

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, November 7, 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, November 2, 2011, and a study session was held on Thursday, November 3, 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 10/17/2011 1-9
- B) SRO Contract with Ontario 8-C School District 10-13
- C) Water Line Easement Request: Keizer Enterprises, LLC 14-17
- D) Airport Hangar Lease Agreements: Alan Daniels - 215/217 Golf 18-32
- E) Ordinance #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 2nd Reading by Title Only 33-76
- F) 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) Move to a High Deductible Insurance Plan for Non-Represented Employees 77-78
- B) Resolution #2011-127: Declaring Necessity and Intent for Acceptance of Road Right-of-Way from Anchors Mini-Storage LLC, H2MK LLC and 3DY LLC 79-89

7) **Topics for Discussion - Thursday**

- A) Skyline Farms Sediment Removal: Chuck Mickelson
- B) Ridgeview/Wettstein Subdivision Development: Chuck Mickelson

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) **Ontario Aquatic Center: (Hand-Outs)**

11) **Adjourn**

MISSION STATEMENT: TO PROVIDE A SAFE, HEALTHFUL AND SOUND ECONOMIC ENVIRONMENT, PROGRESSIVELY ENHANCING OUR QUALITY OF LIFE

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
October 17, 2011**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, October 17, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Dan Jones, David Sullivan and Ron Verini. Charlotte Fugate was excused.

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

David Sullivan led everyone in the Pledge.

AGENDA

Consensus to add Item 6A(1) to the agenda – Contract with Goodman Oil.

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

CONSENT AGENDA

Ron Verini moved, seconded by David Sullivan, to approve Consent Agenda Item A: Approval of the Regular Minutes of 09/19/2011; Item B: Approval of Minutes of Telephonic Meeting of 10/04/2011; Item C: Proclamation – Ontario Hunger Awareness Week October 17-21, 2011; and Item D: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Mayor Dominick read the Proclamation into the record:

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.

COMMENTS

Mayor Dominick presented the LOC Silver Award Safety Award, given to the City at the 2011 LOC Conference, to the City of Ontario and former Human Resources Director Lisa Hansen, and thanked Ms. Hansen for her work in keeping the employees safe, and for reducing costs to the citizens of Ontario.

Mayor Dominick informed the Council that City Recorder Tori Barnett had just been inducted as the 2011-2012 President of the Oregon Association of Municipal Recorders. Ms. Barnett would not only be representing Oregon Recorders, but would also host the 2012 OAMR Conference in Ontario next September, and represent Oregon at the International Institute of Municipal Clerks in Portland next May.

NEW BUSINESS

Change Order: Septage Receiving Facility

Bob Walker, Deputy Public Works Director, stated the purpose of this agenda item was for approval from the City Council to authorize the City Manager to approve the \$26,600 Change Order on the Septage Receiving Facility.

On September 16, 2010, during a 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 was to be provided from budgeted sewer projects which were complete and came in under budget. That request was approved. On April 14, 2011, Council authorized the City Manager to award the Septage Receiving Facility Equipment to Franklin Miller Inc. in the amount of \$149,900, for purchase of equipment only. The total project cost at that time was estimated at \$296,900. On June 20, 2011, Council approved the 2011-2013 budget, was included 11SEW-11 for \$295,000.

Currently, the septic disposal business owners in the area did not have adequate facilities to dispose of their wastewater. They presently used the Clay Peak Landfill in Payette, Idaho or the City of Caldwell Wastewater Treatment Plant in Caldwell, Idaho. There were several issues with the current disposal sites but the biggest one appeared to be the inability to utilize these facilities on weekends, during holidays, or after hours. As a large percentage of their business was emergencies which happened on weekends or after hours, the inability to dump their loads created 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, staff did a rate study of charges assessed by eight surrounding communities. Based upon that study, staff was 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 per month at \$0.08/gallon, 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 was a conservative estimate as there were actually six septic businesses that would most likely utilize the Ontario Facility.

After conferring with the City Council at the April 14 work session, staff modified the design and site layout for the facility. Staff 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, staff was able to eliminate the fill proposed on the south side of the existing headworks building as the septage truck would not have to drive in that area. In addition, the bid request did not include a pH meter which was essential for this type of facility. The

pH meter monitored the effluent from the septage trucks and if it was out of range, the equipment shut down and would not allow the septage hauler to complete the download. The proposed change order included \$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 the existing headworks building and a redesign of equipment to work not only for septage hauler unloading, but to accommodate waste from existing screens.

The revised cost estimate for the project, after inclusion of this Change Order, was \$295,000. The savings from not paving the road and eliminating the fill would be utilized to pay for change. It also provided for a contingency of \$13,261. As indicated above, at a rate of \$0.08 per gallon, the project would have a payback in less than five (5) years.

Mayor Dominick asked what document would set the fees?

Ms. Barnett indicated it would be by resolution.

Mayor Dominick suggested that the resolution include some type of yearly percentage increase to keep up with increased costs. Also, was there a meter that measured gallons?

Mr. Walker stated yes, it was automatically downloaded and direct billed to the consumer.

Mayor Dominick asked if the system had growth capabilities.

Mr. Walker stated it did.

Councilor Fox questioned the COLA.

Mr. Walker stated no study had been done; however, currently the prices were calculated out to repay the costs back in four years. A yearly percentage increase could be researched.

Mayor Dominick stated he just didn't want to lock in a cost for an extended period of time.

Councilor Fox stated the issue should be revisited at least every two years. It wasn't really a COLA if it was on machinery.

Ron Verini moved, seconded by David Sullivan, 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. Roll call vote: Crume-yes; Fox-yes; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Contract with Goodman Oil for Demolition of Goodman Oil Gas Station Building

Larry Sullivan, City Attorney, stated the purpose of this item was to have the Council approve an agreement with Goodman Oil Company to demolish the building on the Goodman Oil property as a dangerous building and to lien the property for the City's demolition costs. There have been numerous Council discussions over the years about the demolition of the building on the Goodman Oil property as a nuisance abatement, including a discussion during the Council work session on October 13, 2011.

In 2010, the City building official, Dwayne Holloway, sent Goodman Oil Company administrative orders for the repair or demolition of the building located on the Goodman Oil property at 248 SW 4th Avenue, which staff determined was a dangerous building under City Code Section 4-5-7A. Goodman Oil Company was insolvent and failed to complete any of the required repairs.

City Code Section 4-5-8(D) authorized the Council to direct staff to repair or demolish any dangerous buildings when the owner failed to do so. Staff determined that the building could not be economically repaired and must be demolished as a nuisance abatement.

The Council packet also included a separate agenda report for approval of the low bid for the demolition of the Goodman Oil building. As noted in that report, the City attorney obtained the oral consent of Royce Goodman, the president of Goodman Oil Company, for the building demolition and for a \$12,000 lien on the property. The Agreement for Abatement of Dangerous Building was prepared for Goodman Oil to formally authorize the demolition of the building as a nuisance abatement and for Goodman Oil's consent to lien the property for those demolition costs in the estimated amount of \$14,000. That estimate had now been increased to \$16,000.

The proposed \$16,000, notice of claim of lien was a preliminary estimate that included the amount of the low bid award, plus the City's costs for staff time, additional expenses for permits, asbestos removal and legal fees. The original \$12,000 estimate was increased to include additional costs for removal of any remaining foundation after the removal of the underground storage tanks and hoist on the property by contractors hired by the Oregon DEQ. An amended claim of lien would be filed by the City for the actual costs incurred after all demolition work had been completed, including any amount in excess of the \$16,000 estimate. The agreement provided that if Goodman Oil did not reimburse the City for those demolition costs within 60 days of the date in which a final accounting for the demolition was mailed to Goodman Oil, the City would have the right to foreclose on the real property.

Councilor Crume confirmed that if Goodman didn't pay the costs after the demolition, after 60 days the city would foreclose on the property, and would own it. Didn't that mean the city would own property that had problems with contamination?

Mr. Sullivan stated if the city acquired the property through a foreclosure, it would be insulated from liability for that acquisition.

Councilor Sullivan asked about a Deed in Lieu of Foreclosure.

Mr. Sullivan stated DEQ would file a formal foreclosure.

Councilor Fox asked if Goodman Oil was solvent.

Mr. Sullivan stated that according to DEQ, Goodman Oil was not solvent.

Councilor Fox asked, for clarification: once the contract was signed, if Goodman Oil neglected to pay the demolition bill of approximately \$14-16K, the only recourse for the city was to take possession of the land?

Mr. Sullivan stated that was correct. At the Thursday work session, DEQ funding to do tank removal and to also pay for monitoring of the property. That meant that when DEQ was done, the property might have a fair market value.

Councilor Verini asked if there might be further contamination even after the tank removal.

Mr. Sullivan stated DEQ would remove any on-sight contamination, and then would monitor it. There was already some indication of some off-site contamination.

David Sullivan moved, seconded by Norm Crume, that the Mayor and City Council approve the Agreement for Abatement of Dangerous Building with Goodman Oil Company and authorize and direct the City Manager to execute the Agreement and proceed with the demolition of the building at 248 SW 4th Avenue as a dangerous building under City Code Section 4-5-8(D). Roll call vote: Crume-yes; Fox-yes; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Bid Award: Demolish Goodman Oil Gas Station to MVCI (\$8,750)

Larry Sullivan, City Attorney, stated the intent of this project was 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 would be completed with minimal disruption to the subsurface soil. Existing slabs, foundations and below ground storage tanks would remain undisturbed. All debris from the demolition would be removed from the site.

