



SCAPPOOSE *Oregon*

MONDAY, APRIL 17, 2023
CITY COUNCIL MEETING AGENDA
REGULAR MEETING 7:00 pm
COUNCIL CHAMBERS
33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056

ITEM AGENDA TOPIC	Action
Call to Order	
Pledge of Allegiance	
Roll Call	
Approval of the Agenda	
Public Comment ~ Items not on the agenda	
Please sign a speaker request form and turn it in to the City Recorder along with any written testimony	
1. Consent Agenda ~ April 3, 2023 City Council work session minutes and April 3, 2023 City Council meeting minutes; and Contract Approval – Contract #2023-07 – Keys Road Reservoir Tank Engineering	
<u>Old Business</u>	
2. Ordinance No. 912: An Ordinance Relating to the Delivery of Power within the City of Scappoose and Granting a Non-Exclusive Franchise to Columbia River Public Utility District City Manager Alexandra Rains	Second Reading/Approval
<u>New Business</u>	
3. Community Development Center Fee Study Rob Moody with Merina+CO; Community Development Director Laurie Oliver Joseph	Approval
4. Resolution No. 23-06: Intergovernmental Agreement with Scappoose Rural Fire District Assistant to Public Works Director Huell Whitehaus	Approval
Ordinance No. 914: An Ordinance Amending the Scappoose Municipal Code Title 8, Chapter 8.08 (Fire Prevention Regulations) Assistant to Public Works Director Huell Whitehaus	Public Hearing/First Reading
5. Ordinance No. 913: An Ordinance Related to the Cable Television Franchise Agreement and Repealing Ordinance No. 823 City Manager Alexandra Rains	Public Hearing/First Reading
Announcements – information only	
6. Calendar	
7. Updates: City Manager; Police Chief; Councilors; and Mayor	
Adjournment	
PLEASE NOTE: IF YOU WOULD LIKE TO SPEAK WITH CITY STAFF ABOUT A PARTICULAR AGENDA ITEM, PLEASE CALL CITY HALL at 503-543-7146, EXT. 224, NO LATER THAN 3:00 PM ON THE DAY OF THE MEETING.	
This meeting will be conducted in a handicap accessible room. If special accommodations are needed, please contact City Hall at (503) 543-7146, ext. 224 in advance.	
TTY 1-503-378-5938	



SCAPPOOSE

Oregon

MONDAY, APRIL 3, 2023
CITY COUNCIL MEETING
REGULAR MEETING 7:00 pm
COUNCIL CHAMBERS
33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056

Call to Order

Mayor Backus called the April 3, 2023 City Council meeting to order at 7:00 pm.

Pledge of Allegiance

Roll Call

Joseph A. Backus	Mayor	Alexandra Rains	City Manager
Megan Greisen	Council President	Susan M. Reeves	City Recorder
Pete McHugh	Councilor	Kevin Turner	Treatment Plant Supervisor
Tyler Miller	Councilor	Huell Whitehaus	Assistant to Public Works Director
Jeannet Santiago	Councilor		
Kim Holmes	Councilor		
Andrew Lafrenz	Councilor		
Peter Watts	Legal Counsel		

Remote: Public Works Director Dave Sukau (left at 8:06pm); Marisa Jacobs (left at 7:33pm); Evan Swanson (left at 7:04pm); Beth Rajski; and AH (joined at 7:41pm).

Approval of the Agenda

Mayor Backus added the appointment of Paul Fidrych to the 50-Year Committee as a liaison from the Parks & Rec Committee.

Councilor Santiago moved, and Councilor Holmes seconded the motion that Council approve the agenda as amended. Motion passed (7-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

Public Comment ~ There were no public comments.

Consent Agenda ~ March 20, 2023 City Council work session minutes; March 20, 2023 City Council meeting minutes; appointment of Karl Fenstermaker to the Economic Development Committee; and appointment of Paul Fidrych to the 50-Year Committee as a liaison from the Parks & Rec Committee

Council President Greisen moved, and Councilor Santiago seconded the motion that Council approve the Consent Agenda ~ March 20, 2023 City Council work session minutes; March 20, 2023 City Council meeting minutes; appointment of Karl Fenstermaker to the Economic Development Committee; and appointment of Paul Fidrych to the 50-Year Committee as a liaison from the Parks & Rec Committee. Motion passed (7-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

New Business

Scappoose Rural Fire Protection District Annual Report

Fire Chief Pricher gave a brief overview of the annual report. He thanked Council on behalf of the Board and staff for the opportunity to be here. He explained how COVID really hurt the volunteer program. They have invested in their staff to create a position that is dedicated just toward recruitment of volunteer members and also look out for their career members as well.

Council President Greisen asked Chief Pricher about stable funding sources and asked what is the plan in finding more.

Chief Pricher replied there are several things beyond their control. He explained their goal is to hopefully establish a permanent tax base. He explained that process is a very deliberate process that includes a lot of education of the community because the only way we can achieve a permanent tax rate moving forward is if we dissolve the current Fire District, we reestablish ourself by expanding our territory and then create a new permanent tax rate and to try to explain that sometimes people look at it as maybe they are being double charged. He stated stable funding would be not having to go back to the voters every five years and saying we need their help.

Council thanked Chief Pricher.

If I Were Mayor Contest

Mayor Backus explained there are three winners for the If I Were Mayor Contest. He was really impressed with how all three of them are into safety, recreation for youth and others in open spaces, all the things Council is fighting for.

Mayor Backus announced the Essay winners of the 2023 If I Were Mayor Contest. Layla 3rd place; Conrad 2nd place; and Eva 1st place. He stated they all will receive a Fred Meyer gift card and lunch with he and his wife.

Congratulations to Eva; Conrad; and Layla!



Layla; Mayor Backus; Eva



Mayor Backus & Conrad

Proclamations

Save Soil Day Proclamation

Mayor Backus read the Save Soil Day Proclamation.



Mayor Backus & Khosro Peiravi

National Volunteer Week

Mayor Backus read the National Volunteer Week Proclamation.

Ordinance No. 912: An Ordinance Relating to the Delivery of Power within the City of Scappoose and Granting a Non-Exclusive Franchise to Columbia River Public Utility District

City Manager Alexandra Rains went over the staff report. **ANALYSIS:** The City's current Franchise Agreement with the Columbia River Public Utility District (CRPUD) is set to expire on March 3, 2024. The PUD's General Manager, Michael Sykes, has offered to renew the agreement ahead of the expiration and increase the revenue from customers with nominal demand less than 1,000 kW from 4% to 5%. Additionally, the PUD has offered to implement the terms of the new agreement in July 2023, enabling the City to begin collecting at the new rate prior to 2024, if Council agrees to sign a 20-year agreement. If the preference of Council is to sign a 10-year agreement, the new rate would be implemented in January 2024.

Attachments (in the staff report):

Attachment A – CRPUD Franchise Agreement, redlined version

Attachment B – Ordinance 912

FISCAL IMPACT: Section 11 (a) of the franchise agreement outlines the fiscal impacts to the City. The current language, included below, has been struck through and the proposed language for section 11 (a) is in *italics*:

~~Section 11 (a) That in consideration of the rights and privileges herein granted, CRPUD shall pay to CITY for each calendar year during the life of this franchise beginning January 1, 2004, an annual fee of four percent (4 %) of the gross revenue from customers with nominal demand less than 1,000kW and one percent (1 %) of the gross revenue from customers with nominal demand greater than or equal to 1,000kW but less than 5,000kW. Customers with nominal demand greater than or equal to 5,000kW shall be excluded from all gross revenue calculations when computing franchise fees.~~

Section 11 (a) pay to CITY for each calendar year during the life of this franchise beginning on the effective date, an annual fee of five percent (5%) of the gross revenue from customers with nominal demand less than 1,000 kW and one percent (1%) of the gross revenue from customers with nominal demand greater than or equal to 1,000 kW.

Under the City's existing agreement, our 2022 Franchise fees were \$188,262.00. Moving forward to FY 23-24, we expect those fees to be closer to \$234,301.00 if the new fee structure is implemented in July. If the new fee structure is implemented in January, the total fees collected by the City would be \$23,000 less for a total of \$211,301.00. Fee collection for FY 24-25 and beyond would be inclusive of the whole calendar year and would increase over time in alignment with PUD rates and growth.

Mayor Backus opened the public hearing at 7:30pm and closed it due to no one wanting to speak on this matter.

Council and staff discussed the length of the agreement along with the rate of 5%.

Council President Greisen moved, and Councilor McHugh seconded the motion that Council approve Ordinance No. 912, authorizing the City Manager to enter into a 20-year Franchise Agreement with Columbia River PUD.

Mayor Backus read the ordinance for the first time. Ordinance No. 912: An Ordinance Relating to the Delivery of Power within the City of Scappoose and Granting a Non-Exclusive Franchise to Columbia River Public Utility District.

Resolution No. 23-05: A Resolution Adopting Findings and Authorizing a Contract-Specific Special Procurement for the Biosolids Dryer Project

Public Works Director Dave Sukau explained a few months ago staff came to Council with the assistance of the Consor engineers and presented on the bioforcetech dryer. He explained at that time they were still working through some preliminary engineering and not quite ready to procure. Since then, they have met with Council on some other special procurement topics and now they are looking to purchase this dryer.

Assistant to Public Works Director Huell Whitehaus went over the staff report. The City had multiple projects funded from the State of Oregon's ARPA-SLFRF allocation, the Biosolids Dryer was one such funded project. The City was awarded \$1,900,000 for the project. In addition, City Council appropriated an additional \$279,000 from the City's ARPA allocation from the US Treasury to provide some contingency amount for the City's ARPA-funded wastewater infrastructure projects. Staff and Consor (formerly Murray Smith) – the City's engineer of record and design consultant for the Wastewater Treatment Plant (WWTP) Phase I Improvements – first addressed City Council on the topic of the dryer at the October 17, 2022 meeting. The engineer anticipated an increased cost and delivery lead time for procuring the dryer. An alternatives analysis has since been completed by the engineer (Exhibit B in the staff report) Technical Memorandum), the conclusion of which recommended purchasing the Bioforcetech BioDryer model due to the fact that it is the most affordable option and conforms to the design requirements to integrate the dryer into the WWTP's operations. Recently, City staff was informed that in order to have the dryer arrive with sufficient time to install, configure, and construct the necessary civil site improvements before the grant deadline, the City would need to place an order for the dryer by mid-April. Additionally, and as part of the evaluation detailed in the tech memo, the engineer evaluated four different dryer models from four different manufacturers before arriving at their conclusion. Consor and City staff are recommending pre-procurement of the dryer equipment itself utilizing a Special Procurement process, a

procurement option available to the City pursuant to ORS 279B.085 and the City's adopted Public Contracting Rules and Procedures, Sections A(2) and C(1-2).1

City staff recommends authorization of a Contract-Specific Special Procurement for purchasing the dryer. According to ORS 279B.085:

"Contract-Specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065, and 279B.070 and is for the purpose of entering into a single contract or a number of related contracts on a one-time basis or for a single project. "Special procurement" means, unless the context requires otherwise, a class special procurement, a contract-specific special procurement or both."

Special procurements deviate from the standard procurement method in this instance – competitive bidding (i.e., low bid). Despite the fact that special procurements deviate from competitive bidding, the specific context of this scenario has accounted for taking advantage of market competition by evaluating four alternative dryer models. It is important to note that the construction services that will be required to install and configure the dryer, and construct the necessary civil site improvements, will be procured through traditional means later this year. The requested special procurement is intended only for the cost to purchase the dryer equipment from the manufacturer.

1 Resolution 22-21, A Resolution Adopting Public Contracting Rules and Procedures and Repealing Resolution No. 17-12.

Special Procurements – similar to, but distinct from Alternative Contracting Methods (e.g., Design-Build or CM/GC) – have two primary requirements to be authorized:

1. Findings must be drafted for consideration by the Local Contract Review Board (i.e., City Council). The findings must demonstrate that the special procurement is unlikely to diminish competition or encourage favoritism; *and* is expected to result in substantial cost savings to the City, *or* otherwise substantially promotes the public interest in a manner otherwise not practicable under standard procurement procedures.
2. Public notice of the approval of a special procurement must be given in the same manner as an Invitation to Bid, along with the addition of a seven (7) calendar day protest period which must conclude before a purchase is made pursuant to the special procurement.

