limited to conditions pertaining to the payment of the expenses incidental to the proper replacement of the marker or monument and the method by which such markers or monuments shall be replaced.

(Ord. 2427 § 24, 1999)

(Ord. No. 2625-2009, § 10, 2-17-09)

3-2-25 - Interference with the public rights-of-way and other properties.

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with City codes, ordinances and regulations as well as the following requirements:

(A) Location of Existing Facilities and Structures: Prior to commencing any permitted work, the permittee shall attempt to notify the owner of any structure or property which may be located in the street or highway in which such work is to be performed, including but not limited to utility companies and similar entities, and the Director in order to determine the location of any conflicting facilities, structures, properties or signalization equipment so as to avoid any damage thereto during the course of performing the work. The permittee is required to notify the local one-call utility locate agency (Dig Line) and request the marking of underground facilities two (2) working days prior to the commencement of the work.

(B) Protection of Existing Facilities and Structures: All existing facilities and structures, including but not limited to pipes, conduits, poles, wires or other apparatus which may in any way be affected by any permitted work shall be protected against damage by support or other necessary means as the owner thereof may reasonably require. In the event any unidentified facilities or other structures are encountered, or facilities or other structures are damaged during the course of performing the work, the permittee shall promptly notify the owner thereof and provide the owner reasonable opportunity to inspect the same and set out the reasonable requirements for the support, protection, and repair if necessary.

(C) Relocation of Existing Facilities: No existing facility or other structure, including but not limited to pipes, conduits, poles, wires or other apparatus, whether owned by the City or any other entity, shall be interfered with or relocated without the express written consent of the owner thereof and

the Director.

(D) Requirement to Protect from Damage: All property adjoining a street or highway in which permitted work is to be performed shall be protected from injury and damage by such measures as may be suitable and necessary for the purpose, including but not limited to the provision of proper foundations. All buildings, walls, fences, or other property likely to be damaged in the course of any permitted work shall be protected by shoring or other such measures suitable and necessary for the purpose. Where, in the protection of such property, it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain the prior written permission of the owner thereof. Any and all costs and expenses of such protective measures shall be borne by the permittee.

(E) Repair and Restoration of Adjoining Property: Any property adjoining a street or highway in which permitted work is to be performed which shall be damaged as a result of any permitted work, shall be repaired and restored to its original condition or better. All permitted work shall be performed in a manner calculated to leave the adjoining property clean of refuse, rubbish, excess earth, rock and other debris, and in a condition as nearly as possible to that which existed prior to the commencement of the permitted work. No trees, shrubs or other landscaping feature or structures shall be removed, even temporarily, without obtaining the prior written consent of the owner thereof. All costs and expenses incurred in the repair or restoration of adjoining property shall be borne by the permittee.

(Ord. 2427 § 25, 1999)

(Ord. No. 2625-2009, § 12, 2-17-09)

3-2-26 - Relocation or removal of facilities.

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

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

(B) The operations of the City or other governmental entity in or upon the public rights-of-way;

(C) The public interest.

(Ord. 2427 § 26, 1999)

3-2-27 - Removal of unauthorized facilities.

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

(A) One year after the expiration or termination of the grantee's telecommunications franchise.

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

(C) If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.

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

(Ord. 2427 § 27, 1999)

3-2-28 - Coordination of construction activities.

All grantees are required to make a good faith effort to cooperate with the City.

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

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

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

(Ord. 2427 § 28, 1999)

Article VI. - Telecommunications Franchise

3-2-29 - Telecommunications franchise.
3-2-30 - Application.
3-2-31 - Application and review fee.
3-2-32 - Determination by the City.
3-2-33 - Rights granted.
3-2-34 - Term of grant.
3-2-35 - Franchise territory.
3-2-36 - Franchise fee.
3-2-37 - Amendment of grant.
3-2-38 - Renewal applications.
3-2-39 - Renewal determinations.
3-2-40 - Obligation to cure as a condition of renewal.
3-2-41 - Assignments or transfers of system or franchise.
3-2-42 - Revocation or termination of franchise.
3-2-43 - Notice and duty to cure.
3-2-44 - Public hearing.
3-2-45 - Standards for revocation or lesser sanctions.
3-2-46 - Other City costs.

3-2-29 - Telecommunications franchise.

A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights-of-way of the City.

(Ord. 2427 § 29, 1999)

3-2-30 - Application.

Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with City finance department which includes the following information:

(A) The identity of the applicant;

(B) A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;

(C) Engineering plans, specifications, and a network map in a form customarily used by the applicant and in a computerized format compatible with Autocad 14, of the facilities located or to be located within the public rights-of-way in the City, including the location and route requested for applicant's proposed telecommunications facilities, all in sufficient detail to identify the location and size of said facilities;

(D) The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;

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

(F) An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

(Ord. 2427 § 30, 1999)

3-2-31 - Application and review fee.

(A) Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.

(B) An application and review fee of two thousand dollars ($2,000.00) shall be deposited with the City as part of the application filed pursuant to Section 3-2-30 above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

(Ord. 2427 § 31, 1999)

3-2-32 - Determination by the City.

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

(Ord. 2427 § 32, 1999)

3-2-33 - Rights granted.

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

(Ord. 2427 § 33, 1999)

3-2-34 - Term of grant.

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

(Ord. 2427 § 34, 1999)

3-2-35 - Franchise territory.

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

(Ord. 2427 § 35, 1999)

3-2-36 - Franchise fee.

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

(Ord. 2427 § 36, 1999)

3-2-37 - Amendment of grant.

Conditions for amending a franchise:

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

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

(C) A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this Chapter.

(Ord. 2427 § 37, 1999)

3-2-38 - Renewal applications.

A grantee that desires to renew its franchise under this Chapter shall, not less than one hundred eighty (180) days before expiration of the current agreement, file an application with the City for renewal of its franchise which shall include the following information:

(A) The information required pursuant to Section 3-2-35 of this Chapter.

(B) Any information required pursuant to the franchise agreement between the City and the grantee.

(Ord. 2427 § 38, 1999)

3-2-39 - Renewal determinations.

Within ninety (90) days after receiving a complete application under Section 3-2-43 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

(A) The financial and technical ability of the applicant.

(B) The legal ability of the applicant.

(C) The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities.

(D) The applicant's compliance with the requirements of this Chapter and the franchise agreement.

(E) Applicable federal, state and local telecommunications laws, rules and policies.

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

(Ord. 2427 § 39, 1999)

3-2-40 - Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

(Ord. 2427 § 40, 1999)

3-2-41 - Assignments or transfers of system or franchise.

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

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

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

(C) Unless otherwise provided in a franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications franchise.

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

(Ord. 2427 § 41, 1999)

3-2-42 - Revocation or termination of franchise.

A franchise to use or occupy public rights-of-way of the City may be revoked for the following reasons:

(A) Construction or operation in the City or in the public rights-of-way of the City without a construction permit.

(B) Construction or operation at an unauthorized location.

(C) Failure to comply with Section 3-2-46 herein with respect to sale, transfer or assignment of a telecommunications system or franchise.

(D) Misrepresentation by or on behalf of a grantee in any application to the City.

(E) Abandonment of telecommunications facilities in the public rights-of-way.

(F) Failure to relocate or remove facilities as required in this Chapter.

(G) Failure to pay taxes, compensation, fees or costs when and as due the City under this Chapter.

(H) Insolvency or bankruptcy of the grantee.

(I) Violation of material provisions of this Chapter.

(J) Violation of the material terms of a franchise agreement.

(Ord. 2427 § 42, 1999)

3-2-43 - Notice and duty to cure.

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

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

(B) Rebuts the alleged violation or noncompliance; and/or

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

(Ord. 2427 § 43, 1999)

3-2-44 - Public hearing.

In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 3-2-43 hereof, the City Manager shall refer the apparent violation or noncompliance to the City Council. The City Council shall provide the grantee with notice and a reasonable oppor tunity to be heard concerning the matter.

(Ord. 2427 § 44, 1999)

3-2-45 - Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with material provisions of this Chapter, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

(A) The misconduct was egregious;

(B) Substantial harm resulted;

(C) The violation was intentional;

(D) There is a history of prior violations of the same or other requirements;

(E) There is a history of overall compliance;

(F) The violation was voluntarily disclosed, admitted or cured.

(Ord. 2427 § 45, 1999)

3-2-46 - Other City costs.

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

(Ord. 2427 § 46, 1999)

Article VII. - General Franchise Terms

3-2-47 - Facilities.
3-2-47A - Maintenance of facilities in nuisance-free condition.
3-2-48 - Damage to grantee's facilities.
3-2-49 - Duty to provide information.
3-2-50 - Service to the City.
3-2-51 - Compensation for City property.
3-2-52 - Cable franchise.
3-2-53 - Leased capacity.
3-2-54 - Grantee insurance.
3-2-55 - General indemnification.
3-2-56 - Performance surety.

3-2-47 - Facilities.

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

(Ord. 2427 § 47, 1999)

3-2-47A - Maintenance of facilities in nuisance-free condition.

Grantees, as owners and persons in charge of telecommunications facilities, including personal property, are subject to and shall comply with the provisions of the Ontario City Code pertaining to nuisance abatement, including but not limited to Sections 7-4-5 and 7-4-6 of the Ontario City Code requiring removal of graffiti. This Ordinance is a material provision of Chapter 2 of Title 3 within the meaning of Section 3-2-42(I).

(Ord. No. 2645-2010, § 1, 6-7-10)

3-2-48 - Damage to grantee's facilities.

Unless directly and proximately caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of-way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

(Ord. 2427 § 48, 1999)

3-2-49 - Duty to provide information.

Within ten (10) business days of a written request from the City, each grantee shall furnish the City with information sufficient to demonstrate:

(A) That grantee has complied with all requirements of this Chapter.

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

(Ord. 2427 § 49, 1999)

3-2-50 - Service to the City.

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

(Ord. 2427 § 50, 1999)

3-2-51 - Compensation for City property.

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

(Ord. 2427 § 51, 1999)

3-2-52 - Cable franchise.

Telecommunication carriers providing cable service shall be subject to the cable franchise requirements set forth by the City.

(Ord. 2427 § 52, 1999)

3-2-53 - Leased capacity.

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

(Ord. 2427 § 53, 1999)

3-2-54 - Grantee insurance.

Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies from a company, rated B++ or better by AM Best, authorized to do business in the State of Oregon and licensed by the Oregon Department of Insurance, evidencing that the applicant has in force and effect policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

(A) Comprehensive general liability insurance with limits not less than:

1. Three million dollars ($3,000,000.00) for bodily injury or death to each person;

2. Three million dollars ($3,000,000.00) for property damage resulting from any one accident; and

3. Three million dollars ($3,000,000.00) for all other types of liability.

(B) Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars ($1,000,000.00) for each person and three million dollars ($3,000,000.00) for each accident.

(C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars ($1,000,000.00).

(D) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000.00).

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

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

(F) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City evidence that the grantee meets requirements of this Section.

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

(Ord. 2427 § 54, 1999)

(Ord. No. 2625-2009, § 12, 2-17-09)

3-2-55 - General indemnification.

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

(Ord. 2427 § 55, 1999)

3-2-56 - Performance surety.

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

to the performance surety required by Section 3-2-28 for construction of facilities.