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; and Warrington Construction Corporation - \$24,400.

The City Attorney arranged with the owner for the City to lien the property up to approximately \$16,000 for the demolition and other costs incurred by the City.

Mayor Dominick asked if the cost included reinstalling the perimeter fence?

Mr. Sullivan stated it did.

Mayor Dominick thanked the three companies who bid on the demolition; he was looking forward to having the eyesore removed.

Norm Crume moved, seconded by Dan Jones, 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. Roll call vote: Crume-yes; Fox-yes; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Approve Letter of Intent with Site Based Energy (SBE) to Install and Operate Solar Panels

Henry Lawrence, City Manager, stated this agenda item was to determine whether the City of Ontario should participate in a solar power pilot program conducted by Idaho Power.

A 2009 Oregon statute required power companies operating in Oregon, including Idaho Power Company, to participate in pilot programs for the generation of solar power. Essentially, Idaho Power paid its customers for the power generated by the solar (photovoltaic) panels installed on the property of its customers who participated in the pilot program at a rate of \$0.317/kWh for the entire 15 year life of the agreement (Schedule 88). The customer continued to pay for electricity used as they currently did during that 15 year period. Once the agreement expired, the customer could choose to negotiate a net metering agreement with Idaho Power that would offset electricity consumed at the location by that produced by the solar system.

Participation in the program required the submission of applications 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 were the 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. The \$5,000 fee to Idaho

Power was refundable so long as the city completed installation of the solar panels within the 12 month deadline discussed in the Idaho Power Overview. If a financing contract between SBE and Ontario was approved by the Council, SBE would 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 would lease the space required for the project from the city at the cost of \$1 per year until full ownership of the project was transferred to the city. Idaho Power will also refund the \$5,000 application fee if Idaho Power decided not to award a Capacity Reservation to the city as discussed in the Overview.

At this point, if the City Council decided not to proceed with the Idaho Power Pilot Program, the city would have to repay SBE the \$5,000 they paid on the city's behalf.

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. Once the panels were owned by the city beginning in the ninth year after installation, SBE projected the City would receive annual payments totaling \$299,894 over the remaining 17 year lifespan of the panels. Staff recognized that this projection was based on assumptions that might prove to be inaccurate.

Mayor Dominick stated if SBE leased the land where the panels were located, what was that rate?

Mr. Sullivan stated the lease was nothing more than an authorization to SBE to have access to the property.

Mayor Dominick asked if SBE would consider a 50/50 cost on this, instead of the seven, then eight year. If the city went the proposed route, the city needed more of a commitment from SBE that they weren't taking all the money right away.

Mr. Sullivan stated the proposal before the Council was not to approve a contract; it was to authorize staff to continue to negotiate with Idaho Power and SBE to participate in the program. They planned to bring back a formal contact with Idaho Power and SBE to the Council before signing, with a final letter of intent with SBE and the city. If the Council authorized the current action, it would not impose a commitment on the city with SBE.

Mr. Lawrence stated this was only to the authorization to continue. It would most likely be around 45-60 days before it would actually come back for action.

Councilor Fox asked about the \$5K that was paid on the city's behalf.

Mr. Lawrence stated it was paid to lock in the 10 spots the city wanted.

Mr. Sullivan stated he had received an email from SBE saying they would apply the \$5K, with the expectation of being reimbursed. If the city moved forward with this project, within 12 months, Idaho Power would reimburse the \$5K to the city, who would then reimburse SBE. If the city opted to not go forward with this program, the city would be obligated to reimburse SBE the \$5K. The expenditure/commitment of the \$5K had not come before the Council for approval, as a decision had to be made due to a deadline. It was either authorize the expenditure or lose out on the deal. Staff was now obligated to pay \$5K.

Councilor Fox asked a company would court the city, why would the city agree to pay anything before anything was even done? SBE would be the one making the profit. Why was tax payer money obligated without Council approval? After hearing Councilor Crume's comments last week, it was clear that Idaho Power would simply increase their rates, passing the increase on to the tax payers/rate payers.

Councilor Crume had spoken to Representative Cliff Bentz last week, who was fully aware of the program when he took office in 2008. One of the first things done in the House was to slow down on the quantity of this type of program. This expense would go back on ratepayers. On this current deal, if something was too good to be true, it

was. This firm was willing to invest their own money, because they would make a profit. It was unknown how much, but there would be tax write-offs on the federal side. Councilor Crume believed this was nothing more than a legal Ponzie scheme. For the city to gain money over a 15-year period of time, who was paying for it, and for what reason? Everyone who paid federal taxes paid for it. For the city to gain some money, it was on the backs of the rate payers and tax payers. He just couldn't understand it, and couldn't believe they would be looking at doing this. They couldn't operate their own businesses that way. Idaho Power was forced by the State of Oregon to do this for "green" renewable energy. He strongly encouraged the Council to really think about it. He would be voting no on the project.

Councilor Sullivan asked if Councilor Crume intended to vote no on every government grant?

Councilor Crume stated no, there were some viable projects.

Councilor Verini stated he would like the opportunity to study solar power. It warranted a very serious look. It was a benefit to the citizens, and it was green. To pass up an opportunity to participate in solar would be a disservice.

Councilor Sullivan stated they were already in by \$5K, they might as well do more research, but not on a 25-year term. Shorten the scope. Even the 12-year term had him concerned. Were there reserves in the amortization schedule? The reality was the city has money flashed in front of them for a myriad of reasons. He disagreed with many of the grants the city accepted, but if it was going to be run like a business, they had to be smart and take advantage of it.

Mayor Dominick stated if the contract was worded correctly, it might result in not having to raise rates. To not wait the 12 years, would offset utilities to the customers. He was in agreement that they should continue to explore this issue. If they got into an impasse in the contract, the city could back out.

Councilor Crume stated he had been informed by Representative Bentz that there was an Oregon firm that built solar panels, and SBE and stated they would be using foreign companies.

Mr. Sullivan stated the panels could be purchased from wherever. If the Council wanted to proceed, and look at purchasing the panels from SBE, the option was there to ask SBE to use the Oregon company.

Councilor Fox reiterated this was going to be a cost to the rate payers. It didn't lower anything to the tax payers. It was no different than if the building permit prices were raised. The contractor would mark their costs up, and pass it off to the end user. He would be voting no on the action.

Councilor Sullivan stated that was for Idaho Power to worry about.

Councilor Crume stated Salem was forcing this. Someone needed to stand up against things that didn't make sense.

Councilor Jones stated the city was on the hook for the \$5K, regardless. The vote before them was for authority to proceed with information gathering.

Councilor Fox stated it was also about spending \$5K without Council approval.

Mayor Dominick stated that was a separate issue. As the city was already obligated, he agreed staff should continue to research the program.

Mr. Sullivan stated if the Council approved the motions, it simply meant Council supported staff spending time on the issue, to gather information, to finalize contracts with SBE and Idaho Power, to bring back before Council. To not approve the motion, then there would be further action on the project.

Mayor Dominick suggested rewording the motion if they were not comfortable with how it currently read.

Mr. Sullivan stated Idaho Power had the \$5K. The terms of the pilot program required that the applicant have the system on-line within 12 months of the time the Certificates of Participation were sent out, following formal approval and the amount of power being reserved in the name of the applicant. After that, Idaho Power would keep the \$5K. SBE estimated the construction would be on-line within a few months.

Councilor Jones asked what Representative Bentz said about businesses like SBE.

Councilor Crume said he was told that there was an Oregon firm that constructed solar panels.

Dan Jones moved, seconded by Ron Verini, that the City Council authorize staff to take the preliminary steps necessary to participate in Idaho Power's Oregon Solar Photovoltaic Pilot Program. Roll call vote: Crume-no; Fox-no; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 4/2/1.

David Sullivan moved, seconded by Ron Verini, that the City Council authorize staff to continue to negotiate with SBE, of Hailey, Idaho, to finance the city's participation in Idaho Power's Oregon Solar Photovoltaic Pilot Program. Roll call vote: Crume-no; Fox-no; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 4/2/1.

Mayor Dominick stated based on the discussion regarding expending city funds, he asked the City Attorney to look at what the Financial Policies stated with regard to the authority of the City Manager to expend city funds without taking the issue before the Council. What amount was he authorized to spend?

Ordinance #2663-2011: Telecommunications Franchise Agreement with Lightspeed Networks, dba LIS Networks (1st Reading)

Larry Sullivan, City Attorney, stated the proposed ordinance was a telecommunications franchise agreement with Lightspeed Networks, Inc., dba LS Networks.

LS Networks was an Oregon corporation duly registered with the Oregon PUC as a telecommunications carrier. It had a contract with the State of Oregon to connect the existing fiber optic network in Ontario to SRCI. The proposed franchise agreement followed 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 were no subscribers within the city limits. This franchise agreement would not result in the payment of any franchise fee to the city until LS Networks acquired such subscribers.

LS Networks 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 was enacted with an emergency clause after a second reading, it would be effective on the date of the second reading on November 7, 2011, rather than after the standard thirty day waiting period on December 7, 2011.