Staff has drafted findings to support the requested authorization of a special procurement process (see Exhibit A in the staff report). A draft Resolution has also been included for consideration, should City Council decide to proceed with authorizing the special procurement (see Exhibit C in the staff report).

EXHIBITS:

Exhibit A – Draft Findings in Support of a Special Procurement – Biosolids Dryer

Exhibit B – Technical Memorandum – Biosolids Dryer Alternatives Analysis and Recommendation Final (March 28, 2023)

Exhibit C – Resolution 23-03

Exhibit D – Draft Notice of Special Procurement

FINANCIAL IMPACT: Bioforcetech BioDryer Cost: \$ 1,200,000

Funding Sources: ARPA-SLFRF Grant; ARPA Allocation (US Treasury) By authorizing a special procurement, the public is substantially benefitted from: the unique opportunity of currently available grant funds, reduced risk of missing the grant expenditure deadline due to supply chain delays, additional costs to ratepayers can be mitigated, and the City's WWTP can continue to comply with DEQ regulatory requirements.

Council discussed the cost of this project.

Councilor Lafrenz moved, and Councilor Holmes seconded the motion that Council adopt Resolution 23-05, thereby adopting the findings in support of the proposed Contract-Specific Special Procurement and authorizing the City Manager to place an order for the Bioforcetech BioDryer, with an estimated final cost of \$1,200,000 pending conclusion of the required protest period.

Councilor Santiago wanted to make sure it was on the record that the Bioforcetech dryer received the highest overall score primarily due to its substantially lower cost, energy-efficient operation due to its biological drying process, and mechanical simplicity of design for long-term maintainability.

Motion passed (7-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

Resolution No.23-03: A Resolution in Support of Measure 5-290, A Measure Brought by the Columbia County Board of Commissioners, for a Tax Levy to Increase Sheriff's Office Enforcement Personnel

Mayor Backus explained his understanding is that we have been working with the County right now and they have been great and with this it will possibly allow for increased support for our City.

Councilor Miller explained Sheriff Pixley, from his understanding, has been very helpful to the City and our new Police Chief. He explained the Sheriff's Office is also training some of our new officers and he is extremely appreciative of the partnership that the City has with the Sheriff's Office and the Sheriff's Office willingness to continuously help us.

Mayor Backus read Resolution No.23-03: A Resolution in Support of Measure 5-290, A Measure Brought by the Columbia County Board of Commissioners, for a Tax Levy to Increase Sheriff's Office Enforcement Personnel.

Councilor McHugh concurs with Councilor Miller.

Councilor Lafrenz feels this is alignment with a lot of the feedback that Council has been receiving.

Councilor Miller moved, and Councilor Holmes seconded the motion that Council accept Resolution No.23-03: A Resolution in Support of Measure 5-290, A Measure Brought by the Columbia County Board of Commissioners, for a Tax Levy to Increase Sheriff's Office Enforcement Personnel. Motion passed (7-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

Resolution No. 23-04: A Resolution in Support of Oregon's Competitive Public Contracting Rules

Mayor Backus read Resolution No. 23-04: A Resolution in Support of Oregon's Competitive Public Contracting Rules.

Councilor McHugh moved, and Councilor Santiago seconded the motion that Council accept Resolution No. 23-04: A Resolution in Support of Oregon's Competitive Public Contracting Rules. Motion passed (7-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

Announcements – information only

Calendar

Mayor Backus went over the calendar.

Updates: City Manager; Police Chief; Councilors; and Mayor

City Manager Rains explained she is looking forward to seeing everyone at the Town Meeting on Saturday. She talked about the department reports and how staff is now adding when something is specific to a goal Council can follow that as well. She asked if Council if this continues to be helpful and is this something they want to see it at every meeting or once a month?

General consensus of Council is to receive the department reports monthly.

Councilor Lafrenz explained he is excited to attend his first Annual Town Meeting as a Councilor.

Councilor Santiago gave an update on the Earth Day Event, which will be on April 22, 2023. She addressed a concern that has been a conversation of the Park & Rec Committee meetings and that is that they need more information, need accurate numbers and they need to kind of make sure they all share the same numbers when they are talking about number of acres. She stated she would like it if we can just come together and make sure that all committees are aware of that specific number or percentage. She explained another topic being discussed is a Park District and they really want to know what that means when they talk about it.

Councilor McHugh gave some history on establishing a Park & Rec District 20 years ago and how they couldn't pass a levy to do anything.

Councilor Holmes explained she is looking forward to the Town Hall.

Councilor Miller explained he is excited to see everybody at the Town Hall. He stated please no more districts. He explained forming a district is one thing, getting funding to make it operational is a totally different thing. He talked about levy compression.

Council President Greisen thanked everyone for listening to the Land Acknowledgment work session. She thinks the more we know what the School District is doing and how that affects our great community is always valuable. She mentioned that there are two big egg hunts this weekend. She wanted to acknowledge that there is quite a big School Board election occurring for many seats on the School Board. She stated as an educator and a parent she wants to remind voters that the purpose of public education is it's an institutionalized form of education that educates all students free of charge and its purpose is to educate students to be well rounded individuals.

Mayor Backus mentioned there is a plant sale on Saturday. He thanked all the participants of the If I Were Mayor Contest. He stated we hear you and we will work diligently to try to bring those to fruition.

Adjournment ~ Mayor Backus adjourned the meeting at 8:30pm.

Mayor Joseph A. Backus

Attest:

City Recorder Susan M. Reeves, MMC

CITY OF SCAPPOOSE

Council Action & Status Report

Date Submitted: April 11, 2023
Agenda Date Requested: April 17, 2023
To: Scappoose City Council
From: Huell Whitehaus, Assistant to Public Works Director
Subject: Contract Approval – Contract #2023-07 – Keys Road Reservoir Tank Engineering

TYPE OF ACTION REQUESTED:

☐ Resolution

☐ Ordinance

☒ Formal Action

☐ Report Only

ISSUE: Contract authorization for engineering services for the Keys Road Reservoir Tank Project.

ANALYSIS: The City of Scappoose had multiple projects funded from the State of Oregon's ARPA-SLFRF allocation – design and construction of an additional reservoir tank to provide 2.0 million gallons of storage capacity in line with was one of the funded projects. This project was identified in the 2020 Water System Master Plan Update (Project ST-01). The City was awarded \$4,400,000 for the project, inclusive of engineering and construction.

The contract (#2023-07) before City Council this evening is specifically for the engineering design work associated with the project. Public Works staff developed and issued an RFP (#2022-05) for this work on December 2nd, 2022. The City received five responsive proposals from the following firms: Consor, PACE, RH2, Stantec, and Tetra-Tech. Proposals were evaluated by City staff in accordance with the criteria indicated in the RFP document. The top three highest-scoring proposers were invited for a follow-up interview. RH2 prevailed as the highest scoring firm for both the proposal and interview phases. A score tabulation is included on the next page.

The protest period for this procurement concluded on March 8, 2023. No protests were

Request for Council Action

received.

RFP 2022-05 - Scores Tabulation			
Firm	Proposal Score	Interview Score	Total
Conсор	86.8	N/A	86.8
PACE Engineers	83.4	N/A	83.4
RH2 Engineering	93	89.75	182.75
Stantec	87.2	86.5	173.7
Tetra-Tech	88.6	80	168.6

ATTACHMENTS:

Exhibit A – Notice of Intent to Award

FINANCIAL IMPACT:

Contract value: \$823,555 (funded by ARPA-SLFRF)

RECOMMENDATION: Staff recommends that the Council authorize City Manager Rains to enter the City into a contract with RH2 Engineering for the Keys Road Reservoir Tank Engineering Project.

SUGGESTED MOTION: I move that Council authorize City Manager Rains to enter the City into a contract with RH2 Engineering for the Keys Road Reservoir Tank Engineering Project.

Request for Council Action



NOTICE OF INTENT TO AWARD

DATE: March 1, 2023

PROJECT: RFP #2022-05 – 2.0 MG Reservoir Engineering Design

NOTICE IS HEREBY GIVEN, based on a review of proposals received and interviews conducted with the three highest scoring proposers pursuant to the above referenced Request for Proposals and based on the scoring results from the City's evaluation committee and interviews of the three highest-scoring Proposers, the City of Scappoose intends to award the contract for this procurement to **RH2 Engineering**. A summary of scores for submitted proposals and conducted interviews are included below:

Proposer	Proposal Score (out of 100 pts)	Interview Score (out of 100 pts)	Aggregated Score (out of 200 pts)
RH2 Engineering	93.0	89.75	182.75
Tetra Tech	88.6	80	168.6
Stantec Consulting Services	87.2	86.5	173.7
Conсор North America	86.8	-	-
PACE Engineers	83.4	-	-

A proposer may submit a formal written protest of this Intent to Award within seven (7) calendar days of the date of this notice. The written protest must specify the grounds upon which the protest is based. For the protest to be considered valid, it must show that the protesting party is an adversely affected or aggrieved bidder as described in OAR 137-048-0240. Such protest must be submitted to the City Recorder, Susan Reeves, 33568 E Columbia Ave., Scappoose, OR 97056. Any protest received after this deadline will not be considered.

The City appreciates your interest in this opportunity and encourages you to contact us if you have any questions regarding this notice.

Sincerely,

Huell Whitehaus, MPA
Assistant to Public Works Director
City of Scappoose

Emailed to the following:

Kyle Pettibone, RH2, kpettibone@RH2.com

Edwin Halim, RH2, ehalim@RH2.com



Taylor Stockton, RH2, tstockton@RH2.com

Elliott Mecham, Shannon & Wilson, elliott.mecham@shanwil.com

Gordon Munro, Tetra Tech, Gordon.munro@tetrattech.com

Brian Murphy, Tetra Tech, brian.murphy@tetrattech.com

Eduardo Arroyo, Tetra Tech, Eduardo.arroyo@tetrattech.com

Eric Yuen, Tetra Tech, eric.yuen@tetrattech.com

Marvin Weiss, Tetra Tech, marvin.weiss@coanda.ca

Dick Talley, Stantec, dick.talley@stantec.com

Aaron Eder, Stantec, aaron.eder@stantec.com

Matthew Perkins, Stantec, matthew.perkins@stantec.com

Wes Silva, Stantec, wes.silva@stantec.com

Chris Kittredge, Stantec, chris.kittredge@cardno.com

Tom Boland, Consor, tom.boland@consoreng.com

Justin Ford, Consor, justin.ford@consoreng.com

Tom Ferrell, PACE, tomf@paceengrs.com

Brian Lee, PACE, brianl@paceengrs.com

Jonathon Neumann, PACE, jonathonN@paceengrs.com

CC:

Alexandra Rains, City Manager, arains@cityofscappoose.org

Dave Sukau, Public Works Director, dsukau@cityofscappoose.org

Darryl Sykes, Water Treatment Supervisor, dsykes@cityofscappoose.org

Chris Negelspach, City Engineer, cnegelspach@cityofscappoose.org

Susan Reeves, City Recorder, sreeves@cityofscappoose.org

CITY OF SCAPPOOSE

Council Action & Status Report

Date Submitted: April 11, 2023

Agenda Date Requested: April 17, 2023

To: Scappoose City Council

From: Alexandra Rains, City Manager
Peter Watts, City Attorney

Subject: Columbia River PUD Franchise Agreement Renewal, Second Reading

TYPE OF ACTION REQUESTED:

☐ Resolution

☒ Ordinance

☐ Formal Action

☐ Report Only

ANALYSIS: City Council completed the first reading of Ordinance 912 on April 3, 2023, and voted unanimously to sign a 20 year agreement commencing July 2023.