(Ord. 2427 § 56, 1999)

Article VIII. - General Provisions

3-2-57 - Governing law.
3-2-58 - Written agreement.
3-2-59 - Nonexclusive grant.
3-2-60 - Severability and preemption.
3-2-61 - Penalties.
3-2-62 - Other remedies.
3-2-63 - Captions.
3-2-64 - Compliance with laws.
3-2-65 - Consent.
3-2-66 - Application to existing ordinance and agreements.
3-2-67 - Confidentiality.

3-2-57 - Governing law.

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

(Ord. 2427 § 57, 1999)

3-2-58 - Written agreement.

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

(Ord. 2427 § 58, 1999)

3-2-59 - Nonexclusive grant.

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

(Ord. 2427 § 59, 1999)

3-2-60 - Severability and preemption.

If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the 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, provision, condition, covenant and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event that

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

(Ord. 2427 § 60, 1999)

3-2-61 - Penalties.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs.

(Ord. 2427 § 61, 1999)

3-2-62 - Other remedies.

Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

(Ord. 2427 § 62, 1999)

3-2-63 - Captions.

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

(Ord. 2427 § 63, 1999)

3-2-64 - Compliance with laws.

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

(Ord. 2427 § 64, 1999)

3-2-65 - Consent.

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

(Ord. 2427 § 65, 1999)

3-2-66 - Application to existing ordinance and agreements.

To the extent that this Chapter is not in conflict with and can be implemented with existing ordinance

and franchise agreements, this Chapter shall apply to all existing ordinance and franchise agreements for use of the public right-of-way for telecommunications.

(Ord. 2427 § 66, 1999)

3-2-67 - Confidentiality.

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

(Ord. 2427 § 67, 1999)

ORDER NO. 05-1052

ENTERED 09/26/05

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 1283

In the Matter of	)	
	)	
LIGHTSPEED NETWORKS, INC.	)	ORDER
dba LS NETWORKS	)	
	)	
Application for a Certificate of Authority to	)	
Provide Telecommunications Service in Oregon	)	
and Classification as a Competitive Provider.	)	

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On April 21, 2005, Lightspeed Networks, Inc., (Applicant) filed an application for certification to provide telecommunications service in Oregon as a competitive provider. On May 23, 2005, Applicant filed a "dba" name of LS Networks with the Commission. LS Networks is a registered "dba" with the Secretary of State.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order.

Applicant also proposes to provide interexchange switched service (toll) and non-switched, private line service (dedicated transmission service) statewide in Oregon. Applicant indicates that it intends to construct facilities and operate as a facilities-based provider for intraexchange and interexchange service. Applicant may purchase network elements and finished services for resale only from other certified carriers.

Applicant will not directly provide operator services as defined in OAR 860-032-0001 and will not be an 'operator service provider' as defined in ORS 759.690(1)(d).

The Commission served notice of the application on May 4, 2005. One protest was received on May 23, 2005, from Mr. Guy Alvis. On July 11, 2005, LS Networks filed a Motion to Dismiss the protest. On July 27, 2005, Administrative Law Judge (ALJ) Michael Grant issued a ruling which granted, in part, the motion to dismiss.

The ALJ's ruling dismissed Mr. Alvis' protest except the matter of affiliated interests between LS Networks and Northwest Open Access Network Oregon (NoaNet Oregon). The original application submitted by LS Networks did not list any affiliated interests. However, on July 11, 2005, the Commission received a letter from LS Networks updating the application and stating that there is an affiliated interest between LS Networks and several other certificated companies in Oregon. NoaNet Oregon was not listed as one of the affiliates.

The ALJ's ruling directed the Commission's Staff (Staff) to process the application and issue a proposed order recommending Commission approval or denial of the application. Staff investigated the relationship between LS Networks and NoaNet Oregon to determine whether an affiliated interest does exist between the two companies. In response to a Staff request for information, LS Networks acknowledged that there is an " affiliated interest" between itself and NoaNet Oregon as that term is defined in OAR 860-032-001(1). LS Networks explained the affiliate relationship as follows: "The current shareholder of LS Networks comprise some of the membership of NoaNet Oregon. None of the current LS Networks shareholders, officers or directors serve in the capacity of officer or director of NoaNet Oregon."

As additional background information, LS Networks explained that LS Networks was incorporated by some of the former members of NoaNet Oregon. LS Networks acquired the assets of NoaNet Oregon via a transfer in lieu of a foreclosure on the assets of NoaNet Oregon which served as collateral for a defaulted loan in favor of LS Networks. In addition, NoaNet Oregon currently continues to operate under an agreement whereby LS Networks provides staff and funding in order to provide telecommunications service to customers. Upon issuance of a certificate of authority to LS Networks, NoaNet Oregon will cease providing service and request to have its certificate of authority canceled.

The remaining issue was to determine whether the affiliated interest between the two companies is an impediment to granting a certificate of service to LS Networks. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest.

LS Networks has disclosed its affiliated interest with NoaNet Oregon. There is no evidence based on the affiliation of LS Networks and any other telecommunications provider or otherwise presented, suggesting that LS Networks will

not operate within the bounds of ORS 759.020, and other laws, Commission rules, or Commission orders related to provision of telecommunications in Oregon.

A Proposed Order was issued on July 27, 2005. Exceptions to the Proposed Order were due on August 29, 2005, with Reply Comments due on September 12, 2005. No Exceptions were filed.

Based on the record in this matter, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

Second, ORS 759.050 governs Applicant's request to provide local exchange telecommunications service. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest. In making this determination, the Commission must consider the extent to which services are available from alternative providers, the effect on rates for local exchange service customers, the effect on competition and availability of innovative telecommunications service in the requested service area, and any other facts the Commission considers relevant. *See* Order No. 96-021.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities and cooperative corporations listed in the appendices provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, MCI, Sprint Communications, Qwest Corporation, Verizon Northwest Inc., and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Public Interest

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's findings in Order No. 93-1850 and Order No. 96-021. Based on a review of those findings, as well as information contained in the application, and further Staff investigation, the Commission concludes that it is in the public interest to grant the application of Lightspeed Networks, Inc. dba LS Networks, to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities and cooperative corporations listed in the appendices, as described in the application. Further, it is in the public interest to grant statewide interexchange authority as described in the application. This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Telecommunications Act of 1996 (47 USC § 251, 252) with regard to the telecommunications utilities and cooperative corporations in this docket.

Conditions of the Certificate

In Order No. 96-021, the Commission interpreted ORS 759.050 and established conditions applicable to competitive local exchange carriers. Also, other conditions are listed in administrative rules, including among others OAR 860-032-0007. Applicant, as a competitive provider, shall comply with the conditions adopted in Order No. 96-021, as well as all applicable laws, Commission rules, and orders related to provision of telecommunications service in Oregon.

Per ORS 759.050(2)(c) and Order No. 96-021, Applicant shall comply with the following conditions.

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications providers that have been issued a certificate of authority by the Commission.

2. Applicant shall make quarterly contributions to the Oregon Universal Service fund based on a Commission approved schedule and surcharge percentage assessed on all retail intrastate telecommunications services sold in Oregon, pursuant to ORS 759.425. If Applicant bills the surcharge to its end-users, Applicant shall show the charges as a separate line item on the bill with the words "Oregon Universal Service Surcharge ____%".

3. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to ensure that all users of its services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' Automatic Number Identification telephone

numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point. Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.

4. For purposes of distinguishing between local and toll calling, Applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.

5. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.

6. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is $100. Applicant is required to pay the fee for the preceding calendar year by April 1.

7. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each retail subscriber at a rate that is set annually by the Commission.

Competitive Zones

All exchanges of the telecommunications utilities and cooperative corporations listed in the appendices to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing Flexibility

Dedicated Transmission Service

The telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order. *See* Order No. 93-1850, docket UM 381.

Local Exchange Switched Service

Cooperative telephone companies are generally not regulated by the Commission for local exchange services, and therefore already have pricing flexibility. Any telecommunications utility exempt under ORS 759.040, listed in Appendix A, has pricing flexibility for local exchange service. By Order No. 96-021, at page 82, pursuant to ORS 759.050(5), the Commission established procedures whereby telecommunications utilities would be granted pricing flexibility for local exchange switched services. Qwest has complied with those procedural requirements for all of its exchanges. Verizon has complied with those procedural requirements for forty of its forty-four exchanges.

ORDER

IT IS ORDERED that:

1. The application of Lightspeed Networks, Inc. dba LS Networks, is granted with conditions described in this order.

2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.

3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.

4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B shall be governed by the provisions of the Telecommunications Act of 1996 (the Act). Commission Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or subsequent Commission order.

5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act with regard to the telecommunications utilities and cooperative corporations listed in the appendices to this order.

6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

Made, entered, and effective SEP 2 6 2005.

Lee Sparling
Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

CP 1283

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

CenturyTel of Eastern Oregon, Inc.
CenturyTel of Oregon, Inc.
Qwest Corporation
United Telephone Company of the Northwest, dba Sprint
Verizon Northwest Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Asotin Telephone Company
Cascade Utilities, Inc.
Citizens Telecommunications Company of Oregon
Eagle Telephone System, Inc.
Helix Telephone Company
Home Telephone Company
Malheur Home Telephone Company
Midvale Telephone Exchange
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Company
Oregon Telephone Corporation
Oregon-Idaho Utilities, Inc.
People's Telephone Company
Pine Telephone System, Inc.
Roome Telecommunications, Inc.
Trans-Cascades Telephone Company

APPENDIX B

CP 1283

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Clear Creek Mutual Telephone
Colton Telephone Company
Gervais Telephone Company
Molalla Telephone Company
Monitor Cooperative Telephone Co.
Pioneer Telephone Cooperative
Scio Mutual Telephone Association
St. Paul Cooperative Telephone Association
Stayton Cooperative Telephone Co.

LS Networks
921 SW Washington St., Suite 370
Portland, OR 97205
Tel: 503.294.5300 Fax: 503.227.8585

September 9, 2011

Lisa Hansen
Director of Finance
City of Ontario
444 SW Fourth Street
Ontario, OR 97914

Advance copy via email to lisa.hansen@ontariooregon.org

Subject: Registration as a Telecommunications Carrier and Telecommunications Franchise

Dear Ms. Hansen,

In accordance with the Ontario Municipal Code (the "Code"), pursuant to the subject matters, the following information is provided:

1. The identity of the license applicant is LightSpeed Networks, Inc, dba LS Networks with offices located at 921 SW Washington Street, Suite 370, Portland, Oregon, 97205. LS Networks has no affiliates to be covered by this application.

2. The utility services as defined by the Code to be offered/provided by the applicant are Telecommunications service (data).

3. Approvals for providing Telecommunications service, in general, are evidenced by the following:

Oregon PUC information on the Company is:

LIGHTSPEED NETWORKS INC ID# 8301
dba LS NETWORKS

INDUSTRY: TELECOMMUNICATIONS

921 SW WASHINGTON ST STE 370, PORTLAND OR 97205
(503) 294-5300
Web Site: www.lsnetworks.net

COMPETITIVE PROVIDER
Certificate GRANTED on **9/26/2005** in docket **CP 1283** Order No. **05-1052**

Statewide Local exchange authority.