David Sullivan moved, seconded by Ron Verini, 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. Roll call vote: Crume-yes; Fox-no; Fugate-out; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/1/1.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Ron Verini stated the veteran center van would be in town tomorrow from 10-3.
- Joe Dominick stated it was Homecoming Week at Ontario High School. He encouraged everyone to attend the game and to be sure to visit the concession stand.

EXECUTIVE SESSION(S)

Executive Session: ORS 192.660(2)(e)

An executive session was called at 8:19 p.m. under provisions of ORS 192.660(1)(e) to discuss real property. The Council convened into a second Executive Session at 8:27 p.m.

Executive Session: ORS 192.660(2)(d)

An executive session was called at 8:30 p.m. under provisions of ORS 192.660(1)(d) to discuss labor negotiations. The Council reconvened into regular session at 9:20 p.m.

ADJOURN

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

APPROVED:

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

Consent AGENDA REPORT
November 7, 2011

TO: Mayor and City Council
FROM: Mark Alexander, Chief of Police
Through: Henry Lawrence, City Manager
SUBJECT: SRO CONTRACT WITH ONTARIO 8C SCHOOL DISTRICT
DATE: October 31, 2011

SUMMARY:

Attached is the following document:

- Proposed School Resource Officer (SRO) contract with Ontario 8C School District.

The Police Department would like to enter into a contract with the Ontario 8C School District to provide two SRO's for the 2011-2012 school year.

BACKGROUND:

The Police Department has partnered with the Ontario 8C School District to provide SRO's for several years. The level of service and associated costs has fluctuated, depending upon budget conditions. There currently is no written contract between the City and the District for SRO services.

The School District has budgeted a maximum of \$125,000 to fund two SRO's for the 2011-2012 school year. The proposed contract outlining the services and associated costs, with the budgeted maximum, is attached.

FINANCIAL IMPLICATIONS:

Ontario 8C School District will pay the City fully burdened wages for actual hours performed by SRO's, up to \$125,000. The City will provide equipment and training for the officers. The City's approved 2011-2013 budget assumes revenues of \$124,462 per year from the SRO contract.

RECOMMENDATION:

Staff recommends the City Council authorize the Mayor to sign a contract with 8C School District to provide two School Resource Officers for the 2011-2012 school year.

**LAW ENFORCEMENT SERVICES AGREEMENT
ONTARIO SCHOOL DISTRICT/CITY OF ONTARIO**

THIS AGREEMENT commencing on the _____ day of _____, 2011 by and between the ONTARIO SCHOOL DISTRICT, a unit of local government, hereinafter referred to as "District" and ONTARIO CITY, a unit of local government, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, District desires to enter into a contract with City for the performance of law enforcement services at schools within the District and at after-school events, and

WHEREAS, the Ontario Police Department, hereinafter referred to as "OPD" has personnel qualified and capable to provide law enforcement protection and services within the City of Ontario and is agreeable to rendering such law enforcement services and protection on the terms and conditions set forth in this Agreement, and

WHEREAS, the parties to this Agreement are authorized by the laws of the State of Oregon to enter into such an agreement pursuant to ORS 190.003 through 190.085.

NOW, THEREFORE, the parties hereto agree as follows:

1. The City agrees to employ, furnish and supply police officers referred to herein as School Resource Officers ("SROs") together with equipment, supplies, vehicle, supervision and such other items that are reasonably necessary to provide law enforcement services to District, under the following terms and conditions:
 - a. OPD will provide two (2) officers as SROs who will work with the District an average of 40 hours per week while school is in session.
 - b. OPD agrees to provide a SRO for certain after-school activities. Any hours worked by the SRO at an after-school activity shall be counted in the hours worked by the SRO in that week as mentioned in subsection (a) above unless such hours qualify for overtime under the Ontario Police Officers Collective Bargaining Agreement. It shall be the responsibility of the Principal or designee to request the presence of the SRO for any after school activity. The Principal shall by mutual agreement with the SRO determine the date and hours to start and end for each after school activity at which the SRO's presence is requested. The Principal shall coordinate with the SRO concerning the number and attire of school security guards required, if any, at such after school activities.
 - c. The personnel used by OPD to perform the law enforcement services shall remain under the jurisdiction and control of OPD while rendering the services, and OPD shall maintain the standard of performance of such personnel. Although SROs will operate within a formal educational environment, they are not relieved of their official duties as law enforcement officers. Decisions to intervene formally will be made when it is necessary to prevent any criminal act. Citations will be issued and arrests made when appropriate and in accordance with OPD's standard operating procedure.
 - d. If, at any time the SRO is called to respond to an emergency by other OPD personnel during the course of providing law enforcement services to the district, the emergency shall take precedence and the SRO shall respond accordingly.

- e. Except as otherwise specifically set forth in this Agreement, such law enforcement services shall only encompass duties and functions of the type coming within the jurisdiction of and customarily rendered by a police officer of a city in the State of Oregon under the statutes of the State of Oregon and the ordinances of the City.
 - f. The law enforcement services to be rendered by OPD are services of an independent contractor with District and the standards of performance, the discipline of officers, patrol of personnel rendering such services, and other matters incident to the performance of such services shall be the responsibility of OPD.
2. The District shall pay the City for law enforcement services to be rendered pursuant to this Agreement. Said sum shall be paid to the City upon receipt of invoices that will be submitted in the following manner:
 - a. The District shall pay the fully burdened cost for two SROs for hours worked for the District during the school year at a rate of \$49.87/hour, not to exceed \$125,000.
 - b. The District shall pay the fully burdened cost for overtime worked by officers during after-school activities when those hours are after the completion of a workday or workweek as defined in the Ontario Police Association bargaining agreement at a rate of \$68.39/hour. Billing for overtime hours shall be included in the above listed cap of \$125,000.
 - c. Invoices will be submitted by the City on a monthly basis. The City shall provide copies of payroll records for verification purposes of hours worked at the request of the District.
 3. To further facilitate the performance of services, the District agrees to set aside a workspace and make facilities at the District available to the SROs performing services under this Agreement so they may write reports, conduct interviews, make phone calls, and complete other administrative tasks without leaving the area.
 4. It is agreed that all employees of OPD shall remain employees of the City for all purposes including the payment of wages and benefits, withholding or deductions from wages and/or salaries, retirement benefits, insurance, worker's compensation, and unemployment or other compensation to any City personnel performing services pursuant to this Agreement.
 5. 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.
 6. Each party shall indemnify and hold the other harmless for any acts of that party and that party's employees and agents, to the extent of the limits set forth in the Oregon Tort Claims Act, ORS 30.260-30.300.
 7. This Agreement shall be effective commencing on the date of execution of this Agreement by the parties and shall continue in full force and effect to the end of 2011-2012 school year.
 8. This Agreement may be renewed by mutual agreement of the parties for additional one (1) year periods under the terms and conditions as the parties agree. Funds under a renewed contract shall be paid to the City within thirty (30) days of renewal or execution of the contract.
 9. Either party to this Agreement may terminate the Agreement with or without cause upon thirty (30) days written notice given to the other party. Should this Agreement be terminated, any funds paid under this Agreement shall not be prorated or returned to Ontario School District.

CONSENT AGENDA
November 7, 2011

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician III

THROUGH: Chuck Mickelson, Public Works Director
Henry Lawrence, City Manager

SUBJECT: KEIZER ENTERPRISES L.L.C. – Water Line Easement

DATE: October 31, 2011

SUMMARY:

Attached is the following document:

- Keizer Enterprises L.L.C. Water Line Easement

Keizer Enterprises L.L.C. is constructing the Ontario Commercial Center, 180 East Lane. A water main was constructed to provide potable water and fire service to the development. Water mains and meters are to remain under control and jurisdiction of the city. Staff is requesting the Mayor be authorized to sign an easement for a water main extension for the Ontario Commercial Center. The easement gives the City of Ontario the authority to maintain and repair this water main and meters as necessary.

The City of Ontario is requesting a 20-foot wide utility easement for the water main and Keizer Enterprises L.L.C. accepts conveyance of the described easement for a water main and agrees to the terms of the City.

BACKGROUND:

Utility easements are very common for larger businesses. Having these easements in place also provides the business with adequate utility and fire service.

FINANCIAL IMPLICATIONS:

None.

RECOMMENDED MOTION:

Staff has reviewed this easement and recommends the Council authorize the Mayor to be signatory to the attached Permanent Utility Easement for a Water Main and the City Recorder attest the Mayor's signature.