Attachments:

Attachment A – CRPUD Franchise Agreement, redlined version

Attachment B – Ordinance 912

FISCAL IMPACT: Section 11 (a) of the franchise agreement outlines the fiscal impacts to the City. The current language, included below, has been ~~struck through~~ and the proposed language for section 11 (a) is in *italics*:

~~Section 11 (a) That in consideration of the rights and privileges herein granted, CRPUD shall pay to CITY for each calendar year during the life of this franchise beginning January 1, 2004, an annual fee of four percent (4 %) of the gross revenue from customers with nominal demand less than 1,000kW and one percent (1 %) of the gross revenue from customers with nominal demand greater than or equal to 1,000kW but less than 5,000kW. Customers with nominal demand greater than or equal to 5,000kW shall be excluded from all gross revenue calculations when computing franchise fees.~~

Section 11 (a) pay to CITY for each calendar year during the life of this franchise beginning on the effective date, an annual fee of five percent (5%) of the gross revenue from customers with nominal demand less than 1,000 kW and one percent (1%) of the

Request for Council Action

gross revenue from customers with nominal demand greater than or equal to 1,000 kW.

Under the City's existing agreement, our 2022 Franchise fees were \$188,262.00. Moving forward to FY 23-24, we expect those fees to be closer to \$234,301.00.

SUGGESTED MOTION: I move Council approve Ordinance No. 912, authorizing the City Manager to enter into a 20 year Franchise Agreement with Columbia River PUD.

FRANCHISE AGREEMENT
~~By and~~ Between
COLUMBIA RIVER PEOPLE'S

UTILITY DISTRICT
And
CITY OF SCAPPOOSE
2023

~~Dated:~~

FRANCHISE AGREEMENT

THIS AGREEMENT, made, ~~and entered, and effective as of into this~~ this 1st day of July, of March, 2004 2023, by and between the CITY OF SCAPPOOSE, a municipal corporation of the State of Oregon, hereinafter referred to as CITY, and the COLUMBIA RIVER PEOPLE'S UTILITY DISTRICT, a municipal corporation of the State of Oregon, hereinafter referred to as CRPUD,

WITNESSETH:

WHEREAS, CRPUD is a utility formed pursuant to ORS Chapter 261 operating within the city limits of CITY; and

WHEREAS, CRPUD is authorized by Oregon statute to enter into a franchise agreement with CITY; and

WHEREAS, CRPUD and CITY desire to enter into a franchise agreement for the mutual benefit of the citizens and businesses within the city limits of CITY as the same now exists, or may be hereafter constituted; and,

WHEREAS, CRPUD and CITY intend a franchise agreement consistent with municipal regulation of utilities under ORS 221.420, *et seq.*, that is not inconsistent with ORS Chapter 261, including the payment of franchise fees for use of CITY street rights of way in lieu of a privilege tax;

NOW, THEREFORE, for consideration hereinafter named, CRPUD and CITY agree as follows:

Section 1. That ~~CRPUD is hereby granted~~CITY give permission for CRPUD, subject to the terms and conditions ~~described herein, the franchise right and privilege hereof, to erect, construct, erect, construct, maintain and operate an electric utility system within the corporate limits of CITY as the same now exists, or may be hereafter constituted,~~

~~and the franchise right and privilege to erect, construct,~~ maintain and operate poles, wires, fixtures, equipment, underground circuits, and other property necessary or convenient to supply CITY and the inhabitants thereof and other persons and territory with electric services and products upon, over, along, under, and across the streets, alleys, roads, and other public ways and places within the corporate limits of CITY as the same now are or hereafter constituted.

All poles, wires, fixtures, equipment, underground circuits, and other property owned or in possession of CRPUD now located within the corporate limits of CITY shall be deemed to be covered by the terms of this Franchise Agreement and to be located in accordance therewith, and the location and placement thereof is hereby approved.

Section 2. —

All rights and privileges hereby granted shall be effective as of the Effective Date and shall be effective for a term of ten (10) years, unless renegotiated or terminated as provided in this Agreement. (“Term”). The Term shall automatically renew for an additional ten (10) year period after the expiration of the initial Term; unless either party provides the other party written notice, at least 60 days prior to the expiration of the initial Term, that it desires to renegotiate this Agreement or does not desire to renew this Agreement.

~~That all rights and privileges hereby granted shall be effective as of January 1, 2004, and~~

~~shall terminate at the expiration of twenty (20) years from said date, except, unless otherwise provided herein, that in the event CRPUD shall fail, neglect or refuse for thirty (30) days after demand in writing by CITY to perform any or all of the obligations or requirements set forth in this Franchise Agreement to be performed by CRPUD, then the rights and privileges herein granted may be terminated and annulled by the Common Council or other legislative body of the CITY, and CRPUD shall forfeit all rights and privileges hereby granted. In addition, either party may request to renegotiate the terms and conditions of this agreement by submitting a written request to the other party at least sixty 60 days prior to January 1, 2009, and every five (5) years thereafter (hereinafter referred to as "January 1 Deadline"). This Agreement shall continue in force unless: (1) a new~~

~~Agreement is executed by the parties prior to the January 1 Deadline, or (2) either party sends a timely written notice of termination to the other party prior to the January 1 Deadline.~~

Section 3. Before CRPUD may conduct underground work involving excavation or construction or major relocation work in any public right-of-way, property, or place, CRPUD shall notify CITY by complying with the rules and regulations adopted by the Oregon Utility Notification Center and shall comply with any special conditions relating to scheduling, coordination, and public safety as may be reasonably required by CITY. As a prerequisite to conducting underground work, CRPUD shall obtain an approved right-of-way permit from the City except in cases of emergency resulting from any one of the following conditions:

"1) Any acts of God, including, but without restricting the generality thereof, lightning, earthquakes, storms, epidemics, and landslides, floods, fires, explosions, or washouts;"

"2) Any acts of the enemies of the state, sabotage, wars, blockades, insurrections, riots, civil disturbances, arrests, or restraints."

CITY shall process any permit application filed by CRPUD pursuant to this Section 3 in a timely manner and, at no charge to CRPUD pursuant to Section 12(h).

That CRPUD shall, if requested so to do, file with the CITY Engineer, or other CITY official designated by CITY, maps or sketches showing any proposed construction work to be done by CRPUD within the corporate limits of CITY, and such construction work shall be done in a reasonable, safe manner subject to the approval of the official designated by the Council of CITY and in accordance with requirement of applicable State laws and CITY ordinances.

If requested by CITY, CRPUD shall, as soon as reasonably possible after completion of said construction work, but in no case more than thirty (30) days thereafter, file "as built" drawings showing the location of any construction, extension, or relocation of its facilities and services in any

public right-of-way, property, or place in CITY. Within thirty (30) days ~~following~~ from a request of CITY, CRPUD shall provide current updated utility maps either in a hard copy printed form or if CITY maintains compatible data base capability, then by electronic data transfer incorporating completed construction to CITY at no expense to CITY.

Section 4. That CRPUD, under the direction of CITY or its properly constituted authorities, may make all necessary excavations in any street, alley, road, or other public way or place for the purpose of erecting, constructing, repairing, maintaining, removing, and relocating

poles and other supports for its wires, conductors, lights or streetlights; and laying, repairing, and maintaining its underground conduits and pipes; and for placing, maintaining, and operating its wires and conductors. All ~~facilities~~ poles of CRPUD ~~that are constructed shall be erected~~ within the right-of-way ~~shall be and~~ installed at the outside edge of the sidewalk, unless otherwise directed by the proper CITY authorities to another position within the right-of-way.

Section 5. That when an excavation shall be made pursuant to the provisions of this Franchise Agreement, CRPUD shall restore the portion of the street, alley, road, or public way or place to not less than the same condition to which it was prior to the excavation thereof and all work shall be done in compliance with the rules, regulations, ordinance or orders which may be adopted from time to time during the continuance of this Franchise by the Common Council of the CITY or as may be otherwise provided by law. Restorations for items that pose a safety concern will receive a temporary patch until such time as the permanent restoration can be completed within seven (7) business days after receiving notice from the city. If CRPUD fails to correct a safety concern after the seven (7) days, the city may then make the temporary patch and charge CRPUD actual and documented costs incurred.

Section 6. Notwithstanding Section 12(g), ~~that CITY, by its properly constituted authorities,~~ shall have the right to cause CRPUD to move the location of any facility within the right-of-way whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by CRPUD. Said poles and facilities shall be moved by CRPUD within ~~sixty (60)~~ thirty (30) days of written notice from CITY. In the event CRPUD is unable to move such facilities within thirty (30) days, CRPUD may request additional time from the City. City's consent to CRPUD's request for additional time shall not be unreasonably withheld. For purposes of this Section, the

“public necessity” shall mean that the relocation of CRPUD facilities must be required for the safety or welfare of the entire community and not the welfare of a specific individual or class of persons.

Section 7. That nothing in this Franchise Agreement shall be construed ~~as~~ in any way to prevent CITY from ~~sewering~~trenching, grading, paving, planking, repairing, widening, altering, or doing any work that may be desirable on any of the streets, alleys, roads, or public ways or places; but all such work shall be done, if possible, in such manner as not to obstruct, injure, or prevent free use and operation of said electric utility system of CRPUD. CITY shall maintain clearance from CRPUD facilities in accordance with state and federal regulations. ~~–~~CITY shall provide notice, as early as possible,

of any proposed property development or construction near CRPUD's substations or high voltage wires.

Section 8. That whenever it shall be necessary in ~~sewering~~trenching, grading, or in making any other improvement in any street, alley, road, or other public way or place, to remove any pole, underground conduit or equipment belonging to CRPUD or on which any light, wire or circuit of CRPUD shall be stretched or fastened, CRPUD shall, upon thirty (30) days written notice from CITY, or its properly constituted authorities, remove such pole, underground conduit, equipment, light, wire or circuit. In the event CRPUD is unable to move such facilities within thirty (30) days, CRPUD may request additional time from the City. City's consent to CRPUD's request for additional time shall not be unreasonably withheld and if CRPUD refuses to move facilities, CRPUD will write a letter of explanation to the council of the city and if it fails, neglects or refuses to so do, the CITY, by its properly constituted authorities, may remove the same at the expense of the CRPUD.

Section 9. That CITY shall provide CRPUD and others with a minimum ~~five (5)~~ten (10) foot wide non-exclusive utility corridor where there is transmission under-build, and a minimum eight (8) foot wide non-exclusive utility corridor in all new street layouts whenever reasonably possible and shall provide CRPUD and others with the opportunity to review all new street and subdivision designs prior to plat approval by CITY.

Section 10. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the ~~aerial-overhead facilities~~ cables, ~~or~~ wires, or other apparatus of CRPUD to permit the passage of any building, machinery or other object, CRPUD will perform such rearrangement on ~~seven (7)~~thirty (30) days written notice from the person or persons desiring to move said building, machinery, or other objects, if reasonably possible, but additional time shall be given upon the request of CRPUD if it

determines that additional time is needed to move such facilities. Said notice shall bear the approval of such officials as the Common Council may designate, shall detail the route of movement of the building, machinery, or other objects, shall provide that the costs incurred by CRPUD in making such arrangements will be borne by the person or persons giving said notice, and shall further provide that the person or persons giving said notice will indemnify and save CRPUD harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary arrangement of the ~~aerial plant~~utility facilities of CRPUD, and, if required by CRPUD, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by CRPUD.

Section 11. That the rights and privileges granted by this Franchise Agreement are granted upon the conditions herein contained and also upon the following considerations and conditions to- wit:

~~(a)~~—That in consideration of the rights and privileges herein granted, CRPUD shall

~~(b)~~—

~~(c)~~(a) pay to CITY for each calendar year during the life of this franchise beginning January 1, 2004 on the effective date, an annual fee of ~~four~~five percent (45%) of the gross revenue from customers with nominal demand less than 1,000_kW and one percent (1%) of the gross revenue from customers with nominal demand greater than or equal to 1,000_kW ~~but less than 5,000kW. Customers with nominal demand greater than or equal to 5,000kW shall be excluded from all gross revenue calculations when computing franchise fees.~~

~~(d)~~(b) Gross revenue as used in this Franchise Agreement shall be deemed to include any revenue earned within CITY from the sale of electric energy by CRPUD after adjustment for the net write-off of uncollectable accounts computed on the average annual

rate for all CRPUD customers and excluding sales of electric energy sold by CRPUD to any public utility when the public utility purchasing such electric energy is not the ultimate consumer. A public utility as defined herein is any individual, partnership, cooperative, corporation, or government agency buying electric energy and distributing such electric energy to other customers or users. Gross revenues shall include revenues from the use, rental, or lease of operating facilities of CRPUD other than residential type space and water heating equipment. Gross revenue does not include proceeds from the sale of bonds, mortgages, other evidences of indebtedness or securities, energy sales by third party energy providers or revenue from joint pole use.