Statewide Inter Exchange authority: Private Line (point-to-point), Switched (toll)

Federal (FCC) Information on the Company is:

Form 499 Filer ID=825859
Federal Registration Number (FRN) = 0014973705
Service Provider Information Number (SPIN) = 143030188

4. Included herein please find an application check payable to the City in the amount of $2,000.

5. The preliminary scope of work for our first project in the City is:

> LS Networks proposes to place a new POI (Point of Interconnect) vault (dimensions 4'x4'x4') in the south side parkway strip of SW 2nd Ave. approx. 70' east of the SW 2nd Street center line.
>
> From this POI vault, LS Networks plans to bore 120' generally east to a pole riser, and approximately 80' west to a Qwest manhole #118 (from which we then interconnect to our collocation in the Qwest CO).
>
> From the pole riser, LS Networks plans to attach to IPL poles and construct a fiber facility to the Snake River Corrections Institute, with a lateral fiber constructed to the 360 hut.
>
> Ontario engineering reviews for other permitting are in process as are attachment permits with Idaho Power and Light.

It should be noted that the service to Snake River is already contracted with the State of Oregon, in support of the facilities' inmate work programs and for hosting an inmate control system that will be providing service to all other state prisons.

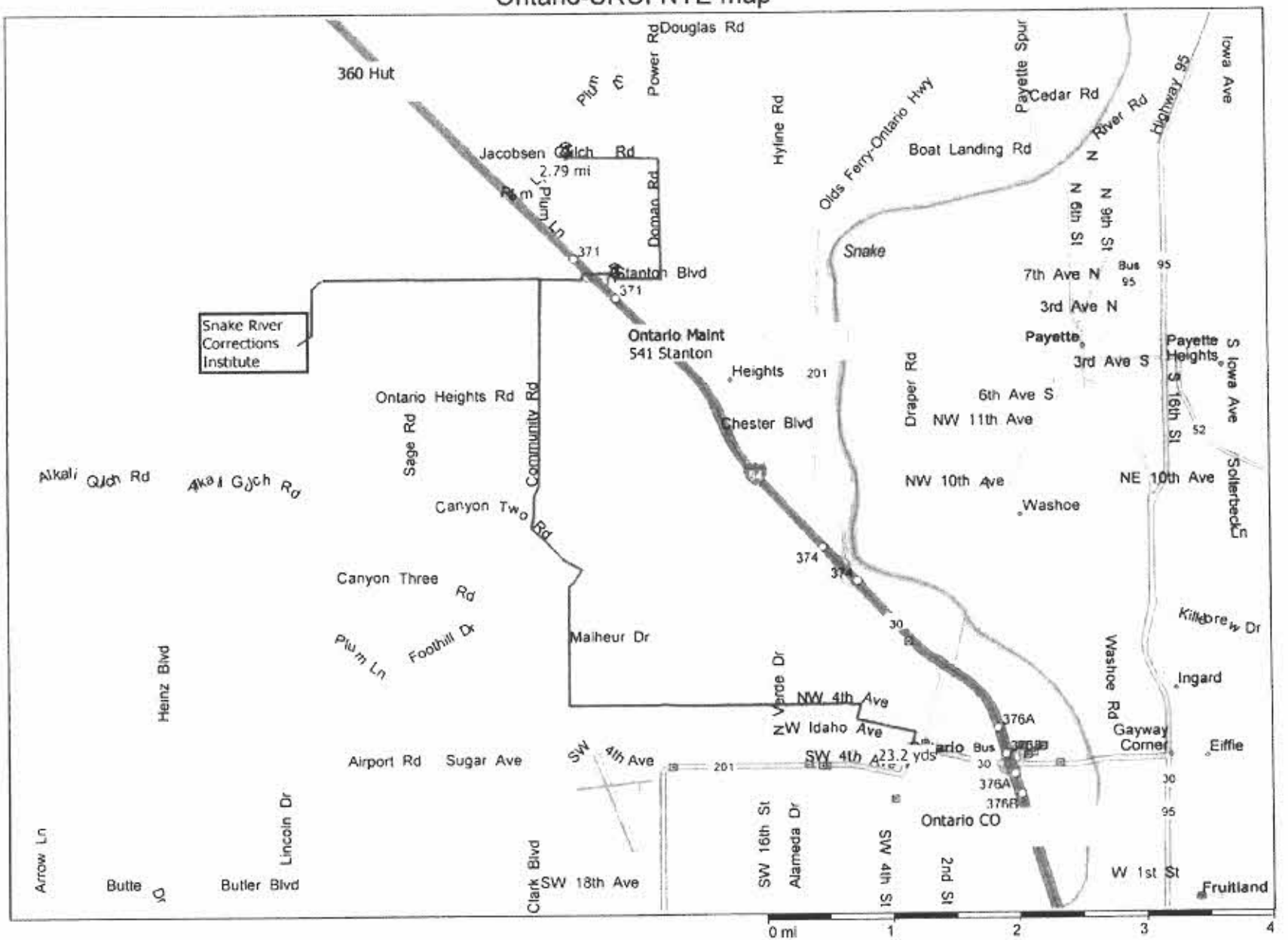
There is quite a sense of urgency for this project, so I would like to thank you in advance for any assistance you may be able to provide to expedite the City's processes.

The enclosures graphically depict this scope of work. Please let me know what questions you may have, and how I may be able to assist you with the processing of this request for registration as a telecommunications carrier, and a request for a franchise agreement.

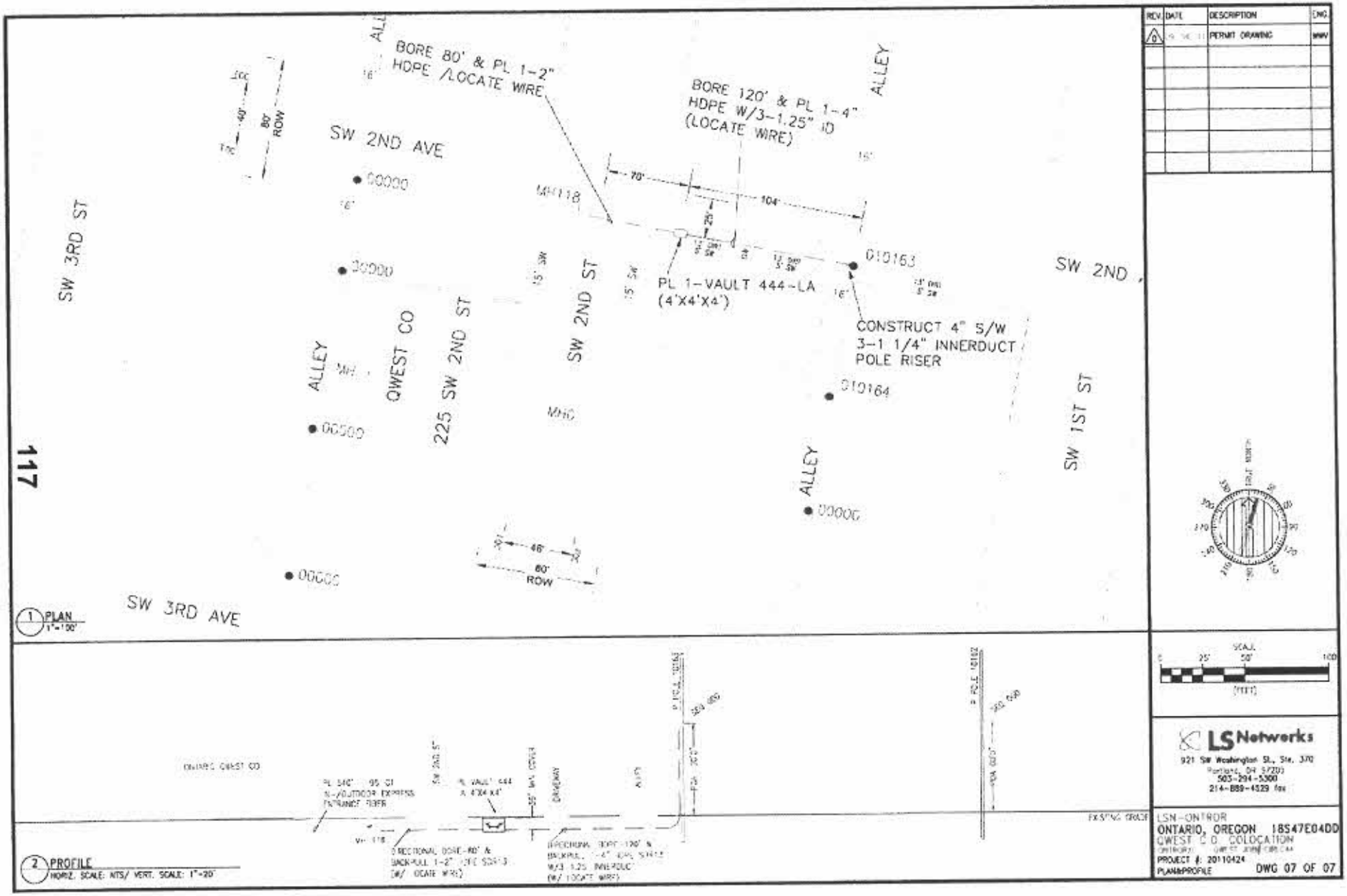
Kind regards,

Michael Weidman
President and CEO

Ontario-SRCI NTE map



Copyright © and (P) 1988–2006 Microsoft Corporation and/or its suppliers. All rights reserved. http://www.microsoft.com/mappoint/
Portions © 1990–2005 InstallShield Software Corporation. All rights reserved. Certain mapping and direction data © 2005 NAVTEQ. All rights reserved. The Data for areas of Canada includes information taken with permission from Canadian authorities, including: © Her Majesty the Queen in Right of Canada, © Queen's Printer for Ontario. NAVTEQ and NAVTEQ ON BOARD are trademarks of NAVTEQ. © 2005 Tele Atlas North America, Inc. All rights reserved. Tele Atlas and Tele Atlas North America are trademarks of Tele Atlas, Inc.



REV.	DATE	DESCRIPTION	DWG
0		PERMIT DRAWING	MWV

SCALE 0 25' 50' 100 (FEET)

LS Networks
921 SW Washington St., Ste. 370
Portland, OR 97205
503-294-5300
214-889-4529 fax

LSN-ONTROR
ONTARIO, OREGON 18S47E04DD
QWEST C.O. COLOCATION
PROJECT #: 20110424
PLAN&PROFILE DWG 07 OF 07

ONTARIO, OR

PROJECT LOCATION:
Intersection of SW 2nd St & SW 2nd Ave

418

01
02 COVER SHEET
03 LEGEND
04 NOTES
05 NOTES
06 NOTES
07 PLAN & PROFILE

SCOPE OF UNDERGROUND WORK:
LS NETWORKS PROPOSES TO PLACE A NEW VAULT (UTILITY VAULT 444-LA) ABOUT 70' SOUTHEAST OF THE CENTER LINE OF SW 2ND ST AND 25' SOUTH OF THE CENTER LINE OF SW 2ND AVE IN THE PLANTER STRIP.
A 80' - 2" HDPE DUCT WILL BE PLACED BETWEEN THE NEW VAULT AND THE EXISTING QWEST MH #118 LOCATED IN THE SOUTH-WEST CORNER OF THE ABOVE MENTIONED INTERSECTION.
A 120'-4" HDPE DUCT WILL BE PLACED FROM THE NEW VAULT TO THE BASE OF PPL POLE #010163 AT THE INTERSECTION OF SW 2ND AVE & ALLEY WAY. ALL CONDUIT PLACEMENT BY DIRECTIONAL BORE.