Prepared by:
City of Ontario
Dan Shepard
444 SW 4th St
Ontario, OR 97914

After recording return to:
City of Ontario
Dan Shepard
444 SW 4th St
Ontario, OR 97914

PERMANENT UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS that Keizer Enterprises, LLC, hereinafter called Grantor, in consideration of the sum of Zero Dollars and No/100 Cents (\$00.00) and other good and valuable consideration paid to them from the **CITY OF ONTARIO, OREGON, a municipal corporation organized and existing under and by virtue of the laws of the State of Oregon**, hereinafter called Grantee, have bargained, sold and by these presents do grant, bargain, sell and convey unto the Grantee and its successors and assigns, a perpetual easement and right-of-way over and across the following described property to construct or reconstruct, maintain, inspect, operate, protect, repair, alter or remove a water main, fire hydrants, water meters and associated appurtenances through and over the following described real property:

LAND IN MALHUER COUNTY, OREGON AS FOLLOWS:

In Township 18S., Range 47E., WM; Section 11:

A parcel of land lying in Government Lot 1 of Section 11, Township 18 South, Range 47 East, Willamette Meridian, Malheur County, City of Ontario, Oregon being more particularly described as follows:

Commencing at the NW corner of said Government Lot 1; thence S 00°15'20" E along the west line of said Government Lot 1, a distance of 381.44 feet; thence N 89°44'09" E, a distance of 42.54 feet to a point on the easterly right of way line of East Lane South and the **True Point of Beginning** of this description; thence leaving the easterly right of way line of East Lane South N 89°44'09" E, 123.38 feet; thence N 00°15'20" W, 50.12 feet; thence N 89°44'09" E, 37.46 feet; thence S 00°15'51" E, 20.00 feet; thence S 89°44'09" W, 17.47 feet; thence S 00°15'20" E, 166.20 feet; thence N 89°44'09" E, 65.91 feet; thence N 00°15'20" W, 43.88 feet; thence N 89°44'09" E, 171.04 feet; thence S 00°15'51" E, 20.00 feet; thence S 89°44'09" W, 151.05 feet; thence S 00°15'20" E, 43.88 feet; thence S 89°44'09" W, 105.91 feet; thence N 00°15'20" W, 136.08 feet; thence S 89°44'09" W, 123.44 feet to a point on the easterly right of way line of East Lane South; thence N 00°05'48" W along the easterly right of way line of East Lane South, 20.00 feet to the Point of Beginning, easement area covering 12,558 square feet, more or less. Basis of Bearings is Survey No. 18-47-0860 in the Malheur County Surveyor's Office.

Together with all rights of ingress and egress necessary or convenient for the full rights and complete use, occupation and enjoyment of the rights and easements hereby granted.

The Grantors herein agree not to build, create or construct, or permit to be built, created or constructed, any obstruction, building, engineer works or other structures over or that would interfere with said water lines, fire hydrant and associated appurtenances, or Grantee's rights hereunder.

It is understood and agreed that in case suit or action is instituted to enforce or obtain compliance with any of the provisions hereof, then and in either of such events, the prevailing party shall be entitled to receive, in addition to its costs and disbursements, such sum as the court may adjudge as reasonable attorney's fees in such suit or action and on the appeal of any such suit or action.

IN WITNESS WHEREOF the parties hereunto have set their hands and seals this ____ day of _____, 2011.

GRANTOR:

M. Eugene Dickerhoof
Managing Member
Keizer Enterprises, LLC

STATE OF OREGON)
) ss.
County of Malheur)

This instrument was acknowledged before me on the ____ day of _____, 2011, by M. Eugene Dickerhoof, managing member of Keizer Enterprises, LLC.

Notary Public for Oregon
My Commission expires: _____

GRANTEE: CITY OF ONTARIO

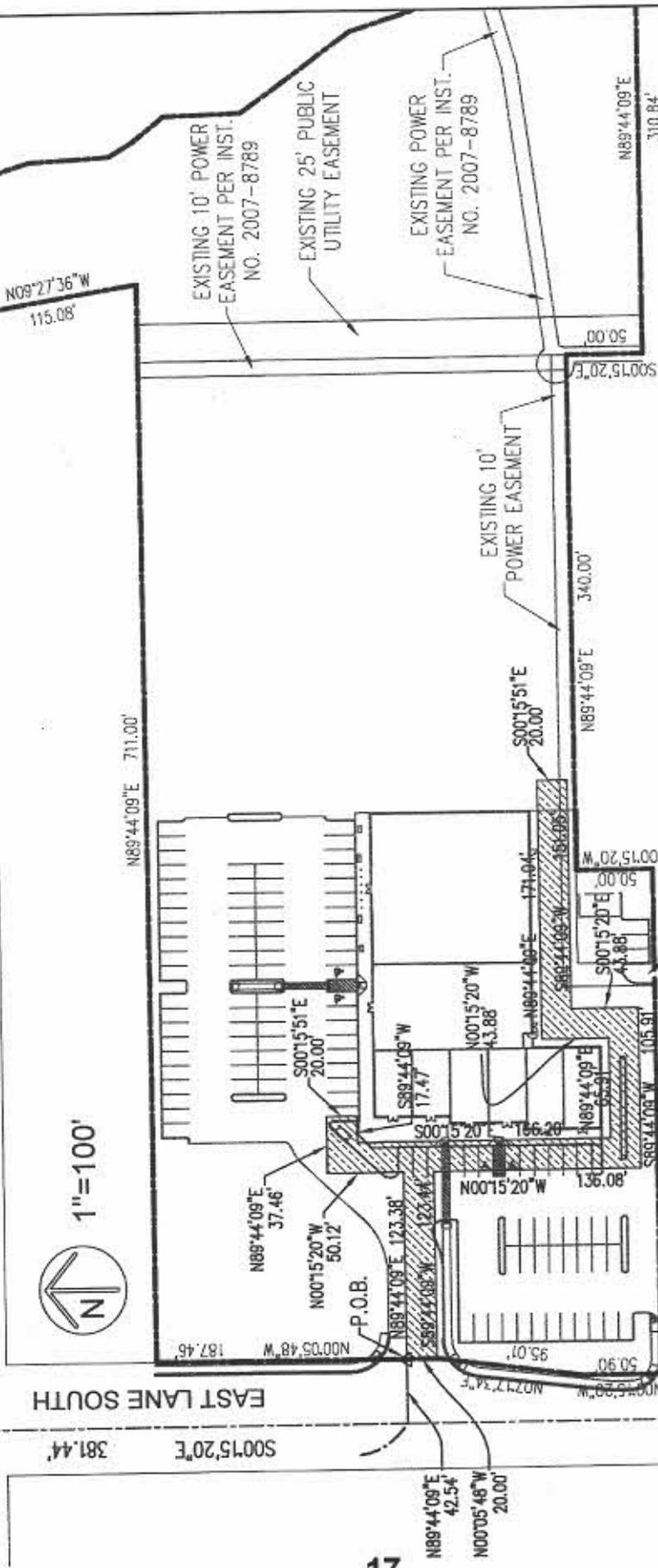
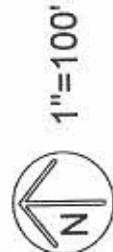
Accepted By: _____
Mayor Joe Dominick

Attest: _____
Tori Barnett, City Recorder

PUBLIC WATER LINE EASEMENT

A PARCEL OF LAND LOCATED IN GOVERNMENT LOT 1 OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 47 EAST, W.M., MALHEUR COUNTY, OREGON
OCTOBER 2011

NW COR GOVERNMENT LOT 1
MONUMENT PER CS 18-47-0860
EAST IDAHO AVE (HWY 30)



- LEGEND:**
- ▲ CALCULATED POINT
 - ◆ MONUMENT PER CS 18-47-0860
 - BOUNDARY LINE
 - - - - EASEMENT LINE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Marcus D. Cross

OREGON
JULY 6, 2010
MARCUS D. CROSS
55506PLS

EXPIRES: 12-31-2011

CONSENT AGENDA REPORT

November 7, 2011

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: LEASE AGREEMENT: ALAN DANIELS. 215 GOLF
LEASE AGREEMENT: ALAN DANIELS, 217 GOLF

DATE: October 6, 2011

SUMMARY:

Attached is the following document:

- Lease Agreement with Alan Daniels 215 Golf
- Lease Agreement with Alan Daniels 217 Golf

This is a lease on new hangars that were constructed by Frazier Aviation completed at the airport. All permits, inspections and fees have been completed prior to use. Alan Daniels is the Airport Manager and will use these hangars for personal use.

ALTERNATIVE:

We have no reason to not approve these leases.

FINANCIAL IMPLICATIONS:

The lease will be \$151.56 per year per hangar at the current rate.

RECOMMENDATION:

Staff recommends the Council approve these Lease Agreements with Alan Daniels for new hangars 215 Golf and 217 Golf at the Ontario Airport.

**LEASE AGREEMENT
HANGAR ADDRESS -
215 Golf
See attachment for location**

THIS AGREEMENT made and entered into this 1 st day of September , 2011, by and between the **CITY OF ONTARIO, OREGON, a municipal corporation**, hereinafter referred to as "Landlord" and **Alan Daniels**, hereinafter referred to as "Tenant."

WITNESSETH:

WHEREAS, Landlord is the owner of certain real property known and operated as the Ontario Municipal Airport; and

WHEREAS, Tenant desires to lease certain real property for airplane storage and hangar use.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein it is agreed as follows:

1) Landlord leases to Tenant and Tenant leases from Landlord the real property described in Exhibit "A," attached hereto and by this reference incorporated herein, for a period of twenty (20) years, commencing on **9-1-2011**. If the lease is not in default, unless either party shall give written notice prior to June 30th of each subsequent year, and subject to Landlord's receipt from Tenant of the annual lease payment, the lease term will automatically renew for a successive ten-year term. A decision by Landlord to give Tenant written notice that Landlord does not intend to extend the ten year term of this lease shall be based upon Landlord's need to utilize the subject property for other airport or aircraft purposes.

2) Tenant shall pay to the Landlord as yearly rent the sum of **twelve and sixty-three one hundredths cents (12.63¢)** per square foot of the property described in Exhibit "A", subject to the rights of Landlord to escalate said rental amount as more specifically provided for hereinafter. The parties hereto covenant and agree that the total area of the property described in Exhibit "A" is **1200** square feet for the purposes of determining the annual rent herein. The annual rental amount shall be paid on or before the 30th day of June each year and is payable each year in advance.