~~(a)~~(c) That in consideration of the agreement of CRPUD to make such payments, CITY agrees that no license, permit fees, tax or charge on the business, occupation, or franchise of CRPUD shall be imposed upon, exacted from or required of CRPUD by CITY during the term of this Franchise Agreement, but this provision shall not exempt the property of CRPUD from lawful *ad valorem* taxes.

(d) That on or before March 1 of each year during the term of this Franchise Agreement, CRPUD shall file with the CITY Recorder a statement under oath showing the amount of gross revenue of CRPUD within CITY on the basis outlined in paragraph (a) herein for the calendar year immediately preceding the calendar year in which the statement is filed. The annual franchise fee for the calendar year in which the statement is filed shall be computed on the gross revenue so reported. Such franchise fee shall be payable annually on or before April 1 in each year. Upon receipt of such annual payment, the CITY Recorder shall issue a receipt ~~therefor.~~

Any controversy that may arise as to the amount of gross revenue within the meaning of this Franchise Agreement shall be resolved in accordance with the dispute resolution process described below in Section 16. Except in the event that a party has invoked the dispute resolution process described in Section 16, any difference of payment due either CITY or CRPUD through error or otherwise shall be payable within fifteen (15) days of discovery of such error. Except in the event that a party has invoked the dispute resolution process described in Section 16, should CRPUD fail or neglect to pay any of said annual payments provided for in this Section for thirty (30) days after any annual payment shall become due and payable and after thirty (30) days written notice from CITY, CITY, by

its properly constituted authority, may, at its option and without waiving the right to collect earned

franchise payments, either continue this franchise or declare a forfeiture of this franchise.

In the event that a party has invoked the dispute resolution process described in Section 16, the final resolution of that process shall control the respective rights of the Parties under this Section. Either party may audit the amount of gross revenue and payment amounts under this Franchise Agreement and request correction for any errors within one (1) year of payment as provided in this section. After the expiration of one (1) year from the date a payment is made under this Franchise Agreement, the payment shall be deemed final and no further corrections or modifications to the amount paid shall be made or requested.

CITY may inspect the books of account, including computer retrieval information, at any time during CRPUD's business hours and may audit the books, at CITY expense, from time to time but no more frequently than semi-annually.

~~(b) That CITY reserves the right to cancel this franchise at any time upon one year written notice to CRPUD in the event that CITY decides to engage in public ownership of electric utility facilities and the distribution of electric energy.~~

~~(e)~~(e) That CRPUD shall permit CITY to string wires on poles of CRPUD upon signing a Joint Use Agreement acceptable to both parties for municipal fire, police, and water departments, and for municipal telephone, fiber optic, telegraph, cable, and traffic signal systems and attach to any pole city fire alarm, and police signals, and ornamental or seasonal lights authorized by CITY, provided that such wires and signals shall be strung so as to interfere as little as possible with the wires of CRPUD and to conform to the provisions

of the National Electrical Safety Code; and further, that CITY shall indemnify and hold CRPUD harmless from loss or damage resulting from damage to property or injury or death to CITY employees or the public arising from or connected with the use of said poles by CITY.

~~(d)~~ That CRPUD shall not, during the term of this franchise, sell, assign, transfer or

~~(e)~~

~~(f)~~ convey this franchise without the consent of the Common Council of CITY expressed by agreement first obtained, and that upon obtaining such consent all of the provisions shall inure to and bind the successors and assigns of CRPUD; and whenever CRPUD shall be mentioned in this Franchise

~~(e)(f)~~ Agreement, it shall be understood to include such successors or assigns in interest of CRPUD as shall have been so consented to by the Common Council.

~~(h)(g)~~ That CRPUD shall render the service hereby authorized to be supplied upon equal terms without unjust discrimination or undue preference to any users within CITY including rates to be charged to CITY by CRPUD for electric services.

~~(i)(h)~~ That CITY shall provide a procedure for building permit applicants to notify CRPUD about building permits within CRPUD service area at the ~~time of the permit application~~beginning of the permit process.

~~(i)(i)~~ CRPUD shall at all times during the term of this franchise maintain a pay-station within CITY limits at which customers may pay their electric bills during normal business hours as long as the CITY provides a location for a pay station free of charge.

~~(k)(j)~~ That ~~W~~whenever work is performed in any public right-of-way, ~~property~~property, or place, CRPUD shall take all reasonable precautions to minimize interruptions to traffic flow, damage to property or creation of any hazardous condition.

~~(k)(k)~~ The facilities of CRPUD shall at all times be constructed, operated, and maintained so as to protect and safeguard the health and safety of the public and CRPUD shall observe all rules pertaining thereto including without limitation any revision or edition of the National Electric Safety Code, approved by the American National Standards Institute.

Section 12. That CITY shall render the following assistance to CRPUD on request and as CITY resources reasonably permit:

(a) To assist CRPUD in controlling traffic upon city streets during emergency procedures, including opening and closing streets to vehicular traffic, erecting barricades, diverting traffic, and police assistance to allow CRPUD's work crews to operate safely and efficiently.

(b) To notify CRPUD of any brush control or tree trimming activities conducted by CITY near CRPUD's power lines and to cooperate, to the extent feasible, in such trimming activities with CRPUD to minimize and share the total amount of trimming costs to the mutual benefit of the Parties.

(c) To provide notice, as early as possible, of any new construction or expansion of existing commercial or industrial properties which may significantly increase the need for electrical power with CRPUD's boundaries. The provision of Electric Service to any new construction or expansion of existing commercial or industrial properties shall be made under CRPUD's adopted rules, policies, and rate schedules, including CRPUD's line extension policy, as amended or superseded from time to time.

(d) To notify CRPUD of any request for new cable franchises or expansion or renewal of existing cable franchises with CITY and to allow CRPUD to participate in all public sessions of such cable franchise negotiations, insofar as attachment of cable or wires to CRPUD's utility poles is concerned. CRPUD may allow use of its poles, in its sole discretion, under a Joint Use or pole attachment agreement acceptable to CRPUD.

(e) To provide advance notice, as early as possible, of any plans to widen streets, relocate public ways, or other major public improvements within CITY which could require poles, wires, or other electrical equipment to be moved and to cooperate in arranging for the relocation of such poles, wires, and equipment, if relocation is necessary.

(f) To give notice of any plans to vacate a street or roadway or other easement owned by CITY, if CRPUD's equipment, poles, or wires are located upon such street, roadway, or easement and to cooperate with CRPUD to avoid unnecessary relocation

of equipment, poles, or wires. In the event of a vacation by CITY, CITY to provide CRPUD the opportunity to obtain a portion of the vacated rights-of-way for a utility easement.

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(g) To require that existing facilities in CITY rights-of-way that must be moved, be moved at the expense of the entity requiring the move insofar as CITY shall have the power and authority to require the entity to pay for the moving.

(h) CITY shall waive business license fees and building permits for pole or line installation, repair, or relocation above or below ground; however, this does not apply to contractors working within CITY who are required to have CITY licenses and permits.

Section 13. That ~~the~~ CRPUD hereby agrees and covenants to indemnify and save harmless CITY and the officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of CRPUD, or its agents or servants, in any manner arising from the rights and privileges hereby granted.

Section 14. That all rights, authority, and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the streets, alleys, roads and other public ways and places of CITY are not to operate in any way so as to be an enhancement of CRPUD's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 15. All new electric utility lines constructed under CRPUD's line extension policy to serve new developments, including lines to streetlights and related facilities; shall be placed underground. In the event CRPUD is unable to reasonably place such facilities underground, CRPUD may request to place such facilities in an alternative location consistent with prudent utility practices, and City's consent shall not be unreasonably withheld. However, this undergrounding requirement does not apply to routine maintenance, repair activities, off-site system upgrades or improvements needed to serve a new development. The undergrounding requirement is subject to the following conditions:

(a) The location of all new facilities shall be placed as outlined in the CITY

Public Works Design Standards Typical Utility Placement Detail, ~~included in this Franchise Agreement as Exhibit A if any exist,~~ or as mutually agreed upon;

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(b) Prior to placement of any new underground facilities, the CITY Engineer, or other CITY official designated by CITY, shall review and approve the location;

(c) New surface mounted apparatuses such as but not limited to transformers, ~~surface-mounted connection boxes and switches~~, meter cabinets, protective devices, etc., may be placed above ground; and,

(d) Temporary utility service facilities or transmission lines ~~(operating at 35,000 volts or above)~~ may be placed above ground.

Section 16. In case of any dispute arising under this Agreement which cannot be settled by direct negotiation between senior representatives of each party, the Parties agree that prior to commencing any arbitration to resolve such dispute, they shall first engage the services of professional mediator to meet with such senior representatives to facilitate a negotiated resolution of the dispute. Either party may request the appointment of a mediator. If the Parties are unable to agree upon a mediator within ten (10) days of such request, either party may request the appointment of a mediator by the Arbitration Service of Portland or a comparable agency. The Parties commit to use reasonable good faith efforts in the mediation process and to complete work with the mediator within thirty (30) days of the mediator's appointment. Each party shall pay one-half of the mediator's fees and expenses and all of its own attorneys' fees, costs and expenses.

If the Parties are unable to reach a mediated resolution of their dispute, the Parties agree to submit their dispute to binding arbitration before a single arbitrator. If the Parties are unable to agree upon an arbitrator, either party may request the appointment of an arbitrator by the Arbitration Service of Portland or a comparable agency. In any case, the arbitration shall be

conducted under the rules of the Arbitration Service of Portland, unless the Parties otherwise agree. Each party shall pay one-half of the arbitrator's fees and expenses and all of its own attorneys' fees, costs and expenses,

unless the arbitrator orders otherwise in the interests of justice. The Arbitrator's award may be entered and enforced as a judgment as provided by Oregon law.

Unless otherwise agreed, any mediation or arbitration shall take place in Columbia ~~or Multnomah~~ County, Oregon.

Section 17. —The Parties agree to comply with all laws and regulations of the United States, the State of Oregon, the ~~CITYCITY~~, and any other authorized public authority. If any ordinance/resolution of the respective governing bodies is in conflict with this Franchise Agreement, this Franchise Agreement will govern and control.

Section 18. Unless otherwise agreed to in writing, all correspondence shall be addressed to the parties as follows:

If to CRPUD:	If to CITY:
<u>If to</u>	<u>St. Helens, OR 97051</u>
<u>CRPUD:Attn:</u>	
<u>General Manager</u>	
<u>Attn: General</u>	<u>Attn: City</u>
<u>Manager</u>	<u>Manager</u>
<u>Columbia River</u>	<u>City of</u>
<u>People's Utility</u>	<u>Scappoose</u>
<u>District</u>	
<u>PO Box 1193</u>	<u>PO Box P</u>
<u>St. Helens, OR</u>	<u>Scappoose,</u>
<u>97051</u>	<u>OR 97056</u>

~~Columbia River People's Utility
District PO Box 1193~~

~~Attn: City Manager~~
~~City of Seappoose~~
~~PO Box P~~

~~Seappoose, OR 97056~~

Section 19. This Franchise Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, including, but not limited to that certain Franchise Agreement between CITY and CRPUD dated effective ~~January 1, 1999~~ March 30, 2004, which agreement CITY and CRPUD expressly terminate as of the date of this Franchise Agreement.

Section 20. This Franchise Agreement may be modified, amended, or supplemented only by written agreement executed by both CITY and CRPUD.