REV	DATE	DESCRIPTION	ENG
0	04 26 11	PERMIT DWG	WRV

PERMITS:

NJUNS #

ONTARIO
PERMIT # _____

ODOT PERMIT # _____

VALERIE STARR (503) 414-0463

WINFRED VOGT (503) 414-0471

LS Networks
921 SW Washington St., Ste. 370
503-294-5300
214-889-4529 fax

LSN - ONTROR
ONTARIO, OR 18S47E10BB
QWEST C.O. COLOCATION
ONTROQC - QWEST #QH CIR.C44
LSN PROJECT: 20110234
COVER PAGE DWG 01 OF 07

SURFACE FEATURES/AERIAL UTILITIES – LINETYPES & SYMBOLS

- CABLE
- STRAND
- TRAFFIC SIGNAL
- CONDUIT
- PLENUM INNERDUCT
- CONDUCTOR
- GAS
- WATER
- CURB
- FENCE
- SANITARY
- STORM
- CENTERLINE
- R/R TRACKS
- RIGHT-OF-WAY
- TCI/AT&T BROADBAND
- POE
- FRONTIER
- EASEMENT
- TRAFFIC SIGNAL
- PACIFIC POWER & LIGHT
- STREET LIGHT
- QWEST
- WESTERN UNION
- TCG/AT&T LOCAL SERVICE
- COMPETITIVE LOCAL EXCHANGE CARRIERS
- EDGE OF PAVEMENT
- GUARD RAIL

- SELF-SUPPORTING INNERDUCT
- CABLE
- STRAND
- TRAFFIC SIGNAL
- CONDUIT
- PLENUM INNERDUCT
- CONDUCTOR

- POWER
- PHONE
- OTHER POLE
- SPLICE
- MID-SHEATH SPLICE
- VAULT/BUILDING STORAGE
- FIBER SYMBOL
- AERIAL STORAGE
- GUY
- S/W ANCHOR OR A GUY
- VGR GROUND

- SPLICE
- MID-SHEATH SPLICE
- VAULT/BUILDING STORAGE
- FIBER SYMBOL
- AERIAL STORAGE
- ANCHOR & GUY
- S/W ANCHOR OR A GUY
- VGR GROUND
- AUXILLARY ANCHOR/ DOWNGUY TO EXISTING ANCHOR

- PROPERTY CORNER
- FOUND MONUMENT
- DRAIN
- WATER METER
- FIRE HYDRANT
- WATER VALVE
- WATER VAULT
- CATCH BASIN
- SANITARY SEWER
- STORM SEWER
- GAS VALVE
- GAS METER
- SIGNAL CONTROLLER
- CABLE MARKER
- CABLE MARKER E/W GROUND LUGS
- JUNCTION BOX
- SIGNAL POLE
- R/R CROSSING SIGNAL
- SIGN
- LUMINAIRE
- TREE
- STEEL PILING

SIGNAL CONTROLLER

CABLE MARKER

CABLE MARKER E/W GROUND LUGS

SECTION LETTERS

SCALE: NTS

DRAWING NUMBER SECTION IS LOCATED ON

DETAIL NUMBER

SCALE:

DRAWING NUMBER DETAIL IS LOCATED ON

DETAILS AND SECTIONS CALLOUT SYMBOLOGY

ABBREVIATIONS

E/W	EQUIPPED WITH	AB	ABANDONED	OD	OUTSIDE DIAMETER	BOC	BACK OF CURB	RPL	REPLACE
E/O	EAST OF	D/W	DRIVEWAY	PL	PLACE	BOW	BACK OF SIDEWALK	SCA	SIDE CABLE ARM
F/O	FIBER OPTIC	DG	DOWNGUY	SL	STREET LIGHT	DOC	DEPTH OF COVER	SLP	STREET LIGHT PROTECTED
N/O	NORTH OF	R/W	RIGHT OF WAY	VE	VERIZON	FDC	FIBER DUCT IN CONCRETE	SLU	STREET LIGHT UNPROTECTED
O/S	OFFSET	S/W	SIDEWALK	WT	WEIGHT	FOC	FACE OF CURB		
S/O	SOUTH OF					GRC	GALVANIZED RIGID CONDUIT		
W/O	WEST OF					HDG	HOT DIPPED GALVANIZED		
						ID	INNERDUCT		
						PUE	PUBLIC UTILITY EASEMENT		

C	POWER DIP
N	NEUTRAL
R	RISER
SD	SERVICE DROP
SL	STREET LIGHT
SLB	STREET LIGHT BRACKET
SLD	STREET LIGHT DRIP LOOP
S	SECONDARY

P.O.A.= _____ –PROPOSED POINT OF ATTACHMENT
–ACTUAL POINT OF ATTACHMENT

45'/4/(5)(T)=POLE HT/CLASS/(D)STRIBUTION(T)RANSMISSION)

REV.	DATE	DESCRIPTION	ENG.
0	9/06	CONSTRUCTION DWG	WW

LS Networks
921 SW Washington St., Ste. 370
503-284-5300
214-889-4529 fax

LSN-ONTROR
ONTARIO, OR 18S47E10BB
QWEST C.O. COLOCATION
ONTROR / QWEST WOF ORE44
LSN PROJECT: 20110234
LEGEND DWG 02 OF 07

ALL WORK CONDUCTED ADJACENT TO WATER MAINS SHALL CONFORM TO THE FOLLOWING CONDITIONS:

A. WHEREVER POSSIBLE CONDUIT SHALL MAINTAIN A HORIZONTAL SEPARATION OF 5.5 FEET BETWEEN THE EDGE OF THE TRENCH AND THE NEAREST FACE OF THE WATER MAIN WHEN THE TOP OF THE HIGHEST CONDUIT IS AT MINIMUM TRENCH DEPTH OF 36" BELOW FINISHED SURFACE ELEVATION.

B. WHEREVER POSSIBLE CONDUIT SHALL MAINTAIN A MINIMUM VERTICAL SEPARATION OF 9" BELOW THE BOTTOM OF ADJACENT PARALLEL WATER MAINS WHEN HORIZONTAL SEPARATION IS LESS THAN 5.5 FEET. THIS 9" VERTICAL SEPARATION SHALL BE MEASURED FROM THE LOWEST PART OF THE WATER PIPE SHELL (BODY) TO THE HIGHEST PART OF THE CONDUIT.

C. CONDUIT PASSING UNDER EXISTING WATER MAINS SHALL MAINTAIN 9" VERTICAL CLEAR SEPARATION WHENEVER POSSIBLE; HOWEVER, IF IT IS NOT POSSIBLE TO MAINTAIN THIS 9" SEPARATION, THE CONTRACTOR SHALL PLACE A 2" LAYER OF HIGH DENSITY POLY FOAM 1" OVER THE HIGHEST PART OF THE CONDUIT. THIS POLY FOAM SHALL BE A BRIGHT YELLOW COLOR AND CLEARLY DISTINCTIVE TO ANYONE WORKING ON THE WATER MAIN.

D. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ESTABLISHING AND MAINTAINING THIS REQUIRED VERTICAL SEPARATION BY EITHER EXPOSING THE WATER MAIN EVERY 100 FEET IN THOSE AREAS WHERE HORIZONTAL SEPARATION IS LESS THAN 5.5 FEET OR BY UTILIZING THE DEPTHS OF ADJACENT WATER VALVES. IF THE CONTRACTOR UTILIZES THE ADJACENT WATER TO DETERMINE WATER MAIN DEPTH, HE SHALL CONTACT THE AGENCY AT EACH SUCH LOCATION AND THE AGENCY WILL DETERMINE THE NECESSARY DEPTH OF THE TOP OF THE CONDUIT AT THAT POINT.

E. THE VERTICAL AND HORIZONTAL SEPARATION SHALL BE MAINTAINED AT ALL TIMES UNLESS SPECIFICALLY REVISED BY AGREEMENT BETWEEN PERMITTING AGENCY AND THE CLIENT. ANY SPECIFIC DEVIATION IN VERTICAL AND HORIZONTAL SEPARATION FROM THOSE DESCRIBED SHALL BE REPORTED TO CLIENT BY THE CONTRACTOR. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING VERTICAL AND HORIZONTAL SEPARATION AT ALL TIMES AND SHALL BE RESPONSIBLE FOR ANY AND ALL ENCROACHMENTS.

F. CLEARANCES TO STORM SEWERS AND SANITARY SEWERS SHALL BE EXACTLY THE SAME AS THOSE TO WATER MAINS.

THE CONTRACTOR SHALL REPLACE ALL MONUMENTS THAT DEFINE PROPERTY OWNERSHIP SUCH AS IRON RODS, IRON PIPES, BRASS SCREWS, AND REFERENCE POINTS AS REQUIRED BY OREGON STATE STATUTE NO. 209.180 (GOVERNMENT CORNERS) AND 209.150 (PROPERTY CORNERS). THIS STATUTE REQUIRES THAT ANY CORNER OR REFERENCE TO A CORNER OF A RECORD OF SURVEY SHALL BE REPLACED BY A LICENSED SURVEYOR WITHIN 90 DAYS OF ITS REMOVAL.

REPLACEMENT MONUMENTS SHALL CONFORM TO OREGON STATE STATUTES AS TO TYPE AND STYLE OF IDENTIFICATION WITH THE NECESSARY RECORD OF SURVEY IDENTIFYING WHAT WAS FOUND ORIGINALLY AND WHAT WAS SET AND THE DATE THE REPLACEMENT WAS SET. THE RECORD OF SURVEY SHALL BE COMPLETED IN CONFORMANCE WITH THE REGULATIONS OF THE STATE OF OREGON AND BENTON COUNTY SURVEYOR.

IN AREAS WHERE THE CONDUIT ALIGNMENT IS NOT CLEARLY DEFINED BY CURB LINES, FENCE LINES, OR OTHER EVIDENCE OF THE RIGHT-OF-WAY, CONTRACTOR WILL PROVIDE CENTERLINE STAKES OR PAINT MARKS WHERE REQUIRED TO MAKE THE PROPOSED CONDUIT ALIGNMENT EVIDENT.

MANHOLE CENTERS WILL BE FIELD STAKED BY THE ENGINEER WITH OFFSET STAKES AT RIGHT ANGLES (90°) TO THE CONDUIT ALIGNMENT (UNLESS SPECIFICALLY REQUESTED BY THE CONTRACTOR).

CLOSURES IDENTIFIED IN THE PLANS SHALL BE LOCATED BY THE CONTRACTOR. DEVIATION FROM PLAN LAYOUT SHALL BE APPROVED BY THE ENGINEER PRIOR TO CONDUIT AND/OR CLOSURE INSTALLATION.

IF ADDITIONAL FIELD STAKING OR LOCATION OF CONDUITS, MANHOLES, PROPERTY LINES, ETC. BECOMES NECESSARY, THE CONTRACTOR IS TO NOTIFY THE INSPECTOR OR THE ENGINEER TWO WORKING DAYS PRIOR TO BEGINNING THE WORK.

DUCTS WILL BE 4" PVC HEAVY WALL (SCHED. 40) DIRECT BURIAL (MATERIAL SPECIFICATION NUMBER 8546) UNLESS OTHERWISE SPECIFIED.

CONTRACTOR SUPPLIED MATERIALS SHALL CONFORM TO SPECIFICATIONS.