3) It is mutually understood and agreed between the parties hereto that the rental amount may be adjusted upward or downward annually in the sole discretion of the Common Council of the City of Ontario. Such adjustment may be made in any year and shall be effective for the balance of the lease term or until further adjustment, if any.

Adjustments to the rent shall not be made more frequently than one adjustment per year and each yearly adjustment shall not be an amount greater than 6% of the then existing rent.

4) The property shall be used to build an airplane hangar to be used primarily as storage of one or more airplanes. Any such construction shall be completed solely with Tenant's labor and at Tenant's expense.

5) Any new construction or improvements made on the property are to be approved in writing prior to commencement of either, and the same to be constructed and operated in conformity with all ordinances and regulations of the City.

6) The Tenant will keep and maintain all structures on the leased property in a constant state of good repair, and will refrain from storing any airplane parts, equipment, or debris outside buildings and will keep the premises in a clean sightly condition. Any aircraft hangar located on the leased premises shall have operative doors. It is mutually understood and agreed between the parties hereto that the building inspector of the City of Ontario shall have the right to inspect the premises periodically. In the event the building inspector of the City of Ontario deems any structure upon the leased premises not to be in compliance with any applicable statute, ordinance, rules or regulation or this agreement the Tenant agrees to correct such non-complying item at the Tenant's sole expense.

7) Any aircraft, aircraft parts, equipment, supplies, or other materials owned by Tenant shall only be stored in an approved manner on property subject to a current Hangar lease, tie-down fee agreement, static display agreement, or temporary use agreement. Any aircraft, aircraft parts, equipment, supplies and/or other materials belonging to Tenant and stored on airport premises for more than forty-eight (48) hours in violation of the provisions herein shall be subject to removal by the City at Tenant's expense.

8) The Landlord covenants and agrees to spray or otherwise control weeds located on and around the leased premises.

9) The color of paint used in all new construction and in the painting of any and all structures shall conform to the airport color scheme as adopted by the Airport Committee.

10) The Tenant shall not use leased land for any purposes other than those authorized herein without the written consent of the Landlord.

11) The Landlord reserves the right to further develop the airport or landing area of the airport as it sees fit.

12) The Landlord reserves the right, but not the obligation to maintain and keep in

repair the landing area of the airport and all public facilities of the airport.

13) This lease shall be subordinate to the provisions of any existing or future agreement between the Landlord and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

14) During the time of war or national emergency, the Landlord shall have the right to lease the landing area or any part thereof to the United States government for military or naval use, and if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the government shall be suspended.

15) Except with respect to activities for which the Landlord is responsible, the Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the leased premises and shall keep the premises free from any liens. If Tenant fails to pay such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 12% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Landlord's property interests are not jeopardized. If a lien is filed as a result of non-payment, Tenant shall, within ten days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or a sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

16) The Tenant shall obtain public liability and property damage insurance in a responsible company with limits of not less than \$500,000 for injury to one (1) person or more in one occurrence, and \$100,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the leased premises whether or not related to an occurrence caused or contributed to by Landlord's negligence, shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under the provisions of the indemnification paragraph contained herein, and shall protect Landlord and Tenant against any and all claims of third persons.

17) Nothing in this lease is intended or shall act to waive the liability limits as established in the Oregon Tort Claims Act, ORS 30.260 et seq.

18) No part of the leased property may be assigned to any third person without the prior written consent of the Landlord. This provision shall apply to all transfers by

operation of law and to transfers to and by trustees in bankruptcy, receivers, administrators, executors and legatees. No consent in one instance shall prevent the provision from applying to a subsequent instance. The Landlord shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances.

19) The following shall be events of default:

a) Failure of Tenant to pay any rent or other charge within thirty (30) days after it is due.

b) Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15) day period, this provision shall be complied with if Tenant begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good-faith to effect the remedy as soon as practicable.

c) Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; and adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of an involuntary petition of bankruptcy and failure of the Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levy of execution on the leasehold interest and failure of the Tenant to secure discharge of the attachment or release of the levy of execution within thirty (30) days. If Tenant consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within thirty (30) days after an event of default occurs the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

20) In the event of a default, the lease may be terminated at the option of the Landlord by notice in writing to Tenant. The notice may be given before or within thirty (30) days after the running of the grace period for default and may be included in a notice of failure of compliance given under the provisions of paragraph 17(b) above set forth. If the property is abandoned by Tenant in connection with a default, termination shall be automatic and without notice.

21) If the lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default.

22) If the lease is terminated for any reason, Tenant's liability for damages shall

survive such termination, and Tenant shall vacate the property immediately and shall remove all improvements and buildings constructed on the leased premises and shall perform any necessary clean-up or other work required to lease the property in its original condition. Any improvements not removed within ninety (90) days after the termination of this agreement shall become the property of the Landlord. Landlord may re-enter, take possession of the premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without the liability for damages.

23) The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

24) This Lease may be terminated at the option of the Tenant by thirty (30) day notice in writing to Landlord. Upon termination of this Lease Tenant must remove the hangar which it has built upon the property, transfer Tenant's interest to another party who would enter into a lease agreement with Landlord, or forfeit Tenant's interest in the hangar.

25) Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

26) If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to the costs such sum as the court may adjudge reasonable as attorney fees, including attorney fees upon appeal.

27) Any notice required or permitted under this lease shall be given when actually delivered or when deposited in the United States mail as certified mail, addressed as follows:

To Landlord: City of Ontario
 444 S.W. 4th Street
 Ontario, Oregon 97914

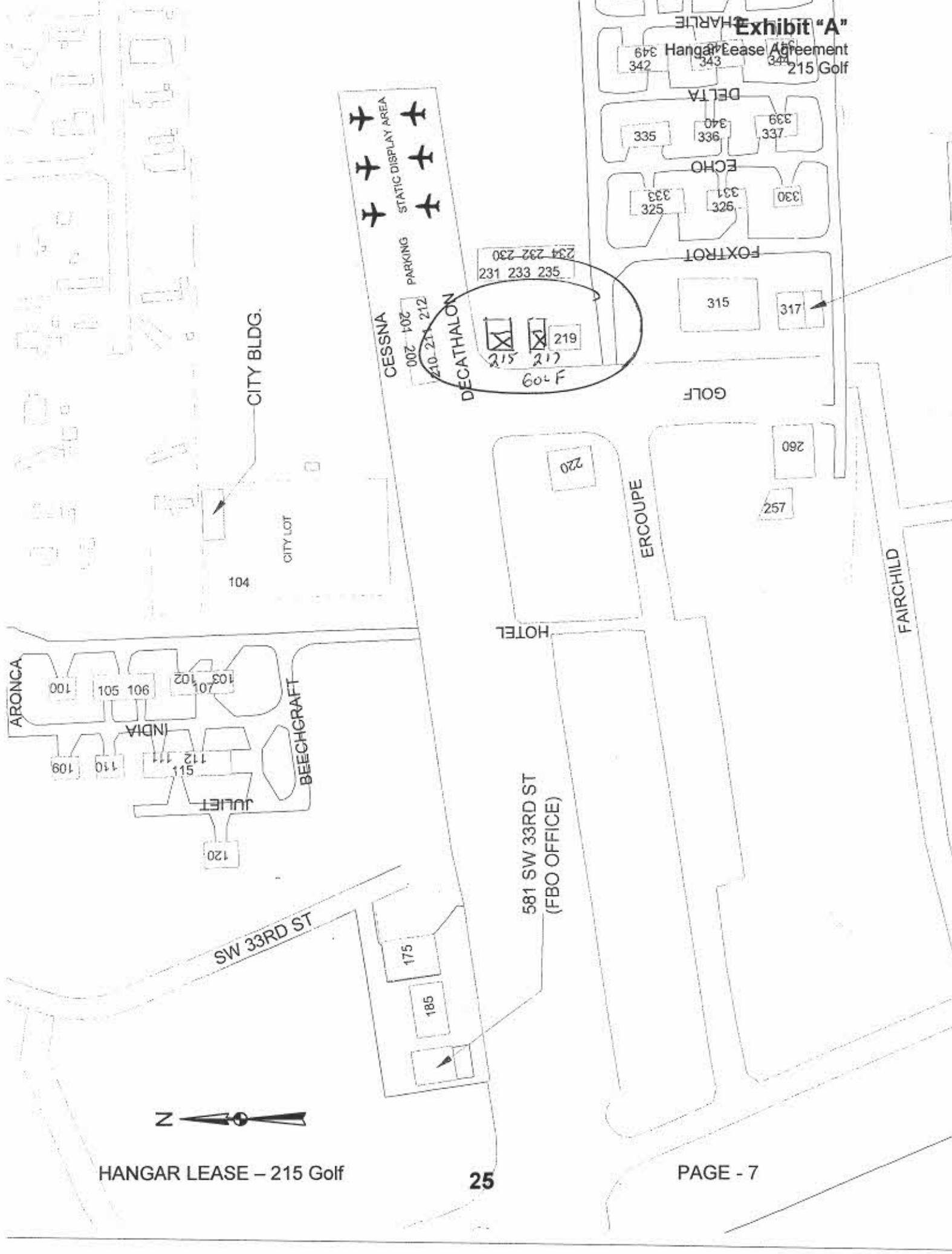
To Tenant: Alan Daniels
 4451 Community Road
 Ontario Oregon 97914
 541-889-2205

or to such other address as may be specified from time to time by either of the parties in writing.