Section 21. If any provision of this Franchise Agreement is found to be invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Franchise Agreement, which shall remain in full force and effect. CITY and CRPUD agree to negotiate in good faith to replace any provision held invalid or unenforceable with a valid and enforceable provision that is as similar as possible in substance to the invalid or unenforceable provision.

Executed the date first mentioned above pursuant to authority granted by ordinance/resolution of the respective governing bodies.

APPROVED AS TO FORM BY
CITY OF SCAPPOOSE

APPROVED AS TO FORM BY
COLUMBIA RIVER PEOPLE’S
UTILITY DISTRICT

By: _____

By: _____

Date: _____

Date: _____

APPROVED AS TO FORM:
—CITY ATTORNEY

APPROVED AS TO FORM:
—ATER WYNNE, LLP

By: _____

By: _____

(CITY)
CITY OF SCAPPOOSE

(CRPUD)
COLUMBIA RIVER PEOPLE’S
UTILITY DISTRICT

By: _____

By: _____

ORDINANCE NO. 912

AN ORDINANCE RELATING TO THE DELIVERY OF POWER WITHIN THE CITY OF SCAPPOOSE AND GRANTING A NON-EXCLUSIVE FRANCHISE TO COLUMBIA RIVER PUBLIC UTILITY DISTRICT.

WHEREAS, CRPUD is a utility formed pursuant to ORS Chapter 261 operating within the city limits of CITY; and

WHEREAS, CRPUD is authorized by Oregon statute to enter into a franchise agreement with CITY; and

WHEREAS, CRPUD and CITY desire to enter into a franchise agreement for the mutual benefit of the citizens and businesses within the city limits of CITY as the same now exists, or may be hereafter constituted; and

WHEREAS, CRPUD and City's existing franchise agreement is set to expire in 2024; and

WHEREAS, CRPUD and CITY intend a franchise agreement consistent with municipal regulation of utilities under ORS 221.420, *et seq.*, that is not inconsistent with ORS Chapter 261, including the payment of franchise fees for use of CITY street rights of way in lieu of a privilege tax;

NOW, THEREFORE, THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. The franchise agreement is attached as Exhibit A and both parties agree to the terms and duration of the agreement.

Section 2. The City Council authorizes the City Manager to execute the agreement.

First reading: April 3, 2023

Second reading:

CITY OF SCAPPOOSE, OREGON

Mayor Joseph A. Backus

Attest:

City Recorder Susan M. Reeves, MMC

Exhibit A

FRANCHISE AGREEMENT
Between
COLUMBIA RIVER PEOPLE'S
UTILITY DISTRICT
And
CITY OF SCAPPOOSE
July 1, 2023

FRANCHISE AGREEMENT

THIS AGREEMENT, made, entered, and effective as of this 1st day of July, 2023, by and between the CITY OF SCAPPOOSE, a municipal corporation of the State of Oregon, hereinafter referred to as CITY, and the COLUMBIA RIVER PEOPLE'S UTILITY DISTRICT, a municipal corporation of the State of Oregon, hereinafter referred to as CRPUD,

WITNESSETH:

WHEREAS, CRPUD is a utility formed pursuant to ORS Chapter 261 operating within the city limits of CITY; and

WHEREAS, CRPUD is authorized by Oregon statute to enter into a franchise agreement with CITY; and

WHEREAS, CRPUD and CITY desire to enter into a franchise agreement for the mutual benefit of the citizens and businesses within the city limits of CITY as the same now exists, or may be hereafter constituted; and,

WHEREAS, CRPUD and CITY intend a franchise agreement consistent with municipal regulation of utilities under ORS 221.420, *et seq.*, that is not inconsistent with ORS Chapter 261, including the payment of franchise fees for use of CITY street rights of way in lieu of a privilege tax;

NOW, THEREFORE, for consideration hereinafter named, CRPUD and CITY agree as follows:

Section 1. That CITY give permission for CRPUD, subject to the terms and conditions hereof, to erect, construct, maintain and operate poles, wires, fixtures, equipment, underground circuits, and other property necessary or convenient to supply CITY and the inhabitants thereof and other persons and territory with electric services and products upon, over, along, under, and across the streets, alleys, roads, and other public ways and places within the corporate limits of CITY as the same now are or hereafter constituted.

All poles, wires, fixtures, equipment, underground circuits, and other property owned or in possession of CRPUD now located within the corporate limits of CITY shall be deemed to be covered by the terms of this Franchise Agreement and to be located in accordance therewith, and the location and placement thereof is hereby approved.

Section 2. All rights and privileges hereby granted shall be effective as of the Effective Date and shall be effective for a term of ten (10) years, unless renegotiated or terminated as provided in this Agreement. (“Term”). The Term shall automatically renew for an additional ten (10) year period after the expiration of the initial Term; unless either party provides the other party written notice, at least 60 days prior to the expiration of the initial Term, that it desires to renegotiate this Agreement or does not desire to renew this Agreement.

Section 3. Before CRPUD may conduct underground work involving excavation or construction or major relocation work in any public right-of-way, property, or place, CRPUD shall notify CITY by complying with the rules and regulations adopted by the Oregon Utility Notification Center and shall comply with any special conditions relating to scheduling, coordination, and public safety as may be reasonably required by CITY. As a prerequisite to conducting underground work, CRPUD shall obtain an approved right-of-way permit from the

City except in cases of emergency resulting from any one of the following conditions:

- "1) Any acts of God, including, but without restricting the generality thereof, lightning, earthquakes, storms, epidemics, and landslides, floods, fires, explosions, or washouts;"
- "2) Any acts of the enemies of the state, sabotage, wars, blockades, insurrections, riots, civil disturbances, arrests, or restraints."

CITY shall process any permit application filed by CRPUD pursuant to this Section 3 in a timely manner and, at no charge to CRPUD pursuant to Section 12(h).

That CRPUD shall, if requested so to do, file with the CITY Engineer, or other CITY official designated by CITY, maps or sketches showing any proposed construction work to be done by CRPUD within the corporate limits of CITY, and such construction work shall be done in a reasonable, safe manner subject to the approval of the official designated by the Council of CITY and in accordance with requirement of applicable State laws and CITY ordinances.

If requested by CITY, CRPUD shall, as soon as reasonably possible after completion of said construction work, but in no case more than thirty (30) days thereafter, file "as built" drawings showing the location of any construction, extension, or relocation of its facilities and services in any public right-of-way, property, or place in CITY. Within thirty (30) days from a request of CITY, CRPUD shall provide current updated utility maps either in a hard copy printed form or if CITY maintains compatible data base capability, then by electronic data transfer incorporating completed construction to CITY at no expense to CITY.

Section 4. That CRPUD, under the direction of CITY or its properly constituted authorities, may make all necessary excavations in any street, alley, road, or other public way or place for the purpose of erecting, constructing, repairing, maintaining, removing, and relocating poles and other supports for its wires, conductors, lights or streetlights; and laying, repairing, and maintaining its underground conduits and pipes; and for placing, maintaining,

and operating its wires and conductors. All poles of CRPUD shall be erected within the right-of-way and installed at the outside edge of the sidewalk, unless otherwise directed by the proper CITY authorities to another position within the right-of-way.

Section 5. That when an excavation shall be made pursuant to the provisions of this Franchise Agreement, CRPUD shall restore the portion of the street, alley, road, or public way or place to not less than the same condition to which it was prior to the excavation thereof and all work shall be done in compliance with the rules, regulations, ordinance or orders which may be adopted from time to time during the continuance of this Franchise by the Common Council of the CITY or as may be otherwise provided by law. Restorations for items that pose a safety concern will receive a temporary patch until such time as the permanent restoration can be completed within seven (7) business days after receiving notice from the city. If CRPUD fails to correct a safety concern after the seven (7) days, the city may then make the temporary patch and charge CRPUD actual and documented costs incurred.

Section 6. Notwithstanding Section 12(g), CITY shall have the right to cause CRPUD to move the location of any facility within the right-of-way whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by CRPUD. Said poles and facilities shall be moved by CRPUD within thirty (30) days of written notice from CITY. In the event CRPUD is unable to move such facilities within thirty (30) days, CRPUD may request additional time from the City. City's consent to CRPUD's request for additional time shall not be unreasonably withheld. For purposes of this Section, the "public necessity" shall mean that the relocation of CRPUD facilities must be required for the safety or welfare of the entire community and not the welfare of a specific individual or class of persons.

Section 7. That nothing in this Franchise Agreement shall be construed in any way to

prevent CITY from trenching, grading, paving, planking, repairing, widening, altering, or doing any work that may be desirable on any of the streets, alleys, roads, or public ways or places; but all such work shall be done, if possible, in such manner as not to obstruct, injure, or prevent free use and operation of said electric utility system of CRPUD. CITY shall maintain clearance from CRPUD facilities in accordance with state and federal regulations. CITY shall provide notice, as early as possible, of any proposed property development or construction near CRPUD's substations or high voltage wires.

Section 8. That whenever it shall be necessary in trenching, grading, or in making any other improvement in any street, alley, road, or other public way or place, to remove any pole, underground conduit or equipment belonging to CRPUD or on which any light, wire or circuit of CRPUD shall be stretched or fastened, CRPUD shall, upon thirty (30) days written notice from CITY, or its properly constituted authorities, remove such pole, underground conduit, equipment, light, wire or circuit. In the event CRPUD is unable to move such facilities within thirty (30) days, CRPUD may request additional time from the City. City's consent to CRPUD's request for additional time shall not be unreasonably withheld and if CRPUD refuses to move facilities, CRPUD will write a letter of explanation to the council of the city.

Section 9. That CITY shall provide CRPUD and others with a minimum ten (10) foot wide non-exclusive utility corridor where there is transmission under-build, and a minimum eight (8) foot wide non-exclusive utility corridor in all new street layouts whenever reasonably possible and shall provide CRPUD and others with the opportunity to review all new street and subdivision designs prior to plat approval by CITY.

Section 10. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the overhead facilities cables, wires, or other apparatus of CRPUD to permit the passage of any

building, machinery or other object, CRPUD will perform such rearrangement on thirty (30) days written notice from the person or persons desiring to move said building, machinery, or other objects, if reasonably possible, but additional time shall be given upon the request of CRPUD if it determines that additional time is needed to move such facilities. Said notice shall bear the approval of such officials as the Common Council may designate, shall detail the route of movement of the building, machinery, or other objects, shall provide that the costs incurred by CRPUD in making such arrangements will be borne by the person or persons giving said notice, and shall further provide that the person or persons giving said notice will indemnify and save CRPUD harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary arrangement of the utility facilities of CRPUD, and, if required by CRPUD, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by CRPUD.

Section 11. That the rights and privileges granted by this Franchise Agreement are granted upon the conditions herein contained and also upon the following considerations and conditions to- wit:

(a) That in consideration of the rights and privileges herein granted, CRPUD shall pay to CITY for each calendar year during the life of this franchise beginning on the effective date, an annual fee of five percent (5%) of the gross revenue from customers with nominal demand less than 1,000 kW and one percent (1%) of the gross revenue from customers with nominal demand greater than or equal to 1,000 kW.

(b) Gross revenue as used in this Franchise Agreement shall be deemed to include any revenue earned within CITY from the sale of electric energy by CRPUD after adjustment for the net write-off of uncollectable accounts computed on the average annual

rate for all CRPUD customers and excluding sales of electric energy sold by CRPUD to any public utility when the public utility purchasing such electric energy is not the ultimate consumer. A public utility as defined herein is any individual, partnership, cooperative, corporation, or government agency buying electric energy and distributing such electric energy to other customers or users. Gross revenues shall include revenues from the use, rental, or lease of operating facilities of CRPUD other than residential type space and water heating equipment. Gross revenue does not include proceeds from the sale of bonds, mortgages, other evidences of indebtedness or securities, energy sales by third party energy providers or revenue from joint pole use.

(c) That in consideration of the agreement of CRPUD to make such payments, CITY agrees that no license, permit fees, tax or charge on the business, occupation, or franchise of CRPUD shall be imposed upon, exacted from or required of CRPUD by CITY during the term of this Franchise Agreement, but this provision shall not exempt the property of CRPUD from lawful *ad valorem* taxes.