ALL CONTRACTOR SUPPLIED MATERIALS SHALL INCLUDE A CERTIFIED TEST REPORT CLEARLY STATING THAT THOSE SUPPLIED MATERIALS COMPLY WITH ANY SUCH SPECIFICATION.

PLACE CONDUIT IN LOCATION SHOWN ON PRINTS WITH MINIMUM COVER OF 36" ON PUBLIC RIGHT-OF-WAY AND 36" ON PRIVATE PROPERTY, UNLESS OTHERWISE SPECIFIED.

NO GRADE FOR DRAINAGE REQUIRED BETWEEN MANHOLES.

TOTAL LENGTH OF TRENCH OPEN AT ANY ONE TIME TO BE KEPT TO A MINIMUM.

WHERE PRACTICAL CONDUIT ENTERING MANHOLES SHALL HAVE A MINIMUM 5.0 FOOT STRAIGHT SECTION ON EACH CONDUIT. THIS STRAIGHT SECTION SHALL BE PARALLEL TO THE WALL OF SAID MANHOLE AND SHALL BE SMOOTH AND FREE OF ALL BURRS AND OTHER FEATURES THAT MIGHT DAMAGE TELEPHONE CABLES.

ALL STEEL CONDUIT BENDS SHALL BE 4" I.D. WITH THREADED FITTINGS.

ALL NEW 4" DUCTS TO BE EQUIPPED WITH 3-1 1/4 INNERDUCTS AND A COPPER LOCATING WIRE. THE INNERDUCTS ARE TO BE PLUGGED AND EQUIPPED WITH PULL ROPE OR MULE TAPE.

CONTRACTOR IS TO CONTACT ALL PROPERTY OWNERS AT LEAST 48 HOURS PRIOR TO START OF ANY CONSTRUCTION ACTIVITIES ON THEIR PROPERTY.

THIS PROJECT MAY INVOLVE PLACING EITHER DIRECT BURIED 4" I.D. HEAVY WALL STEEL PIPE OR PVC 4" SCHED 40 IN A HEAVY WALL STEEL CASING AS SHOWN IN THE PLANS AND DETAILS.

STEEL PIPE SHALL BE 100% FILET WELD (3/16") OR THREADED COUPLING. IF WELDED THE CONTRACTOR SHALL PROVE THE INTERIOR DIMENSION BY PULLING A 3-7/8" DIAMETER MANDREL COMPLETELY THROUGH THE WELDED JOINT IN BOTH DIRECTIONS. PIPE JOINTS SHALL BE STEEL BRUSHED AND PAINTED WITH A ZINC RICH FLAT BLACK METAL PRIMER PAINT.

THE CONTRACTOR SHALL PLACE TIGHT-SHEET SHORING OR SLOPE BACK BORE PIT WALLS AT A 3:1 SLOPE IN CONFORMANCE WITH OSHA REQUIREMENTS.
BORE PITS SHALL BE PLACED IN SUCH A MANNER AS IS NECESSARY TO PROVIDE BOTH HORIZONTAL AND VERTICAL CONTROL OF PIPE/CASING DIRECTION. BORE PITS SHALL BE DUG WITHIN THE RIGHT-OF-WAY LIMITS OF THE PERMIT ISSUED FOR SAID CROSSING.

BORE PITS SHALL BE PLACED IN A MANNER AS IS REQUIRED TO MINIMIZE CONFLICTS WITH VEHICULAR AND PEDESTRIAN TRAFFIC ADJACENT TO THE BORE.

THE CONTRACTOR IS RESPONSIBLE FOR PLACING APPROPRIATE MARKERS TO INSURE THAT OTHER UTILITIES WORKING IN THE AREA OF FACILITIES, ARE AWARE OF THEIR PRESENCE BEFORE DAMAGE CAN OCCUR. MARKING WILL BE MADE BY USE OF "WARNING TAPE" AND "POST MARKERS" FOR CONDUIT, AND 3M-EMS LOCATORS FOR MANHOLES AND HANDHOLES.

"FIBER OPTIC WARNING TAPE" SHOULD BE PLACED A MINIMUM OF 12" ABOVE ANY FIBER DUCT ALONG THE ENTIRE TRENCH ROUTE, WHILE ADDITIONALLY "POST MARKERS" SHOULD BE PLACED EVERY 500' IN SUBURBAN AREAS AND 1000' IN RURAL AREAS.

ANY SUBSURFACE MANHOLES AND HANDHOLES ARE TO BE EQUIPPED WITH EMS LOCATORS. THE BURIED HANDHOLE IS TO HAVE 24" DEPTH OF COVER WITH THE EMS LOCATOR BALL BEING 12" ABOVE THE TOP OF THE HANDHOLE. THE SURFACE MOUNTED HANDHOLE AND THE MANHOLES ARE TO HAVE EMS MARKERS INSTALLED ON THE WALL AT THE TOP TO EASE LOCATING.

THIS PROJECT MAY INVOLVE WORKING ALONG A MAJOR ARTERIAL STREET AND HEAVY TRAFFIC VOLUME SHOULD BE ANTICIPATED.

UNIFORM TRAFFIC FLOW SHALL BE MAINTAINED AT ALL TIMES. ONLY EQUIPMENT AND MATERIALS NECESSARY FOR IMMEDIATELY SCHEDULED OR IN PROGRESS WORK WILL BE MAINTAINED IN THE WORK AREA. ALL OTHER EQUIPMENT AND MATERIALS WILL BE "STORED OR STOCKPILED" IN SUCH A MANNER AS TO ELIMINATE HAZARDOUS CONDITIONS FOR TRAFFIC OR PEDESTRIANS DURING NON-WORKING OR SHUT DOWN PERIODS.

TRAFFIC WARNING DEVICES AND SIGNS SHALL CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS (U.S. GOVERNMENT PRINTING OFFICE) AND TO SECTION 107.18 PUBLIC SAFETY AND CONVENIENCE, OF THE OREGON STATE HIGHWAY DIVISION STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION (1974). HIGH LEVEL WARNING TYPE DEVICES ARE TO BE USED AT ALL TIMES AND SPECIAL WARNING DEVICES MAY BE STIPULATED BY PERMITTING AGENCY AT ANY TIME THE USE WILL ADD TO THE SAFETY AND PROTECTION OF TRAFFIC OR PEDESTRIANS IN THE CONSTRUCTION AREA.

ALL CONDUIT TRENCHING IN PAVED AREAS SHALL BE BACKFILLED WITH CRUSHED GRAVEL OR COMPLETELY COVERED AT THE COMPLETION OF EACH WORKING DAY. ANY BACKFILLED TRENCH SHALL BE CAPPED WITH A MINIMUM LAYER OF ASPHALTIC CONCRETE COLD PATCH AT THE END OF EACH WORKING DAY.

THE CONTRACTOR SHALL MARK THE CONDUIT TRENCH AND DEFINE HIS CONSTRUCTION AREA CLEARLY WITH BARRICADES, CONES, AND/OR OTHER VISIBLE METHODS THAT ALERT THE PUBLIC TO CONSTRUCTION ACTIVITY.

THE TRAFFIC CONTROL PLAN SHALL BE PREPARED BY THE CONTRACTOR AND SUBMITTED TO THE ENGINEERING DEPARTMENT OF THE PERMITTING AGENCY FOR REVIEW AND APPROVAL OR REVISION PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITY FOR THIS PROJECT. THE APPROVED PLAN SHALL BE SUBMITTED TO PERMITTING AGENCY AND A COPY OF THE PLAN SHALL BE KEPT AT THE CONSTRUCTION SITE AND MUST BE READILY AVAILABLE FOR REVIEW, IF REQUIRED BY PERMITTING AGENCY.

PHYSICAL WORK SHALL NOT BE STARTED UNTIL THE PERMITTING AGENCY'S INSPECTOR AND THE CONTRACTOR ARE IN POSSESSION OF AND HAVE CAREFULLY REVIEWED AND FULLY UNDERSTAND ALL CONDITIONS AND SPECIFICATIONS SET FORTH IN THE PERMITS, FRANCHISES, AND/OR EASEMENTS.

JOB SITE FOREMAN TO HAVE A COPY OF THE PERMITS/EASEMENTS ON SITE AT ALL TIMES.

ANY CONFLICT BETWEEN WORK PRINT SPECIFICATIONS AND SPECIFICATIONS SET FORTH UNDER RELATED PERMITS, FRANCHISES, AND/OR EASEMENTS MUST BE CLEARED BY PROPER COMPANY AUTHORITY BEFORE PROGRESSING WITH WORK INVOLVED.

UPON NOTIFICATION OF COMPLETION OF THE WORK AND ACCEPTANCE BY THE CITY OF ONTARIO, THE CONTRACTOR SHALL PROVIDE TO THE CITY'S PROJECT MANAGER WITH A SET OF NEAT AND ACCURATE "AS-BUILT" DRAWINGS WITHIN 10 BUSINESS DAYS OF COMPLETION OF THE PROJECT.

AS-BUILT DATA SHALL BE UPDATED AND MAINTAINED DAILY ON FIELD COPY DRAWINGS FOR THE DURATION OF CONSTRUCTION. UPON COMPLETION OF THE PROJECT, THE AS-BUILT DATA SHALL BE TRANSFERRED TO A CLEAN SET OF CONSTRUCTION DRAWINGS FOR SUBMITTAL TO THE CITY'S PROJECT MANAGER.

THE AS-BUILT DATA SHALL BE DETAILED ON THE DRAWINGS IN EITHER COLORED INK OR COLORED PENCIL ACCORDING TO THE FOLLOWING COLOR CODES:

RED: WORK PLACED ACCORDING TO DESIGN AND CHANGES TO THE DESIGN
GREEN: WORK NOT PLACED ACCORDING TO THE DESIGN; DUCT FROM DESIGN
BLUE: EXISTING UTILITIES FACILITIES, COMMENTS AND NOTES

1) WORK PERFORMED ACCORDING TO THE DESIGN SHALL BE HIGHLIGHTED OR TRACED IN RED.

2) WORK PERFORMED ACCORDING TO APPROVED CHANGES OR VARIATIONS TO THE DESIGN SHALL BE NEATLY DRAWN AND DETAILED ON THE DRAWINGS SHOWING HOW THE CHANGES WERE CONSTRUCTED IN THE FIELD.

3) WORK THAT WAS DESIGNED BUT NOT PERFORMED AS SHOWN ON THE DRAWINGS SHALL BE HIGHLIGHTED OR TRACED IN GREEN TO SHOW THAT THE WORK FUNCTION WAS NOT CONSTRUCTED AS DESIGNED.

4) EXISTING FACILITIES OR UTILITIES ENCOUNTERED; CONSTRUCTION NOTES; ADDITIONAL CONSTRUCTION RELATED INFORMATION IDENTIFIED IN THE FIELD SHALL BE NEATLY DRAWN AND DETAILED IN BLUE.

COLORED HIGHLIGHTER PENS ACCORDING TO THE COLOR CODES AS DETAILED ABOVE ARE ACCEPTABLE. FLUORESCENT YELLOW HIGHLIGHTER PENS ARE NOT AN ACCEPTABLE FORM OF AS-BUILT COLORING.

AS-BUILT DRAWINGS SHALL CONTAIN THE FOLLOWING DATA AT A MINIMUM FOR EACH OF THE FOLLOWING WORK FUNCTIONS:

AERIAL SEGMENTS

1) POINT OF ATTACHMENT HEIGHT FROM THE GROUND TO THE CABLE AND/OR STRAND ON ALL POLES.