28) Subject to the above-stated limitation on transfer of Tenant's interest, this lease shall be binding upon and inure to the benefit of the parties, their respective successors

Exhibit "A"

Hangar Lease Agreement
215 Golf



**LEASE AGREEMENT
HANGAR ADDRESS -
217 Golf
See attachment for location**

THIS AGREEMENT made and entered into this 1 st day of September , 2011, by and between the **CITY OF ONTARIO, OREGON, a municipal corporation**, hereinafter referred to as "Landlord" and **Alan Daniels**, hereinafter referred to as "Tenant."

WITNESSETH:

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WHEREAS, Tenant desires to lease certain real property for airplane storage and hangar use.

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2) Tenant shall pay to the Landlord as yearly rent the sum of **twelve and sixty-three one hundredths cents (12.63¢)** per square foot of the property described in Exhibit "A", subject to the rights of Landlord to escalate said rental amount as more specifically provided for hereinafter. The parties hereto covenant and agree that the total area of the property described in Exhibit "A" is **1200** square feet for the purposes of determining the annual rent herein. The annual rental amount shall be paid on or before the 30th day of June each year and is payable each year in advance.

3) It is mutually understood and agreed between the parties hereto that the rental amount may be adjusted upward or downward annually in the sole discretion of the Common Council of the City of Ontario. Such adjustment may be made in any year and shall be effective for the balance of the lease term or until further adjustment, if any.

Adjustments to the rent shall not be made more frequently than one adjustment per year and each yearly adjustment shall not be an amount greater than 6% of the then existing rent.

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5) Any new construction or improvements made on the property are to be approved in writing prior to commencement of either, and the same to be constructed and operated in conformity with all ordinances and regulations of the City.

6) The Tenant will keep and maintain all structures on the leased property in a constant state of good repair, and will refrain from storing any airplane parts, equipment, or debris outside buildings and will keep the premises in a clean sightly condition. Any aircraft hangar located on the leased premises shall have operative doors. It is mutually understood and agreed between the parties hereto that the building inspector of the City of Ontario shall have the right to inspect the premises periodically. In the event the building inspector of the City of Ontario deems any structure upon the leased premises not to be in compliance with any applicable statute, ordinance, rules or regulation or this agreement the Tenant agrees to correct such non-complying item at the Tenant's sole expense.

7) Any aircraft, aircraft parts, equipment, supplies, or other materials owned by Tenant shall only be stored in an approved manner on property subject to a current Hangar lease, tie-down fee agreement, static display agreement, or temporary use agreement. Any aircraft, aircraft parts, equipment, supplies and/or other materials belonging to Tenant and stored on airport premises for more than forty-eight (48) hours in violation of the provisions herein shall be subject to removal by the City at Tenant's expense.

8) The Landlord covenants and agrees to spray or otherwise control weeds located on and around the leased premises.

9) The color of paint used in all new construction and in the painting of any and all structures shall conform to the airport color scheme as adopted by the Airport Committee.

10) The Tenant shall not use leased land for any purposes other than those authorized herein without the written consent of the Landlord.

11) The Landlord reserves the right to further develop the airport or landing area of the airport as it sees fit.

12) The Landlord reserves the right, but not the obligation to maintain and keep in

repair the landing area of the airport and all public facilities of the airport.

13) This lease shall be subordinate to the provisions of any existing or future agreement between the Landlord and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

14) During the time of war or national emergency, the Landlord shall have the right to lease the landing area or any part thereof to the United States government for military or naval use, and if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the government shall be suspended.

15) Except with respect to activities for which the Landlord is responsible, the Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the leased premises and shall keep the premises free from any liens. If Tenant fails to pay such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 12% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Landlord's property interests are not jeopardized. If a lien is filed as a result of non-payment, Tenant shall, within ten days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or a sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

16) The Tenant shall obtain public liability and property damage insurance in a responsible company with limits of not less than \$500,000 for injury to one (1) person or more in one occurrence, and \$100,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the leased premises whether or not related to an occurrence caused or contributed to by Landlord's negligence, shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under the provisions of the indemnification paragraph contained herein, and shall protect Landlord and Tenant against any and all claims of third persons.

17) Nothing in this lease is intended or shall act to waive the liability limits as established in the Oregon Tort Claims Act, ORS 30.260 et seq.

18) No part of the leased property may be assigned to any third person without the prior written consent of the Landlord. This provision shall apply to all transfers by

operation of law and to transfers to and by trustees in bankruptcy, receivers, administrators, executors and legatees. No consent in one instance shall prevent the provision from applying to a subsequent instance. The Landlord shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances.

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a) Failure of Tenant to pay any rent or other charge within thirty (30) days after it is due.

b) Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15) day period, this provision shall be complied with if Tenant begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good-faith to effect the remedy as soon as practicable.

c) Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; and adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of an involuntary petition of bankruptcy and failure of the Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levy of execution on the leasehold interest and failure of the Tenant to secure discharge of the attachment or release of the levy of execution within thirty (30) days. If Tenant consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within thirty (30) days after an event of default occurs the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

20) In the event of a default, the lease may be terminated at the option of the Landlord by notice in writing to Tenant. The notice may be given before or within thirty (30) days after the running of the grace period for default and may be included in a notice of failure of compliance given under the provisions of paragraph 17(b) above set forth. If the property is abandoned by Tenant in connection with a default, termination shall be automatic and without notice.

21) If the lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default.

22) If the lease is terminated for any reason, Tenant's liability for damages shall

survive such termination, and Tenant shall vacate the property immediately and shall remove all improvements and buildings constructed on the leased premises and shall perform any necessary clean-up or other work required to lease the property in its original condition. Any improvements not removed within ninety (90) days after the termination of this agreement shall become the property of the Landlord. Landlord may re-enter, take possession of the premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without the liability for damages.

23) The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

24) This Lease may be terminated at the option of the Tenant by thirty (30) day notice in writing to Landlord. Upon termination of this Lease Tenant must remove the hangar which it has built upon the property, transfer Tenant's interest to another party who would enter into a lease agreement with Landlord, or forfeit Tenant's interest in the hangar.

25) Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

26) If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to the costs such sum as the court may adjudge reasonable as attorney fees, including attorney fees upon appeal.

27) Any notice required or permitted under this lease shall be given when actually delivered or when deposited in the United States mail as certified mail, addressed as follows:

To Landlord: City of Ontario
 444 S.W. 4th Street
 Ontario, Oregon 97914

To Tenant: Alan Daniels
 4451 Community Road
 Ontario Oregon 97914
 541-889-2205

or to such other address as may be specified from time to time by either of the parties in writing.

28) Subject to the above-stated limitation on transfer of Tenant's interest, this lease shall be binding upon and inure to the benefit of the parties, their respective successors

and assigns.

29) If the Tenant fails to perform any obligation under this lease, the Landlord shall have the option to do so after fifteen (15) day's written notice to the Tenant. All of the Landlord's expenditures to correct the default shall be reimbursed by the Tenant on demand with interest at the rate of 12% per annum from the date of expenditure by the Landlord.

30) In construing this lease, it is understood that the Landlord or Tenant may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date and year first above written.