(d) That on or before March 1 of each year during the term of this Franchise Agreement, CRPUD shall file with the CITY Recorder a statement under oath showing the amount of gross revenue of CRPUD within CITY on the basis outlined in paragraph (a) herein for the calendar year immediately preceding the calendar year in which the statement is filed. The annual franchise fee for the calendar year in which the statement is filed shall be computed on the gross revenue so reported. Such franchise fee shall be payable annually on or before April 1 in each year. Upon receipt of such annual payment, the CITY Recorder shall issue a receipt.

Any controversy that may arise as to the amount of gross revenue within the meaning of this Franchise Agreement shall be resolved in accordance with the dispute resolution process described below in Section 16. Except in the event that a party has invoked the dispute resolution process described in Section 16, any difference of payment due either CITY or CRPUD through error or otherwise shall be payable within fifteen (15) days of discovery of such error. Except in the event that a party has invoked the dispute resolution process described in Section 16, should CRPUD fail or neglect to pay any of said annual payments provided for in this Section for thirty (30) days after any annual payment shall become due and payable and after thirty (30) days written notice from CITY, CITY, by its properly constituted authority, may, at its option and without waiving the right to collect earned franchise payments, either continue this franchise or declare a forfeiture of this franchise.

In the event that a party has invoked the dispute resolution process described in Section 16, the final resolution of that process shall control the respective rights of the Parties under this Section. Either party may audit the amount of gross revenue and payment amounts under this Franchise Agreement and request correction for any errors within one (1) year of payment as provided in this section. After the expiration of one (1) year from the date a payment is made under this Franchise Agreement, the payment shall be deemed final and no further corrections or modifications to the amount paid shall be made or requested.

CITY may inspect the books of account, including computer retrieval information, at any time during CRPUD's business hours and may audit the books, at CITY expense, from time to time but no more frequently than semi-annually.

(e) That CRPUD shall permit CITY to string wires on poles of CRPUD

upon signing a Joint Use Agreement acceptable to both parties for municipal fire, police, and water departments, and for municipal telephone, fiber optic, telegraph, cable, and traffic signal systems and attach to any pole city fire alarm, and police signals, and ornamental or seasonal lights authorized by CITY, provided that such wires and signals shall be strung so as to interfere as little as possible with the wires of CRPUD and to conform to the provisions of the National Electrical Safety Code; and further, that CITY shall indemnify and hold CRPUD harmless from loss or damage resulting from damage to property or injury or death to CITY employees or the public arising from or connected with the use of said poles by CITY.

(f) That CRPUD shall not, during the term of this franchise, sell, assign, transfer or convey this franchise without the consent of the Common Council of CITY expressed by agreement first obtained, and that upon obtaining such consent all of the provisions shall inure to and bind the successors and assigns of CRPUD; and whenever CRPUD shall be mentioned in this Franchise Agreement, it shall be understood to include such successors or assigns in interest of CRPUD as shall have been so consented to by the Common Council.

(g) That CRPUD shall render the service hereby authorized to be supplied upon equal terms without unjust discrimination or undue preference to any users within CITY including rates to be charged to CITY by CRPUD for electric services.

(h) That CITY shall provide a procedure for building permit applicants to notify CRPUD about building permits within CRPUD service area at the beginning of the permit process.

(i) CRPUD shall at all times during the term of this franchise maintain a

pay-station within CITY limits at which customers may pay their electric bills during normal business hours as long as the CITY provides a location for a pay station free of charge.

(j) That whenever work is performed in any public right-of-way, property, or place, CRPUD shall take all reasonable precautions to minimize interruptions to traffic flow, damage to property or creation of any hazardous condition.

(k) The facilities of CRPUD shall at all times be constructed, operated, and maintained so as to protect and safeguard the health and safety of the public and CRPUD shall observe all rules pertaining thereto including without limitation any revision or edition of the National Electric Safety Code, approved by the American National Standards Institute.

Section 12. That CITY shall render the following assistance to CRPUD on request and as CITY resources reasonably permit:

(a) To assist CRPUD in controlling traffic upon city streets during emergency procedures, including opening and closing streets to vehicular traffic, erecting barricades, diverting traffic, and police assistance to allow CRPUD's work crews to operate safely and efficiently.

(b) To notify CRPUD of any brush control or tree trimming activities conducted by CITY near CRPUD's power lines and to cooperate, to the extent feasible, in such trimming activities with CRPUD to minimize and share the total amount of trimming costs to the mutual benefit of the Parties.

(c) To provide notice, as early as possible, of any new construction or expansion of existing commercial or industrial properties which may significantly increase the need for electrical power with CRPUD's boundaries. The provision of Electric Service to any new construction or expansion of existing commercial or industrial properties shall be made under CRPUD's adopted rules, policies, and rate schedules, including CRPUD's line extension

policy, as amended or superseded from time to time.

(d) To notify CRPUD of any request for new cable franchises or expansion or renewal of existing cable franchises with CITY and to allow CRPUD to participate in all public sessions of such cable franchise negotiations, insofar as attachment of cable or wires to CRPUD's utility poles is concerned. CRPUD may allow use of its poles, in its sole discretion, under a Joint Use or pole attachment agreement acceptable to CRPUD.

(e) To provide advance notice, as early as possible, of any plans to widen streets, relocate public ways, or other major public improvements within CITY which could require poles, wires, or other electrical equipment to be moved and to cooperate in arranging for the relocation of such poles, wires, and equipment, if relocation is necessary.

(f) To give notice of any plans to vacate a street or roadway or other easement owned by CITY, if CRPUD's equipment, poles, or wires are located upon such street, roadway, or easement and to cooperate with CRPUD to avoid unnecessary relocation of equipment, poles, or wires. In the event of a vacation by CITY, CITY to provide CRPUD the opportunity to obtain a portion of the vacated rights-of-way for a utility easement.

(g) To require that existing facilities in CITY rights-of-way that must be moved, be moved at the expense of the entity requiring the move insofar as CITY shall have the power and authority to require the entity to pay for the moving.

(h) CITY shall waive business license fees and building permits for pole or line installation, repair, or relocation above or below ground; however, this does not apply to contractors working within CITY who are required to have CITY licenses and permits.

Section 13. That CRPUD hereby agrees and covenants to indemnify and save harmless

CITY and the officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of CRPUD, or its agents or servants, in any manner arising from the rights and privileges hereby granted.

Section 14. That all rights, authority, and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the streets, alleys, roads and other public ways and places of CITY are not to operate in any way so as to be an enhancement of CRPUD's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 15. All new electric utility lines constructed under CRPUD's line extension policy to serve new developments, including lines to streetlights and related facilities; shall be placed underground. In the event CRPUD is unable to reasonably place such facilities underground, CRPUD may request to place such facilities in an alternative location consistent with prudent utility practices, and City's consent shall not be unreasonably withheld. However, this undergrounding requirement does not apply to routine maintenance, repair activities, off-site system upgrades or improvements needed to serve a new development. The undergrounding requirement is subject to the following conditions:

- (a) The location of all new facilities shall be placed as outlined in the CITY

Public Works Design Standards Typical Utility Placement Detail, if any exist, or as mutually agreed upon;

- (b) Prior to placement of any new underground facilities, the CITY Engineer, or other CITY official designated by CITY, shall review and approve the location;

(c) New surface mounted apparatuses such as but not limited to transformers, switches, meter cabinets, protective devices, etc., may be placed above ground; and,

(d) Temporary utility service facilities or transmission lines operating at 35,000 volts or above may be placed above ground.

Section 16. In case of any dispute arising under this Agreement which cannot be settled by direct negotiation between senior representatives of each party, the Parties agree that prior to commencing any arbitration to resolve such dispute, they shall first engage the services of professional mediator to meet with such senior representatives to facilitate a negotiated resolution of the dispute. Either party may request the appointment of a mediator. If the Parties are unable to agree upon a mediator within ten (10) days of such request, either party may request the appointment of a mediator by the Arbitration Service of Portland or a comparable agency. The Parties commit to use reasonable good faith efforts in the mediation process and to complete work with the mediator within thirty (30) days of the mediator's appointment. Each party shall pay one-half of the mediator's fees and expenses and all of its own attorneys' fees, costs and expenses.

If the Parties are unable to reach a mediated resolution of their dispute, the Parties agree to submit their dispute to binding arbitration before a single arbitrator. If the Parties are unable to agree upon an arbitrator, either party may request the appointment of an arbitrator by the Arbitration Service of Portland or a comparable agency. In any case, the arbitration shall be conducted under the rules of the Arbitration Service of Portland, unless the Parties otherwise agree. Each party shall pay one-half of the arbitrator's fees and expenses and all of its own

attorneys' fees, costs and expenses, unless the arbitrator orders otherwise in the interests of justice. The Arbitrator's award may be entered and enforced as a judgment as provided by Oregon law.

Unless otherwise agreed, any mediation or arbitration shall take place in Columbia County, Oregon.

Section 17. The Parties agree to comply with all laws and regulations of the United States, the State of Oregon, the CITY, and any other authorized public authority. If any ordinance/resolution of the respective governing bodies is in conflict with this Franchise Agreement, this Franchise Agreement will govern and control.

Section 18. Unless otherwise agreed to in writing, all correspondence shall be addressed to the parties as follows:

If to CRPUD:
Attn: General Manager
Columbia River People's Utility District
PO Box 1193
St. Helens, OR 97051

If to CITY:
Attn: City Manager
City of Scappoose
PO Box P
Scappoose, OR 97056

Section 19. This Franchise Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, including, but not limited to that certain Franchise Agreement between CITY and CRPUD dated effective March 30, 2004, which agreement CITY and CRPUD expressly terminate as of the date of this Franchise Agreement.

Section 20. This Franchise Agreement may be modified, amended, or supplemented only by written agreement executed by both CITY and CRPUD.

Section 21. If any provision of this Franchise Agreement is found to be invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Franchise Agreement, which shall remain in full force and effect. CITY and CRPUD agree to negotiate in good faith to replace any provision held invalid or unenforceable with a valid and enforceable provision that is as similar as possible in substance to the invalid or unenforceable provision.

Executed the date first mentioned above pursuant to authority granted by ordinance/resolution of the respective governing bodies.

APPROVED AS TO FORM BY
CITY OF SCAPPOOSE

APPROVED AS TO FORM BY
COLUMBIA RIVER PEOPLE'S
UTILITY DISTRICT

By: _____

Date: _____

By: _____

Date: _____

City of Scappoose
Council Action & Status Report

Date Submitted: April 10, 2023
Agenda Date Requested: April 17, 2023
To: Scappoose City Council
From: Laurie Oliver Joseph, Community Development Director
Subject: Community Development Center Fee Study

Type of Action Requested:

<input type="checkbox"/>	<input type="checkbox"/>	Resolution	<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Formal Action	<input type="checkbox"/>	<input type="checkbox"/>	Report Only

Issue:

City Manager, Alex Rains, contracted with Merina+CO to have them perform a cost-of-service evaluation on select fees and services assessed by the Community Development Center and to provide recommendations for updates to community development related fees and charges.

Analysis:

The City of Scappoose's Community Development Department provides services to developers, builders, and citizens of Scappoose as well as providing services internally to Public Works and other City functions. Currently, the Department charges fees for services provided as stated in the City's 2022-2023 Master Fee Resolution No. 22-16 as adopted by the City Council. Many of the Department's fees for services have not been critically reviewed or adjusted for several years in consideration of rising staff costs, inflation, or increased time and effort of staff in addressing increasingly complex planning and engineering projects.

The objective of this fee review was to identify the direct and indirect costs of providing community development services and to propose fees that more appropriately align with those costs of service. As stated in the report, Merina+CO believes that fees in many cases should be adjusted upwards to address several years of inflationary pressure and increases in personnel services costs, and to align with the current market environment as demonstrated through comparative benchmarking.

Appendix VI, within the Community Development Fee Review Report, summarizes the recommendations for adjustments to the City's 2022-2023 Master Fee Resolution with respect to community development (planning and engineering) fees. These recommendations are based on consideration of cost of service, market factors such as inflation, and perceived value to the customer.