2) CABLE FOOTAGE (SEQUENTIAL) MARKINGS AT ALL CABLE ENDS; START AND END OF SLACK STORAGE AND CONDUIT ENTRANCE / EXIT POINTS.

3) LOCATION OF ALL SLACK STORAGE AND CABLE SPLICE POINTS.

4) ANCHOR AND DOWN GUY SIZE PLACED AND LEAD LENGTH BETWEEN THE ANCHOR AND THE POLE.

UNDERGROUND SEGMENTS

1) DEPTH OF CONDUIT MEASURED EVERY 25 FEET AND AT EVERY CHANGE IN DIRECTION ALONG THE CONDUIT ALIGNMENT.

2) OFFSET DISTANCE MEASURED EVERY 25 FEET AND AT EVERY CHANGE IN DIRECTION FROM THE ALIGNMENT TO A CURB, EDGE OF PAVEMENT OR OTHER PHYSICAL REFERENCE OBJECT.

REV.	DATE	DESCRIPTION	ENG.
A	[illegible]	PERMIT DWG	MWV

LS Networks
921 SW Washington St., Ste. 370
503-294-5300
214-889-4529 fax

LSN-ONTROR
ONTARIO, OR 18S47E10BB
QWEST C.O. COLOCATION
LSN PROJECT: 20110234
NOTES

3) LOCATION AND DEPTH OF VAULTS, HAND HOLES AND JUNCTION BOXES PLACED.

4) DEPTH, TYPE AND DIRECTION OF ANY EXISTING UTILITY ENCOUNTERED CROSSING THE CONDUIT ROUTE.

5) LOCATION OF MAGNETIC LOCATING TARGETS PLACED.

6) CABLE FOOTAGE (SEQUENTIAL) MARKINGS AT ALL CABLE ENDS, START AND END OF SLACK STORAGE, CONDUIT ENTRANCE / EXIT POINTS.

7) ACTUAL QUANTITY OF CABLE SLACK STORAGE LEFT IN VAULT LOCATIONS.

8) ACTUAL WALL TO WALL MEASUREMENTS OF CONDUIT SEGMENTS BETWEEN VAULTS.

DIRECTIONAL BORING

1) DEPTH OF CONDUIT MEASURED EVERY 10 FEET WITH A RUNNING LINE OFFSET DISTANCE FROM A CURB, EDGE OF PAVEMENT OR OTHER PHYSICAL REFERENCE OBJECT.

2) BORE PLAN AND PROFILE DRAWING REFLECTING THE DEPTH AND RUNNING LINE OFFSET MEASUREMENT EVERY 10 FEET THROUGHOUT THE ENTIRE LENGTH OF THE BORE.

3)AS-BUILT DRAWINGS SHALL HAVE THE WORDS "AS-BUILT" WITH THE NAME OF THE CONTRACTOR AND THE DATE STAMPED ON EVERY SHEET IN THE DRAWING PACKAGE.

ANY CHANGES OR DEVIATIONS FROM THE CONSTRUCTION DRAWINGS MUST BE APPROVED BY THE PROJECT MANAGER FOR THE CITY OF ONTARIO, OREGON PRIOR TO MAKING ANY OF THE SAID CHANGES OR DEVIATIONS.

PROJECT MANAGER: _____

ALL WORK SHALL BE DONE IN A "NEAT AND WORKMAN" LIKE MANNER, IN CONFORMITY WITH LOCAL, STATE AND FEDERAL BUILDING CODES. ALL WORK MUST COMPLY WITH APPLICABLE DATA SYSTEM STANDARDS AND NATIONAL ELECTRIC CODE STANDARD SPECIFICATIONS. STANDARDS INCLUDE, BUT ARE NOT LIMITED TO, EIA/TIA 568-B COMMERCIAL BUILDING WIRING STANDARDS AND EIA/TIA 569-A COMMERCIAL BUILDING STANDARD FOR TELECOMMUNICATIONS PATHWAYS AND SPACES.

EIA/TIA COMMERCIAL BUILDING WIRING STANDARD, 606 AND ALL RECOGNIZED TSBS.

NATIONAL ELECTRIC CODE

UNDERWRITER'S LABORATORIES (UL), APPLICABLE LISTINGS AND RATINGS

1) ALL CONDUIT PLACED ON PRIVATE PROPERTY IS TO BE 4" SCHEDULE 40 PVC IF PLACED OUTSIDE THE BUILDING AND 4" CUT IF PLACED WITHIN THE BUILDING. RISER CONDUIT ON THE EXTERIOR OF BUILDING IS TO BE 4" GRC UNLESS OTHERWISE SPECIFIED.

2) ALL CONDUIT IS TO BE EQUIPPED WITH INNERDUCT AS SPECIFIED.

3) 90° BENDS ARE TO BE "SWEEP" BENDS, 3' RADIUS, UNLESS OTHERWISE SPECIFIED.

4) CONDUIT PATHWAYS WITHIN BUILDING INTERIORS SHALL BE SUPPORTED WITH APPROPRIATE HARDWARE SPECIFIC TO THE EXISTING MATERIAL OR STRUCTURE.

5) ALL EXTERIOR WALL PENETRATIONS ARE TO BE RESEALED PER BUILDING AND FIRE CODE.

6) ALL INTERIOR WALL PENETRATIONS ARE TO COMPLY WITH PERTINENT BUILDING AND FIRE CODES AND ARE TO BE CONSTRUCTED IN SUCH A MANNER AS TO INSURE THE INTEGRITY OF THE PENETRATED WALL.

7) ALL PULL BOXES ARE TO BE NEMA TYPE 3R OR EQUIVALENT.

8) NOTIFY THE "BUILDING CONTACT" PERSON A MINIMUM OF 48 HOURS PRIOR TO COMMENCING ANY WORK ON THE PREMISES.

MANHOLES IN HEAVY TRAFFIC AREAS TO BE UTILITY VAULT PRECAST TYPE 444-1A UNLESS OTHERWISE SPECIFIED.

ALL MANHOLES WILL BE FULLY EQUIPPED AS TO LADDERS, CABLE RACKS, SUPPORTS, AND PULLING IRONS AS SHOWN BELOW.

EQUIP 444-1A VAULTS WITH
[4] "L" BRACKETS
[4] 8 HOLE - 11" CUT RACKS
[4] SPRING NUT & SCREWS
(1/2" NUT, 1/2" X 1 1/4" PLATED CAP SCREW)
MOUNT BRACKETS ON 2' GALVANIZED "C" CHANNELS, 2 EA. SIDE, 18" APART

ALL MANHOLES SHALL BE EQUIPPED WITH 2-6" RISERS AND A 30"x18" FRAME AND COVER.

PLACE SUMPS IN ALL MANHOLES.

GROUND COVER OVER ALL MANHOLES SHOULD BE 36" MINIMUM DEPTH BELOW FINISHED STREET OR SIDEWALK ELEVATIONS UNLESS SHOWN OTHERWISE IN THE MANHOLE DETAILS OR UNLESS SPECIFICALLY LISTED ON ANY RIGHT-OF-WAY PERMIT ISSUED FOR THIS CONSTRUCTION ACTIVITY.

EXCAVATION OVER MANHOLES IS CONSIDERED PART OF THE TOTAL MANHOLE INSTALLATION.

THE CONTRACTOR SHALL FIELD SLOT PRECAST CONCRETE VAULTS WHERE NECESSARY TO PROVIDE ACCESS FOR CABLES AND CONDUIT NOT PROVIDED WITH A BLOCKOUT FOR THAT PURPOSE. THE FIELD SLOT SHALL BE REPAIRED BY SPLICING ANY REINFORCING CUT TO ALLOW CABLE ENTRY AND SHALL BE SEALED WITH NON-SHRINK CONCRETE GROUT. THE CONTRACTOR CONTRACTOR SHALL NOTIFY CITY OF ONTARIO IMMEDIATELY IF IT BECOMES EVIDENT FIELD SLOTTING WILL BE NECESSARY. FIELD SLOTS SHALL BE SAWCUT (SCORED INSIDE AND OUT) AND BRUSH HAMMER TO PROVIDE A ROUGHENED SURFACE FOR GROUT BONDING AND TO MINIMIZE REINFORCING SPLICES.

EXCAVATION FOR TWO PIECE AND THREE PIECE PRECAST VAULTS MUST ALLOW FOR OVERALL ASSEMBLED HEIGHT OF THE VAULT PLUS ADDED HEIGHT OF RISERS AND BEDDING MATERIAL CONSISTING OF 6" OF COMPACTED SAND OR GRAVEL, GRADED LEVEL.

A MINIMUM CLEARANCE OF 4" AROUND THE SIDEWALLS OF THE VAULT IS REQUIRED FOR EASE OF INSTALLATION.

BACKFILL AROUND ALL VAULTS SHOULD CONSIST OF GOOD COMPACTABLE MATERIAL SUCH AS SAND OR SELECT BACKFILL MATERIAL. IN NO CASE SHALL THE MATERIAL BE SATURATED SOIL OR CONTAIN LARGE ROCKS OR CHUNKS. NO VOIDS SHOULD REMAIN BETWEEN THE VAULT WALLS AND NATIVE SOIL OF EXCAVATION. BACKFILLING SHOULD NOT BE DONE UNTIL THE VAULT IS COMPLETELY ASSEMBLED MAKING CERTAIN TO COMPACT THE BACKFILL PROGRESSIVELY FROM THE BOTTOM TO THE TOP SURFACE.

ALL BACKFILLING IS THE RESPONSIBILITY OF THE CONTRACTOR.

ALL GROUTING OF RISERS, COVERS, CONDUIT, OR SPECIFIC SECTIONS OF VAULTS IS THE RESPONSIBILITY OF THE CONTRACTOR. NON-SHRINK CONCRETE GROUT WILL BE USED TO SEAL ALL JOINTS. APPLY IN A MANNER TO ENSURE FILLING OF ALL VOIDS IN THE JOINT BEING SEALED.

ACCESS DOORS SHALL BE CONSTRUCTED OF STEEL, ALUMINUM OR CONCRETE WITH AN APPROVED NON-SLIP SURFACE HAVING A STATIC COEFFICIENT OF FRICTION BETWEEN 0.60 AND 1.00 AS DETERMINED BY ASTM DESIGNATION C 1028-89. ACCESS DOORS ON INCLINED SURFACES GREATER THAN 4% SHALL HAVE A COEFFICIENT OF FRICTION BETWEEN 0.80 AND 1.00.

OWNERS ARE RESPONSIBLE TO MAINTAIN THE NON-SLIP CHARACTERISTICS OF THE ACCESS DOOR OVER ITS LIFE IN THE SIDEWALK AREA.

THE STANDARD SURFACE MOUNTED HANDHOLE IS THE QUAZITE 24"X36" AND THE STANDARD "SPLIT DUCT" HANDHOLE IS UTILITY VAULT #587A UNLESS OTHERWISE SPECIFIED. DETAILS OF BOTH OF THESE ARE OUTLINED: (SEE SHEET 6). HANDHOLES ARE TO BE PLACED ON 6" OF BEDDING MATERIAL CONSISTING OF SAND OR GRAVEL GRADED LEVEL. ALL HANDHOLES (SEE MH/HH PLACEMENT DETAIL).