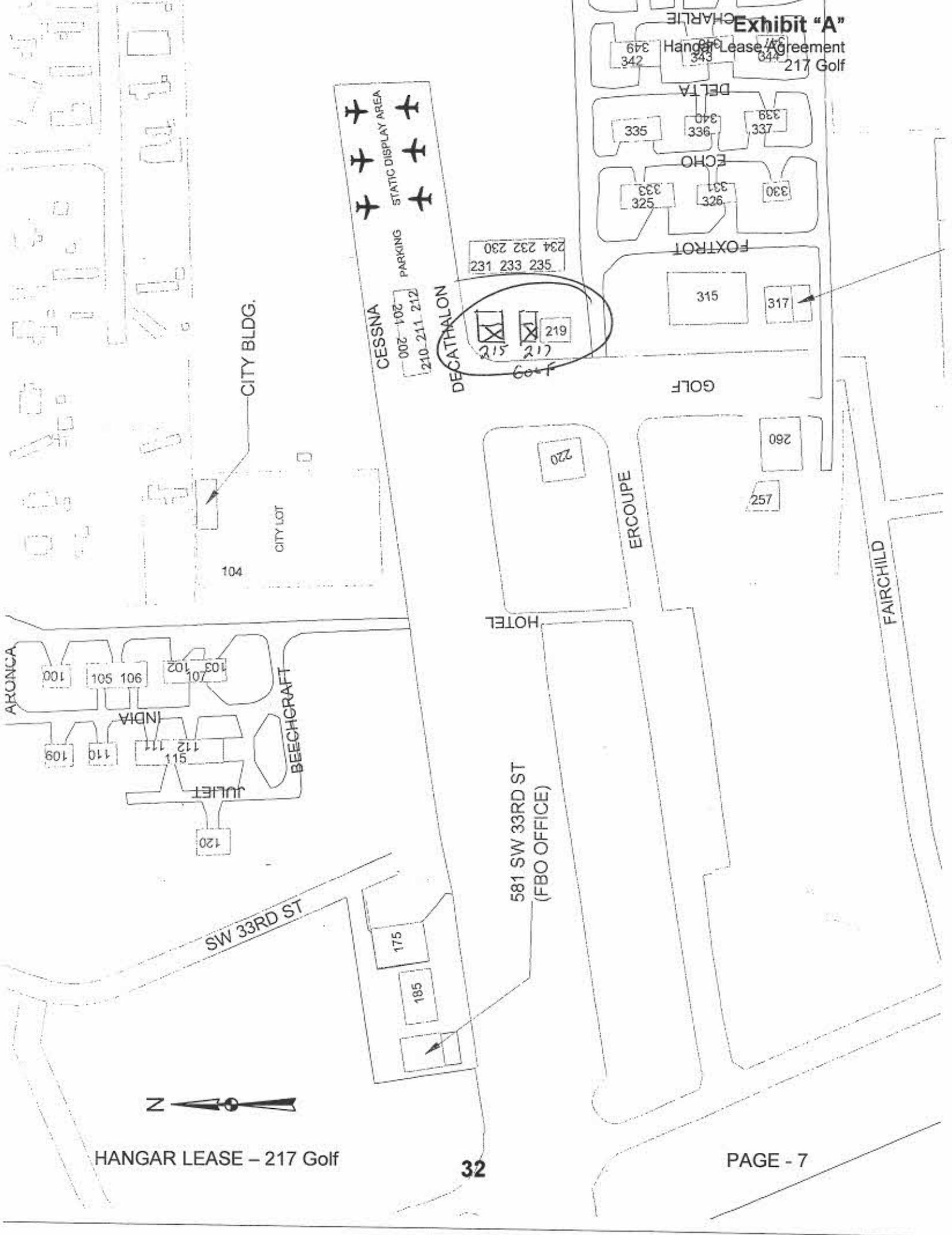
CITY OF ONTARIO, OREGON

TENANT

Joe Dominick, Mayor

ATTEST:

Tori Barnett, City Recorder



CONSENT AGENDA REPORT
November 7, 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 (FINAL READING)

DATE: October 31, 2011

SUMMARY:

Attached are the following documents:

- Ordinance 2663-2011

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

PREVIOUS COUNCIL ACTION:

10/17/2011 Council passed Ordinance #2663-2011 on 1st Reading by Title Only, with the Emergency Clause enacted.

RECOMMENDATION:

Staff recommends the Council approve Ordinance No. 2663-2011, and Declaring an Emergency, on Second and Final 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.

Title 3 - BUSINESS REGULATIONS
Chapter 2 - TELECOMMUNICATIONS
Article VIII. - General Provisions

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) Rebutts 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 opportunity 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(l).

(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

Title 3 - BUSINESS REGULATIONS
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Article VIII. - General Provisions

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)

**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 26 2005



A handwritten signature in black ink, appearing to read "Lee Sparling", is written over a horizontal line.

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 A
PAGE 1 OF 1

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.

APPENDIX B
PAGE 1 OF 1

AGENDA REPORT
November 7, 2011

TO: Mayor and City Council

FROM: Anita Zink, Human Resource Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: APPROVAL OF CITY'S MOVE TO A HIGH DEDUCTIBLE INSURANCE PLAN FOR NON-REPRESENTED EMPLOYEES

DATE: October 31, 2011

SUMMARY:

At the direction of the City Council, staff has been researching the option of moving the non-represented employees to a High Deductible Health Plan with HSA effective January 1, 2012.

BACKGROUND:

The City of Ontario has not increased the cap (\$1,034.00) for the medical/life/dental insurance for the non-represented employees since 8/1/08. (Current cap for the Teamsters is \$1,185.18; cap for the Police is \$1,223.78; cap for the Fire is \$1,295.35). Therefore, all of the insurance increases have been borne by the non-represented employees. The non-represented employees have agreed to reduce coverage on an annual basis in order to deflect some of the cost increases, but the employees are still currently paying \$335.68 for family coverage which represents 25% of their insurance costs.

In order to stay in compliance with the potential upcoming new federal laws in regards to insurance costs per employee and at the direction of the City Council, we have researched the option of moving the non-represented group to a high deductible health plan with a HSA. This will give the employee some options for their \$335.68 copayment. The employee could pay \$-0- or any amount up to \$6,150.00 into their HSA to help defer their medical expenses and also be able to carry forward any unused balances.

There are a total of 19 employees that would qualify for the HDHP-2 Plan with an HSA and 3 employees are currently waiving the medical/vision portion of the current insurance the City of Ontario is offering.

ALTERNATIVE:

Stay with current plan.

FINANCIAL IMPLICATIONS:

The City of Ontario could have a potential to save 7.65% of the pre-tax portion employees are able to pay into an HSA up to \$6,150.00. An example would be if 15 employees chose to pay \$4,000.00 into a pre-tax HSA, the City could save \$4,590.00 ($\$4,000.00 * 15 * 7.65\%$).

It is also possible employees may opt-out because of double coverage potential that is not allowed under the HDHP-2 Plan with an HSA and therefore save the City the insurance costs for that employee.

RECOMMENDATION:

Staff has two recommendations:

- 1) Approve the HDHP/HSA plan offering to the non-rep employees for a 1/1/2012 effective date; and
- 2) Consider using the City's FICA savings to offset the administration fees from the HSA Bank at a \$2.25 per employee cost per month. ($\$2.25 * 12 \text{ months} * 15 \text{ employees} = \405.00)

PROPOSED MOTION:

I move the City Council approve the move of the non-represented employees to the High Deductible Health Plan effective January 1, 2012, and use the City's FICA savings to offset the administration fees from the HSA Bank at a \$2.25 per employee cost per month.

AGENDA REPORT
November 7, 2011

To: Mayor and Council

FROM: Dan Shepard, Engineering Technician III

THROUGH: Henry Lawrence, City Manager

SUBJECT: **RESOLUTION No. 2011-127, DECLARING THE NECESSITY AND INTENT FOR ACCEPTANCE OF ROAD RIGHT OF WAY FROM ANCHOR MINI-STORAGE L.L.C., H2MK L.L.C & 3DY L.L.C.**

DATE: October 31, 2011

Summary:

- Resolution No. 2011-127
- Attachment "A" Street Right of Way Easement
- Attachment "B" Location Map

Anchor Mini-Storage L.L.C. was requested to donate the right of way for SE 5th Avenue as part of their development requirements. Dan Cummings, working for CK3 LLC, contacted adjacent property owners to see if they wished to donate right of way along their properties also. Two of these property owners, Dale Yee of 3DY L.L.C. and Mike Hanigan, of H2MK, L.L.C., agreed to donate right of way at this time, prior to development occurring on their respective properties. Each of the three properties is donating an additional 10-feet of right of way that would meet the future development requirements for a street right of way width of 70-feet. H2MK, L.L.C. is also donating an additional five feet of right of way, for a total of 30 feet, on SE 10th Street. This will bring their property into conformance with the others on SE 10th Street.

Previous Council Action:

None

Background:

During the building permit review process for the Anchor Storage development, it was noted that there was a 50-foot right of way dedication for SE 5th Avenue. The Transportation System plans classify SE 5th Avenue as a Major Collector with a right of way of 70-feet. Anchor Storage was requested to donate an additional 10-feet of right of way that would make the south half of SE 5th Avenue 35-feet. Dan Cummings worked with adjacent property owner Yee to obtain a donation of right of way adjacent to and east of Anchor Storage for the south side of SE 5th Avenue and with Hanigan for donation of right of way for the north side of SE 5th Avenue. Both of these donations would also match the requirement for a 70-foot right of way. Anchor Storage will construct a storm sewer main and a sanitary sewer main. They will sign an agreement to defer the street improvements until more development occurs in the area. Hanigan and Yee will be obligated to do off street improvements when their respective properties develop. Hanigan has

also agreed to donate additional right of way on SE 10th Street to match the existing right of ways of the adjacent properties. This portion of right of way was not picked up during the Eastside Development project in 1988.

Financial Implications

None.

Recommendations:

Staff recommends the adoption of **RESOLUTION 2011-127, A RESOLUTION DECLARING THE NECESSITY AND INTENT FOR ACCEPTANCE OF ROAD RIGHT OF WAY FROM ANCHOR MINI-STORAGE L.L.C., H2MK L.L.C. AND 3DY L.L.C.**

Proposed Motion:

I move the Mayor and City Council adopt **RESOLUTION 2011-127, A RESOLUTION DECLARING THE NECESSITY AND INTENT FOR ACCEPTANCE OF ROAD RIGHT OF WAY FROM ANCHOR MINI-STORAGE L.L.C., H2MK L.L.C. AND 3DY L.L.C.**

RESOLUTION 2011-127

**A RESOLUTION DECLARING THE NECESSITY AND INTENT FOR
ACCEPTANCE OF ROAD RIGHT OF WAY
FROM ANCHOR MINI-STORAGE L.L.C., H2MK L.L.C. AND 3DY L.L.C.**

WHEREAS, The City of Ontario has requested right of way donation for SE 5th Avenue from Anchor Mini-Storage L.L.C., H2MK L.L.C., 3DY L.L.C. and from H2MK L.L.C. a donation of right of way for SE 10th Street; and

WHEREAS, The current right of way of SE 5th Avenue is 50-feet and is required by the City of Ontario Transportation Master Plan to be 70-feet; and

WHEREAS, Anchor Mini-Storage L.L.C., H2MK L.L.C. and 3DY L.L.C. have agreed to donate an additional 10-feet of property adjacent to SE 5th Avenue to be used as road right of way and H2MK L.L.C. to donate an additional 5-feet of property adjacent to SE 10th Street to be used as street right of way; and

WHEREAS, It is necessary to accept this property as road right of way.