Appendix VI includes columns (from left to right) that represent; the type of land use application/service, the current fees for planning and engineering services, the cost of service for staff to process the stated type of land use applications, what the current fees collected represent in terms of the cost to provide the service¹, and lastly, planning and engineering fees proposed by Merina+CO (which align with cost recovery).

Options:

1. Approve the proposed planning and engineering fee adjustments as identified in **Appendix VI** of the Merina+CO Community Development Fee Review Report, which is based on cost-of-service recovery.
2. Direct staff to implement an identified % of the proposed fee adjustments (e.g., 75%), which would be less than cost-of-service recovery but would still result in additional revenue to the City.
3. Direct staff to not increase the planning and engineering fees at this time.

Recommendation: Staff recommends that the Council consider options 1 or 2 above.

Suggested Motion:

1. I move that Council approve the proposed fee adjustments as presented in **Appendix VI** of the Merina+CO Community Development Fee Review Report.

Or:

2. I move that Council approve ____% of the proposed fee adjustments as presented in **Appendix VI** of the Merina+CO Community Development Fee Review Report.

Please find attached:

Merina+CO Community Development Fee Review Report, dated April 2023

¹ This is stated as a percentage, where 100% means that the City is collecting fees at a rate that 100% covers the cost to provide the service.

City of Scappoose, Oregon

Review and Analysis of Community Development Fees

April 2023



7624 SW Mohawk Street
Tualatin, OR 97062
www.merina.com

April 2023

Alexandra Rains, City Manager
City of Scappoose, Oregon
33568 E. Columbia Avenue
Scappoose, Oregon 97056

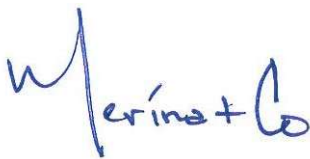
Dear Ms. Rains,

We have completed our review and assessment of the City of Scappoose's Community Development Fees. This report summarizes the results of our review.

We have identified several recommended updates to the Community Development fees as stated in the City's 2022-23 Master Fee Resolution. These recommendations present an opportunity for City leadership to align fees with the cost of providing community development related services and in turn reduce reliance on general fund revenues of the City.

We wish to express our appreciation to the City personnel we spoke with for their cooperation and assistance during this review.

Sincerely,

A handwritten signature in blue ink that reads "Merina+Co". The signature is stylized, with the "M" being particularly large and the "erina+Co" following in a cursive-like script.

Merina+Co

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Introduction and Objective

The City of Scappoose's (City) Community Development Department (Department) provides services to developers, builders, and citizens of Scappoose as well as providing services internally to Public Works and other City functions. Currently, the Department charges fees for services provided as stated in the City's 2022-2023 Master Fee Resolution No. 22-16 as adopted by the City Council. Many of the Department's fees for services have not been critically reviewed or adjusted for several years in consideration of rising staff costs, inflation, or increased time and effort of staff in addressing increasingly complex planning and engineering projects. The cost of services provided by Engineering staff (primarily) to Public Works are addressed internally as the City Engineer position is currently accounted for in the City's utility and Street Funds.

In August of 2022, Merina+Co engaged with the City of Scappoose (City) to review fees related to community development activities and services (Planning, Engineering, and Building). The objective of our review was to identify the direct and indirect costs of providing community development services and to propose fees that more appropriately aligned with those costs of service, and in turn reduce the Community Development Department's reliance on general fund revenues of the City where possible.

Approach and Methodology

To develop a better understanding of current service levels, associated costs of providing those services, and related fees to internal and external customers, Merina+Co met with and interviewed Department staff including the Community Development Director, the City Engineer, and the Building Official. We also reviewed relevant City documents including the 2022-2023 Master Fee Resolution, the City's budget, audited financial statements, and detailed information from the City's financial information system related to personnel services and materials and services costs of the Department. Our review and discussions focused on identifying the effort involved in services currently being provided and perspective on the respective fees charged. Throughout these discussions, we inquired about current processes, time and effort involved in providing service to internal and external customers, direct and indirect cost components, and perspectives on fees related to respective services provided.

Based on time estimates provided by Community Development staff and our calculations of direct and indirect costs associated with processing various applications and permits, we formulated the following recommendations for process adjustments. We calculated direct costs based on budgeted salaries, wages, and related benefits. We calculated indirect costs based on budgeted amounts for materials and services in each of the respective Engineering and Planning functions and converted to hourly rates that became a second component of the overall cost per hour for services provided.

MCO was initially unsuccessful in obtaining meaningful comparative results from other jurisdictions regarding their level of effort and fee structures for community development/land use applications. City staff was able to obtain comparative fees through professional contacts with respect to engineering plan review and inspection and we have remarked on that information below.

As part of our assessment, we evaluated fees for potential improvements in efficiency. Where reasonable, we have included recommendations for changes in process that may require changes to the City's Code or other guidance. For example, where the requirements and/or standards are clearly presented, we believe it

reasonable to approve certain land use applications through an administrative process rather than taking the application to the Planning Commission for approval.

We also took the opportunity to evaluate fees through the lens of community affordability or burden. Typically, these considerations are framed within a policy established to either encourage development in a community (holding fees at a lower price point) or conversely to incent development to pay its own way (i.e., full cost recovery).

Background

The Department's services are provided under a mix of local policies and statutory requirements that to some extent dictate the process for granting approvals to customers related to land use applications, permits, and related inspections. While some applications are processed and approved through an administrative (staff) review process, others require presentation to, and action by the Planning Commission, the City Council, or both. Understandably, the level of staff time and effort involved is proportionate to the level of approval required.

The City's Building Official position is currently vacant and due to a reduction in large projects currently, the City has chosen to enter into an intergovernmental agreement with Columbia County Land Development Services, Building Division, to serve as the City's Building Official and to provide plan review and inspections. For fiscal year 2023 – 2024, the City has elected to continue the current arrangement with Columbia County since it is working well for the City and for the County and allows the City flexibility in deciding when and if they wish to fill the vacant City Building Official position. As a result of this, and the fact that building services are largely established and governed by the State of Oregon Building Codes Division, we did not analyze building fees in any detail as part of our analysis. Increases to the building fees will be proposed for the 2023 – 2024 fee resolution, which will align with the fees imposed by Columbia County's Building Division.

Benchmarking Information

MCO compared current and proposed land use application fees (planning and engineering) to several comparison jurisdictions for purposes of gaining a market perspective and to get a sense of general reasonableness. Two factors are noteworthy as we evaluated the comparisons:

1. Most of the comparison jurisdictions do not charge engineering fees associated with the processing of land use applications. Of those that do, their structures were not easily compared with Scappoose. For example, the City of Sherwood charges for engineering review on a time and materials basis to cover actual staff costs, and the City of Milwaukie charges a percentage of project value for engineering review related to subdivision applications.
2. While other jurisdictions do not collect an engineering fee as a component of land use review, the Scappoose City Engineer, who called and spoke with several of the City Engineers on the comparables list, was told that they felt this was a good idea and was something they had been considering as well. It is important to note also that there are times when an application receives land use approval, but never actually moves on to the construction phase. In that case, Scappoose has at least recovered some of the engineer's review costs related to analyzing the land use application for conformance with the Public Works Design Standards and other relevant codes and standards.

The jurisdictions selected for purposes of comparing planning and engineering fee information are as follows:

- + City of Independence
- + City of Molalla
- + City of Sandy
- + City of St. Helens
- + City of Sherwood
- + City of Milwaukie
- + City of Happy Valley
- + City of Hood River
- + City of Wilsonville
- + Columbia County

In comparing land use application fees, MCO worked with staff to identify several of the most common application types to illustrate the similarities and differences across jurisdictions, which are annexations, site development review, and subdivisions. To facilitate comparison, we assumed the following facts with respect to applications and resultant fee calculations:

- + For annexations we assumed a total of five (5) acres with no elections required and no separate zone change fees in our calculations.
- + Regarding site development review applications, we assumed a construction value (CV) of \$1 million, a single building/structure, and a total of five (5) acres for purposes of calculating fees.
- + In calculating fees related to subdivision applications we assumed a total of two (2) acres and ten (10) lots.

For illustrative purposes the charts provided as **Appendices I through V** include both planning and engineering fees combined, as well as planning fees individually, for the City of Scappoose. Planning and engineering staff work closely in the processing of land use applications and therefore the combined fees provide a more complete picture. The comparative information provided in the appendices support the proposed fees for the Department based on the following conclusions drawn.

- + **Annexations** – The City of Scappoose’s proposed combined fees (planning and engineering) are slightly above the average across the comparative jurisdictions. That average is skewed by the cities of St. Helens and Independence, who again do not charge engineering fees for these types of applications. If considering only planning fees, Scappoose is below the average of the comparative jurisdictions.
- + **Site Development Review** – The City of Scappoose’s proposed combined fees are in line with the average of the comparison jurisdictions. Most of the comparison jurisdictions assess a base fee only for these applications while Scappoose’s fee is value based. Only St. Helens and Columbia County also charge based on project value.
- + **Subdivisions** – The combined proposed fee for Scappoose is in fact the highest among the comparative jurisdictions. The delta in fees is primarily due to the fact that other jurisdictions do not collect engineering review fees at the time of land use submittal and instead only collect fees for engineering once the subdivision moves to construction document review. The proposed fees as seen in **Appendix III**, for subdivision applications are set to cover staff costs associated with processing these applications and includes both the preliminary plat and final plat review fees.
- + **Home Occupation/Business Licenses** – The data for these fees is all over the board with respect to comparisons as many jurisdictions have either a home occupation application fee or a business license fee, but not both. The only jurisdictions with both fees are Sherwood, Sandy, and St. Helens. Hood River, Happy Valley, and Columbia County skew the data with home occupation application fees of more than \$750. The proposed fees for Scappoose are modest and in line with most other

comparators.

With respect to engineering plan review and inspection, information was collected for example project valuations ranging from \$100 thousand to \$3 million, and fees were calculated based on the respective structures of each jurisdiction, including where applicable base fees and amounts charged as a percentage of the project's value. These comparisons indicate that for projects with a lower construction value or CV (\$100k), Scappoose's total fees are nearly twice the average of the comparison jurisdictions. With a CV of \$250k Scappoose's fees are more than 60% above the average across all comparative jurisdictions. For projects with an CV of \$1M Scappoose is slightly higher than the average across the comparison jurisdictions, and at the high end (\$3M) Scappoose is in line with the average fees charged. Other information on the comparative jurisdictions:

- + The City of Sandy's fees for engineering public improvement plan review and inspections are well below the average of other comparative jurisdictions across the board, and especially with respect to the high-end project values.
- + The cities of Wilsonville and Sherwood are higher than the other comparative jurisdictions in all but the lowest value projects where Scappoose is the highest.

The information above is illustrated in the chart included as Appendix IV. What the comparison appears to show is that in summary, most cities appear to discount fees on the lower value projects relative to Scappoose, perhaps to incent development, but those same jurisdictions appear to be much more comparable in their fees at the higher end of the valuation range.

Results

Our review of community development fees identified several opportunities for the Department. We believe that fees in many cases should be adjusted upwards to address several years of inflationary pressure and increases in personnel services costs, and to align with the current market environment as demonstrated through comparative benchmarking.

Fee adjustments proposed generally allow for full cost recovery in support of review and approval of stated land use applications for both planning and engineering and engineering inspections during the construction phase. Beyond cost recovery, the City of Scappoose's current land use application process appears to provide a higher level of review and attention to projects than is evident in the information obtained from other jurisdictions. This greater level of review and attention appears to justify the City's fees as proposed and as compared with other jurisdictions as noted. As stated, most comparators have no engineering participation built into their initial review and approval processes. The City of Sherwood charges for engineering review on a time and materials basis to cover actual staff costs, and the City of Milwaukie charges a percentage of project value for engineering review related to subdivision applications. No other indications of engineering involvement were specifically identified during the review of respective comparators' fee schedules.