ACCESS DOORS SHALL BE CONSTRUCTED OF STEEL, ALUMINUM, OR CONCRETE WITH AN APPROVED NON-SLIP SURFACE HAVING A STATIC COEFFICIENT OF FRICTION BETWEEN 0.60 AND 1.00 AS DETERMINED BY ASTM DESIGNATION C 1028-89. ACCESS DOORS ON INCLINED SURFACES GREATER THAN 4% SHALL HAVE A COEFFICIENT OF FRICTION BETWEEN 0.80 AND 1.00.

OWNERS ARE RESPONSIBLE TO MAINTAIN THE NON-SLIP CHARACTERISTICS OF THE ACCESS DOOR OVER ITS LIFE IN THE SIDEWALK AREA.

THE CONTRACTOR SHALL CORE DRILL EXISTING CONCRETE WALLS TO PROVIDE ACCESS FOR CONDUIT AS SHOWN IN THE PLANS. CORE DRILLING SHALL PROVIDE A MINIMUM 1 INCH LARGER DIAMETER HOLE THAN THE SIZE OF CONDUIT BEING PLACED. THE CONTRACTOR SHALL SEAL THE VOID BETWEEN THE CONDUIT AND THE CONCRETE WITH NON-SHRINK EPOXY GROUT.
THE CONTRACTOR SHALL REPAIR ANY STRUCTURAL REINFORCING DAMAGED BY CORE DRILLING. REINFORCING REPAIR SHALL BE IN CONFORMANCE WITH THE REQUIREMENTS AND SPECIFICATIONS OF CRSI (CONCRETE REINFORCED STEEL INSTITUTE).

IF THE CONTRACTOR ELECTS TO ADJUST AN ACCESS HOLE IN WHICH REINFORCING WAS FOUND TO AVOID DAMAGE TO THE REINFORCING STEEL HE SHALL FULLY EXPOSE THE SURFACE OF THE REBAR AND FIELD COAT THE BAR WITH A ZINC RICH PAINT BEFORE PLACING NON-SHRINK EPOXY GROUT TO REPAIR DAMAGE.

CALL BEFORE YOU DIG

POTENTIAL UNDERGROUND FACILITY OWNERS
"ONE CALL"
UTILITY NOTIFICATION CENTER
246-6699

ATTENTION:
OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER.
(NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)246-6699).

REV.	DATE	DESCRIPTION	ENG.
0	09-16-11	PERMIT DWG	WWV

LS Networks
921 SW Washington St., Ste. 370
503-294-5300
214-889-4529 fax

LSN-ONTPOR
ONTARIO, OR 18S47E10BB
QWEST C.O. COLOCATION
ONTARIO, OREGON
LSN PROJECT: 20110234
NOTES DWG 04 OF 07

THE ACTUAL LOCATION OF EXISTING CONDUIT AND CABLES MAY VARY FROM THE LOCATION SHOWN. REPAIR OF ANY DAMAGED CONDUIT CONTAINING CABLE SHALL BE MADE BY USE OF 4" PVC SPLIT DUCT. THE CONTRACTOR SHALL ENCLOSE THE EXISTING CABLES IN 4" PVC SPLIT DUCT.

THE LOCATIONS OF EXISTING UTILITIES SHOWN IN THIS PLAN ARE APPROXIMATE. WHEN WORK IS TO BE CONDUCTED IN THE VICINITY OF KNOWN UTILITIES, THEIR ACTUAL LOCATION MUST BE FIELD VERIFIED TO AVOID CONFLICTS OR DAMAGE TO THOSE UTILITIES. VARIATION IN LOCATION BETWEEN "RECORDED POSITIONS" AND ACTUAL POSITIONS SHOULD BE ANTICIPATED.

IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THE LOCATION OF ALL UNDERGROUND UTILITIES. BURIED UTILITIES MAY EXIST IN THE AREA IN ADDITION TO THOSE SHOWN ON THE PLAN. THE CONTRACTOR SHALL CONTACT PROPERTY OWNERS WHEN WORKING WITHIN PRIVATE EASEMENTS FOR LOCATION OF UNDERGROUND TANKS, PIPELINES, DRAIN TILES, OR OTHER BURIED IMPROVEMENTS. THE CONTRACTOR SHALL ALSO NOTIFY THE UTILITY NOTIFICATION CENTER PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITIES.

THE CONTRACTOR MUST ASSUME ALL BURIED UTILITIES ENCOUNTERED ARE ALIVE AND ACTIVE UNLESS SPECIFICALLY INSTRUCTED OTHERWISE BY THE OWNERS OR OPERATORS OF SAID UTILITIES.

DAMAGE TO SUB-SURFACE STRUCTURES IS THE SOLE RESPONSIBILITY OF THE PLACING CONTRACTOR.

THE CONTRACTOR SHALL PROTECT THE EXISTING TRAFFIC CONTROL LOOPS. IF EXISTING TRAFFIC CONTROL LOOPS ARE DAMAGED DURING CONSTRUCTION, THE ENTIRE LOOPWIRE FROM FROM TERMINAL TO TERMINAL SHALL BE REPLACED IN ACCORDANCE WITH PERMITTING AGENCY STANDARDS AND REGULATIONS AT CONTRACTOR'S EXPENSE.

REMOVAL OF EXISTING ASPHALT PAVEMENT, CONCRETE CURBS, AND CONCRETE SIDEWALKS WILL BE "NEAT LINE" WITH SAW OR PAVEMENT CUTTER, PER REQUIREMENTS AND SPECIFICATIONS OF THE AGENCY OR DEPARTMENT RESPONSIBLE FOR EACH LOCATION. IF CONCRETE PAVEMENT IS ENCOUNTERED WHILE EXCAVATING CONDUIT TRENCHES, THE CONCRETE REMOVAL WILL BE "NEAT LINE" WITH A PAVEMENT SAW.

IF CONCRETE CURB RETURNS AND/OR SIDEWALKS ARE REPLACED DUE TO CONDUIT OR MANHOLE INSTALLATION, THE CONTRACTOR SHALL PLACE APPROVED HANDICAPPED SIDEWALK AND CURB ACCESS RAMPS IN CONFORMANCE WITH OREGON STATE STATUTES.

ALL MATERIALS NECESSARY FOR THE REPAIR OF STREETS, CURBS, SIDEWALKS, SANITARY SEWERS, STORM SEWERS, AND PUBLIC SERVICE UTILITIES, AND THE INSTALLATION OF SUCH MATERIALS SHALL BE IN CONFORMANCE WITH THE REQUIREMENTS AND SPECIFICATIONS OF THE AGENCY OR DEPARTMENT RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE REPAIRED FACILITY.

ALL WORK SHALL CONFORM TO THE SPECIFICATIONS OF THE PERMITTING AGENCY.

ALL OPEN TRENCH WILL BE CLEARLY MARKED WITH BARRICADES OR CONES. STEEL PLATES OR OTHER TYPES OF BRIDGING SHALL BE PROVIDED TO COVER OPEN TRENCH IN THE TRAVEL PORTION OF THE STREETS. THESE PLATES OR BRIDGING SHALL BE ADEQUATE TO SUPPORT THE NORMAL VEHICLE LOADS ANTICIPATED IN THIS AREA AND SHALL BE IN PLACE DURING ALL NON-WORKING AREAS.

ALL SURFACES TO BE RESTORED TO ORIGINAL CONDITION, AND BACKFILL TO BE COMPACTED AS SPECIFIED. TRENCH EXCAVATION IN SURFACES WHICH INCLUDE CONCRETE TREATED BASE SHALL FOLLOW LOCAL AREA SPECIFICATIONS.

THE CONTRACTOR SHALL BE REQUIRED TO MAINTAIN NORMAL TRAFFIC MOVEMENT DURING NON-WORK PERIODS FOR ALL CONSTRUCTION ACTIVITY WITHIN THE LIMITS OF CITY STREETS BY THE USE OF STEEL PLATES (DESIGNED FOR H-20 LOADING) OR BACKFILLING THE TRENCH. IF THE CONTRACTOR ELECTS TO BACKFILL THE TRENCH HE SHALL "CAP" THE TRENCH WITH A 3' (COMPACTED MINIMUM) DEPTH OF CLASS "C" ASPHALTIC CONCRETE COLD MIX. IF THE CONTRACTOR ELECTS TO PLATE THE TRENCH THE PLATES SHALL BE PINNED AT EACH CORNER AND THE EDGES SHALL BE "RAMPED" WITH CLASS "C" ASPHALTIC CONCRETE COLD MIX TO PREVENT "WHEEL SHOCK" ON IMPACT. COLD MIX SHALL BE COMPACTED AND SMOOTH IN EITHER TYPE OF INSTALLATION. TO PREVENT SKIDDING, TRAFFIC PLATES SHALL BE TREATED WITH WELD BEADS TO PROVIDE TRACTION. WELD BEADS SHALL BE LOCATED 4" ON CENTER AND EXTEND THROUGH THE TRAVEL PORTIONS OF THE PLATES.

THE CONTRACTOR SHALL NOTIFY PERMITTING AGENCY IMMEDIATELY IF ANY MATERIALS ARE ENCOUNTERED THAT ARE CONSIDERED HAZARDOUS BY THE EPA, DEQ, OR OSHA. IF POTENTIALLY HAZARDOUS MATERIALS ARE ENCOUNTERED THE CONTRACTOR SHALL SECURE THE SITE AND PREVENT THE ACCIDENTAL EXPOSURE BY THE PUBLIC OR THE CONTRACTOR'S PERSONNEL.

THE CONTRACTOR MAY EXCAVATE UP TO, BUT SHALL NOT DISTURB KNOWN HAZARDOUS MATERIALS SUCH AS ASBESTOS, OR S, ACID, ETC. THE REMOVAL OF ALL HAZARDOUS MATERIALS MUST BE DONE BY AN APPROVED OR CERTIFIED HAZARDOUS MATERIALS CONTRACTOR LICENSED BY THE STATE OF OREGON.

A COPY OF ALL CORRESPONDENCE PERTINENT TO THE REMOVAL OF HAZARDOUS MATERIALS SHALL BE TRANSMITTED TO PERMITTING AGENCY AND A COPY SHALL BE AVAILABLE AT THE PROJECT OFFICE AND THE JOB SITE.

BACKFILL OF CONDUIT TRENCH OR MANHOLE EXCAVATION SHALL BE 3/4" - 0 CRUSHED ROCK PLACED IN 6" LIFTS AND COMPACTED WITH MECHANICAL VIBRATING TYPE COMPACTION EQUIPMENT TO 95% OF MAXIMUM DRY DENSITY (ASTM D-1557 OR AASHTO T-180) UNDER ALL PAVED SURFACES.

BACKFILL OF CONDUIT TRENCH OR MANHOLE EXCAVATION IN NON-PAVED AREAS SHALL BE CLEAN SAND OR SILTY LOAM SOILS PLACED IN 1'-0" LIFTS COMPACTED BY MECHANICAL VIBRATING TYPE COMPACTION EQUIPMENT TO 95% OF MAXIMUM DRY DENSITY (ASTM D698 OR AASHTO T-99).

SAND MAY BE WATER SETTLED IF THAT TYPE OF COMPACTION IS ALLOWED BY THE PERMITTING AGENCY IN EITHER PAVED OR NON-PAVED SITUATIONS. THE CONTRACTOR SHALL VERIFY THE TYPE OF COMPACTION ALLOWED PRIOR TO BEGINNING ANY BACKFILL ACTIVITY.