NOW THEREFORE, BE IT RESOLVED by the Ontario City Council to approve the following:

1. The Ontario City Council finds that it is necessary, desirable and in the public interest to accept this property as street right of way.
2. The Mayor is hereby authorized and directed to sign the Deed of Dedication from Anchor Mini-Storage L.L.C., H2MK L.L.C. and 3DY L.L.C., in consideration of the sum of zero dollars, for street right of way.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the Ontario City Council 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, City Recorder

IN WITNESS WHEREOF, the Grantee hereby accepts the above described Right of Way hereon granted and has executed this instrument on this _____ day of _____, 2011.

GRANTEE:

CITY OF ONTARIO

By: _____
(Signature)

Name: _____
(Print)

Its: Mayor

Attested: _____
City Clerk: Tori Barnett

IN WITNESS WHEREOF, the Grantee hereby accepts the above described Right of Way hereon granted and has executed this instrument on this _____ day of _____, 2011.

GRANTEE:

CITY OF ONTARIO

By: _____
(Signature)

Name: _____
(Print)

Its: Mayor

Attested: _____
City Clerk: Tori Barnett

Exhibit "A"
(H2MK, LLC Deed of Dedication)

Land in Malheur County, Oregon, as follows:

In Twp. 18S., R. 47 E., W.M.:

Sec. 10: A parcel of land in the S1/2NW1/4NE1/4 described as follows:
Beginning at the Southeast corner of said S1/2NW1/4NE1/4;
thence N. 00°11'15"W., coincident with the East boundary of said S1/2NW1/4NE1/4, 425.00 feet;
thence N. 89°51'54"W., parallel with the South boundary of said S1/2NW1/4NE1/4, 30.00 feet;
thence S. 00°11'15"E., parallel with and 30 feet west of said East boundary, 369.89 feet to a 20.00 feet radius curve to the right;
thence along said curve to the right, 31.53 feet, (whose long chord bears S. 44°58'26"W., 28.36 feet);
thence N. 89°51'54"W., parallel with and 35.00 feet northerly of the South boundary of said S1/2NW1/4NE1/4, 975.10 feet, more or less, to a point on the Westerly boundary of that certain parcel of land described in Statutory Warranty Deed recorded under Instrument No. 2005-9444 on December 23, 2005;
thence S.13°00'10"W., coincident with said Westerly boundary, 35.90 feet, more or less, to a point on the said South Boundary of said S1/2NW1/4NE1/4;
thence S. 89°51'54"E., coincident with said South Boundary, 1033.41 feet, more or less, to the Point of Beginning.

After Recording Return to:
City of Ontario
444 SW 4th Street
Ontario, OR 97914

DEED OF DEDICATION

FOR VALUE RECEIVED, 3DY, LLC, an Oregon Limited Liability Company ("Grantor"), in consideration of the sum of 0.00 dollars and other considerations, the receipt of which is hereby acknowledged, does hereby convey and dedicate to the CITY OF ONTARIO, ("Grantee"), whose address is 444 SW 4th Street, Ontario, Oregon 97914, the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove a permanent roadway and public utilities, such as but not limited to Sewer, Water, Gas, Electric and Communication services lines, Fixtures and Facilities over, across, and through the following described real property located in Malheur County, Oregon (the "Property"), to wit:

Land in Malheur County, Oregon, as follows:

In Twp. 18S., R. 47 E., W.M.:

Sec. 10: The NORTH 35.00 Feet of the E1/2NE1/4SW1/4 NE1/4.

Further, it is agreed, and made a condition herein, that the conveyed Property be dedicated for public use and in the event the Grantee fails to use or ceases to use the Property exclusively for said use, all right, title and interest in and to the Property shall revert to the Grantor through a legal Vacation process.

GRANTEE, by signing this Instrument, accepts the conveyance of the real property described herein for a public street and agrees to the terms of Grantor's Reversion and all other covenants, terms and conditions of this instrument.

IN WITNESS WHEREOF, the Grantor has executed this instrument on this 30th day of September, 2011.

GRANTOR:

3DY, LLC

By: 

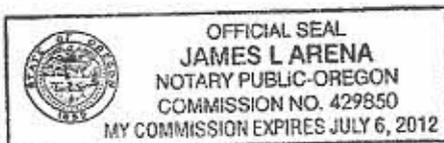
Dale S. Yee, Managing Member

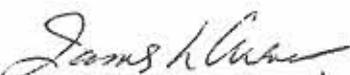
By: _____

STATE OF OREGON)
County of Multnomah) SS.

On this 30th day of September, 2011, before me, the undersigned Notary Public in and for said State, personally appeared above named persons, known or identified to me to be the Managing Members of 3DY, LLC, and the Company that executed the within instrument, or the person who executed the instrument in behalf of said Company, and acknowledged to me that such Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




Notary Public for OREGON
My Commission expires: JULY 6, 2012

IN WITNESS WHEREOF, the Grantee hereby accepts the above described Right of Way hereon granted and has executed this instrument on this _____ day of _____, 2011.

GRANTEE:

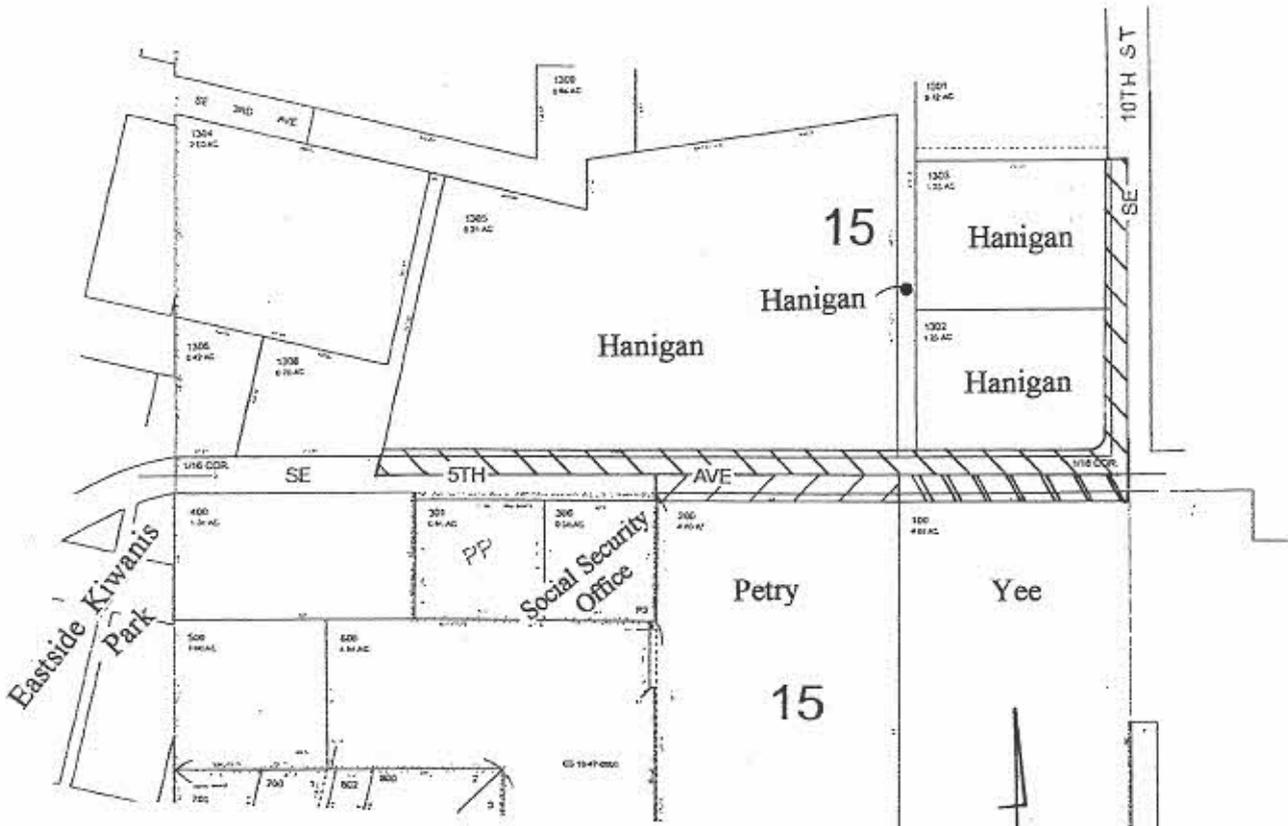
CITY OF ONTARIO

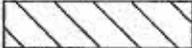
By: _____
(Signature)

Name: _____
(Print)

Its: Mayor

Attested: _____
City Clerk: Tori Barnett



- H2MK L.L.C. (Hanigan) dedication 
- Anchor Mini- Storage L.L.C. (Petry) Dedication 
- 3DY L.L.C. (Yee) dedication 

NORTH
NTS

S.E. 5th Avenue & SE 10th Street Right of Way Dedication Location
Map
Resolution Number 2011-127

Attachment "B"