BACKFILL SHALL BE PLACED IN ACCORDANCE WITH THE SPECIFICATIONS AND REGULATIONS OF PERMITTING AGENCY.

TREES AND SHRUBS TO BE PLACED, TRIMMED, OR REMOVED SHALL BE IDENTIFIED PRIOR TO ALL SUCH ACTIVITY TO VERIFY THE NECESSITY OF SAID ACTION AND THE METHOD OF DEALING WITH THEM.

TREE AND SHRUB TRIMMING SHALL BE DONE BY A LICENSED LANDSCAPER AND SHALL CONFORM TO THE STANDARDS OF THE AMERICAN NURSERYMAN'S ASSOCIATION.

TREES AND SHRUBS TO BE PLACED AS SIGHT SCREENING OR TO REPLACE TREES AND SHRUBS REMOVED FOR CONSTRUCTION SHALL MEET AMERICAN NURSERYMAN'S ASSOCIATION STANDARDS FOR QUALITY AND SIZE. REPLACEMENT TREES AND SHRUBS SHALL SATISFY THE PROPERTY OWNER AS TO SIZE AND QUALITY.

EXCAVATION IN LAWN AREAS SHALL BE "NEAT LINED" WITH A SOD CUTTER TO ENSURE A SMOOTH MATCH LINE FOR REPAIR WITH APPROVED SOD.

ALL LAWN RESTORATION SHALL BE DONE BY USING SOD PLACED TO THE GROWER/SUPPLIER'S SPECIFICATIONS AND ADJACENT PROPERTY OWNER'S SPECIFICATIONS.

SOD USED TO REPAIR EXISTING LAWN AREA SHALL BE OF A BLEND THAT WILL MATCH THE ADJACENT UNDISTURBED LAWN AREA FOR BOTH COLOR AND TEXTURE.

PRIVATE IRRIGATION SYSTEMS ARE OCCASIONALLY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY OF ADJACENT STREET AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THEIR OPERATION AND REPAIR IF DAMAGE OCCURS DURING HIS CONSTRUCTION ACTIVITY. PRIVATE IRRIGATION SYSTEMS LOCATED ON PRIVATE PROPERTY DAMAGED BY CONSTRUCTION ACTIVITY SHALL BE REPAIRED IMMEDIATELY TO THE OWNER'S SATISFACTION.

IN DEVELOPED (PROFESSIONALLY) LANDSCAPED AREAS, NO WORK SHALL BE DONE WITHOUT THE OWNER'S WRITTEN PERMISSION OR AUTHORIZATION.

MANHOLES AND CONDUIT TO BE PLACED ADJACENT TO EXISTING STRUCTURES SUCH AS BRIDGE, BRIDGE FOOTINGS/PIERS, BUILDING FOUNDATIONS, WALLS, POWER AND TELEPHONE POLES, AND OTHER UTILITIES SHALL MAINTAIN A MINIMUM CLEARANCE AS SHOWN. THE CONTRACTOR SHALL NOT UNDERMINE ANY ADJACENT STRUCTURE WITHOUT SPECIFIC WRITTEN PERMISSION FROM THE OWNER/OPERATOR OF SUCH STRUCTURE.

SHORING USED AS FOUNDATION SUPPORT SHALL BE DESIGNED SPECIFICALLY FOR BOTH THE LIVE AND DEAD LOADS OF THE STRUCTURE, OR IF ONLY THE DEAD LOAD IS USED FOR DESIGN, THE CONTRACTOR SHALL PROVIDE A DETAILED LAYOUT AND PLAN OF THE METHOD OF ESTABLISHING AND MAINTAINING THE DESIGN LOAD CONDITIONS (I.E., ROAD DETOURS, TIEBACKS, ETC.).

SEE UTILITY CLEARANCE SECTION NOTES FOR CLEARANCE CRITERIA TO PARALLEL OR CROSS UTILITIES.

EXISTING UTILITIES EXPOSED DURING EXCAVATION SHALL BE 100% SUPPORTED BY EITHER TRENCH BRIDGING AND SUSPENSION OR BY THE USE OF LONGITUDINAL TRAYS OR PLATFORMS VERTICALLY SUPPORTED BY ADJUSTABLE BUILDING JACKS.

EXISTING SPLICE CASES AND CABLES SHALL BE SUPPORTED BY SUSPENSION FROM A CROSSING BEAM. SUPPORTS SHALL BE PLACED AT A MAXIMUM SPACING OF 4.0 FEET AND SHALL CONSIST OF A CANVAS SLING WITH NYLON BELTING OR ROPE. ALL CABLE SUPPORTS SHALL BE PLACED IN A MANNER THAT PREVENTS KINKS OR OTHER DAMAGE TO THE CABLE SHEATH.

AN ACCEPTABLE ALTERNATIVE TO CABLE SLINGS WOULD BE THE UTILIZATION OF A WIDE FLANGE "I" BEAM OR CHANNEL AS A "CABLE TRAY" WITH THE CABLES/CASES BANDED IN PLACE.

THE CONTRACTOR SHALL PROVIDE SHORING FOR CONDUIT TRENCH EXCAVATION 42" OR MORE IN DEPTH AS MEASURED FROM THE HIGH SIDE OF THE TRENCH AND FOR ALL MANHOLE EXCAVATION.

MANHOLE SHORING SHALL BE TIGHT-SHEETED.

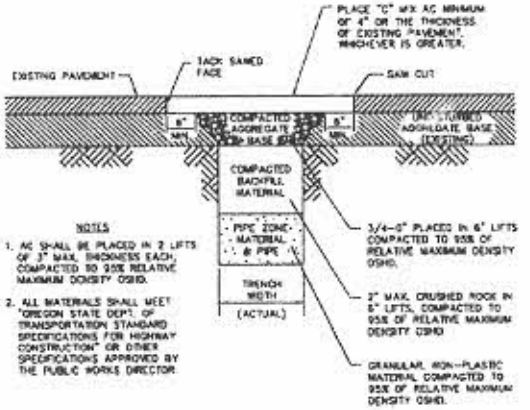
ALL SHORING SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF CITY OF PORTLAND AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA).

SHORING SHALL BE DESIGNED TO MEET H-20 HIGHWAY LOADING.

THE CONTRACTOR SHALL PROVIDE ALL SHORING AND DESIGN CALCULATIONS TO THE PERMIT ISSUING AGENCY PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITY.

LANDSCAPE AREAS SERVED BY IRRIGATION SYSTEMS SHALL BE MAINTAINED AT ALL TIMES DURING CONSTRUCTION BY THE UTILIZATION OF TEMPORARY SOURCES OF IRRIGATION WATER OR BY MAKING TEMPORARY REPAIRS TO THE DAMAGED SYSTEM TO ALLOW ITS SATISFACTORY OPERATION.

ANY UTILITY DAMAGED BY CONSTRUCTION ACTIVITY SHALL BE RETURNED TO FULL SERVICE IMMEDIATELY AND ANY COST OR EXPENSE CONSIDERED TO BE LOST BY THE UTILITY USER SHALL BE THE CONTRACTOR'S RESPONSIBILITY.



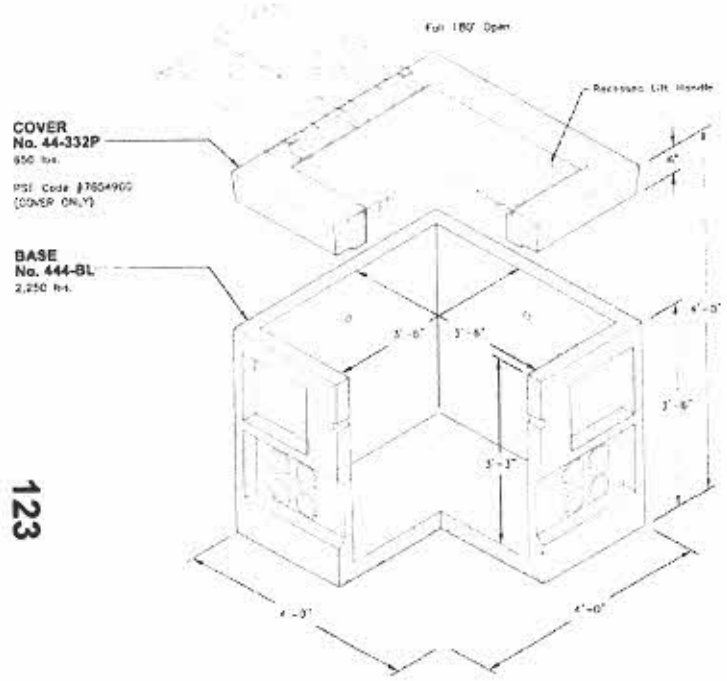
NOTES

1. AC SHALL BE PLACED IN 2 LIFTS OF 3" MAX. THICKNESS EACH, COMPACTED TO 95% RELATIVE MAXIMUM DENSITY OSHD.
2. ALL MATERIALS SHALL MEET "OREGON STATE DEPT. OF TRANSPORTATION STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION" OR OTHER SPECIFICATIONS APPROVED BY THE PUBLIC WORKS DIRECTOR.

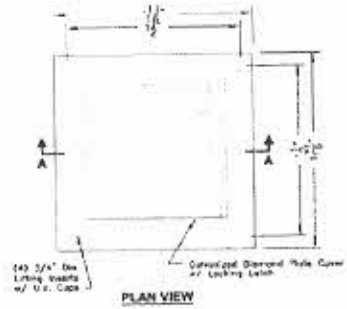
REV.	DATE	DESCRIPTION	ENG.
0	09-05-1	PERMIT DWG	MW

LS Networks
921 SW Washington St., Ste. 370
503-294-5300
214-889-4529 fax

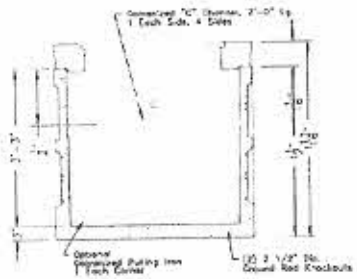
LSN-ONTROR
ONTARIO, OR 18S47E10BB
QWEST C.O. COLOCATION
LSN PROJECT: 20110234
NOTES



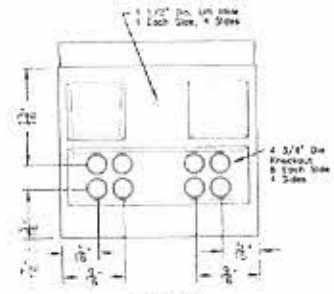
123



PLAN VIEW

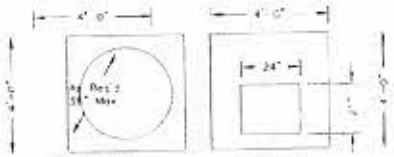


SECTION AA



END VIEW

OPTIONAL COVER SECTIONS



Non Skid Covers Available

UTILITY VAULT PRE-CAST 444LA
SCALE 1/2"

REV	DATE	DESCRIPTION	ENG.
0	09 06 11	PERMIT DWG	WWV

LS Networks
921 SW Washington St., Ste. 370
503-294-5300
214-889-4529 fax

LSN-ONTROR
ONTARIO, OR 18S47E10BB
QWEST C.O. COLOCATION
LSN PROJECT: 20110234
NOTES