The recommended fees for Scappoose appear to be well positioned to cover staff costs for providing the respective services, and equitable to developers and others within the region and the state looking to develop and build in the City. The proposed fees are defensible based on current processes and the level of attention given by Planning and Engineering staff to applications to ensure standards are met and maintained.

Appendix VI summarizes our recommendations for adjustments to the City's 2022-2023 Master Fee Resolution with respect to community development (planning and engineering) fees. Our recommendations are based on consideration of cost of service, market factors such as inflation, and perceived value to the customer.

Recommendations

Simply stated, there are three ways to align charges for service with the related cost of service and with the market for those services. The first is to increase fees. The second is to streamline processes and recognize efficiencies to reduce costs until they fall within or close to the fees established within the market. The third, and most commonly applied, is a combination of the two.

MCO believes that there are opportunities for process improvement resulting in increased efficiencies related to processing of land use applications. Community Development staff are currently evaluating processes and we recommend they continue those efforts and act on whatever opportunities they identify. We also believe that the Department may be able to adjust its approach to some land use actions such that they can be handled administratively without going before the Planning Commission for action. Our recommendations with respect to streamlining processes are outlined below with the factors that led us to these recommendations.

Based on our work performed, we formulated the following recommendations around processing of land use and related applications. These recommendations are integral to our proposed fee adjustments as indicated in **Appendix VI**.

Recommendation 1 – We recommend staff continue with their process improvement review of the steps involved from application acceptance and initial review processes through generation of the staff report and public notices. The goal should be to identify critical paths and eliminate actions that do not directly provide value to the process or substantially contribute to moving the application forward. Such a review may likely include process mapping and detailed time tracking to ensure accurate data on which to determine true cost of service as a component of establishing fair and effective fees.

Recommendation 2 – Currently, the structure for processing Site Development applications includes a flat fee charged by Engineering that falls well short of the estimated cost of providing the services involved. Similarly, the sliding scale fees charged by Planning for processing these applications fall short of estimated costs at all but the highest value (ECV, estimated construction value) projects. We propose a two-tiered structure for both Engineering and Planning that on average will address cost of service while not placing an undue burden on smaller projects. The two-tiered structure is integrated into the fee proposal as indicated in **Appendix VI** and outlined in red.

Recommendation 3 – Food Cart Pod Permits currently require administrative approval for a Type I permit and Planning Commission (PC) approval for a Type II permit. These applications appear to be less complex and require less analysis than other common applications and could both be processed administratively within established standards and Code though we understand that may require a change in the City's Code and policies. That said, we recommend that both Type I and Type II applications be completed and approved at the staff level, and that fees be established accordingly.

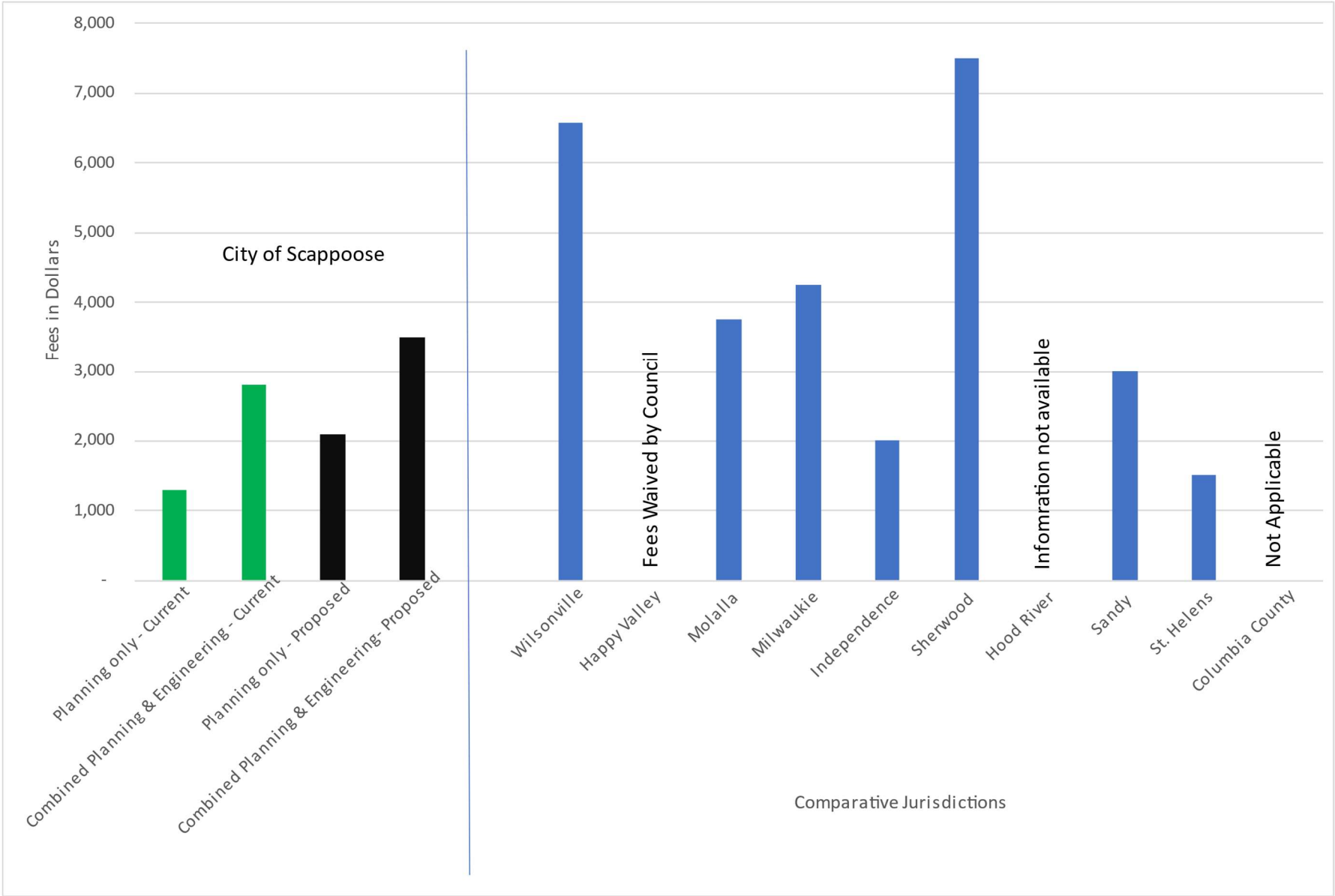
Recommendation 4 – We noted from our discussions that the City collects a fee for business licenses related to businesses located outside of city limits (who are performing work inside the City) and has established a fee for business licenses for businesses located within city limits. However, the fees related to business licenses inside city limits have been waived by the City Council since 2010 and are not collected. While the City currently has fees listed on the fee schedule for home occupation permits (which include business license fees for businesses located inside city limits), the business license portion of those fees are not collected. Staff costs and recommended fees to cover those costs are modest relative to other land use actions but the information and compliance aspects are not insignificant and align with the City's potential to license businesses in the community to recognize additional revenue in the General Fund. Further consideration can be given to business license fees in future fee discussions. Home occupation permit applications are included in **Appendix VI**.

The City Engineer position is not currently reported as an FTE in the Community Development Department, nor are the fees associated with services provided by the City Engineer recorded in the General Fund. Rather, the City Engineer is allocated across the City's public works related funds and fees paid for Engineering services are credited to those funds. Amounts not recovered through fees are borne by the City's public works related funds.

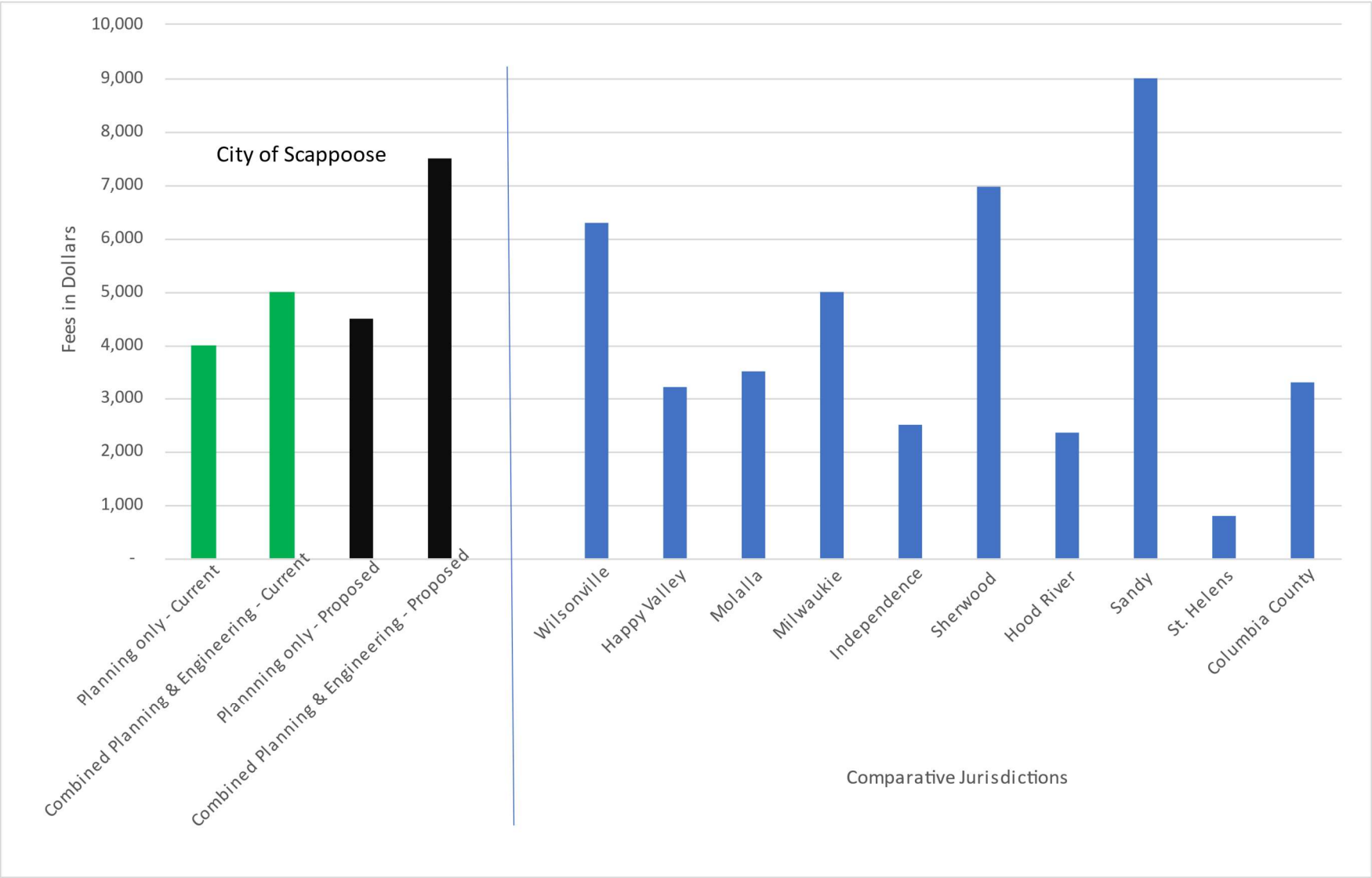
While a legitimate strategy, the result is an unclear picture of the net cost of service for Engineering, especially in those land use applications where there are both Engineering and Planning elements to the review and approval process. The Engineering and Planning functions work closely together and are physically located together in City offices. The City Engineer reports directly to the Community Development Director. It takes a great deal of analysis and calculations to evaluate the financial ins and outs of the Community Development Department's function given this hybrid accounting where half the function is recorded and reported in the General Fund and the other half is allocated across utility funds. Fiscal accountability would best be served by aggregating Engineering and Planning in a single department in the General Fund, and structuring costs and related fees with transfers from the utility funds to pay for services received to properly manage the overall Community Development function.

Recommendation 5 – We recommend that the City explore moving the City Engineer position to the Community Development Department, and report related expenditures and fees revenues from Engineering services in the General Fund. Such consideration will include budgetary impacts to the General Fund, utilities funds, and Street Fund for purposes of estimating expenditures, revenues, and interfund transfers.

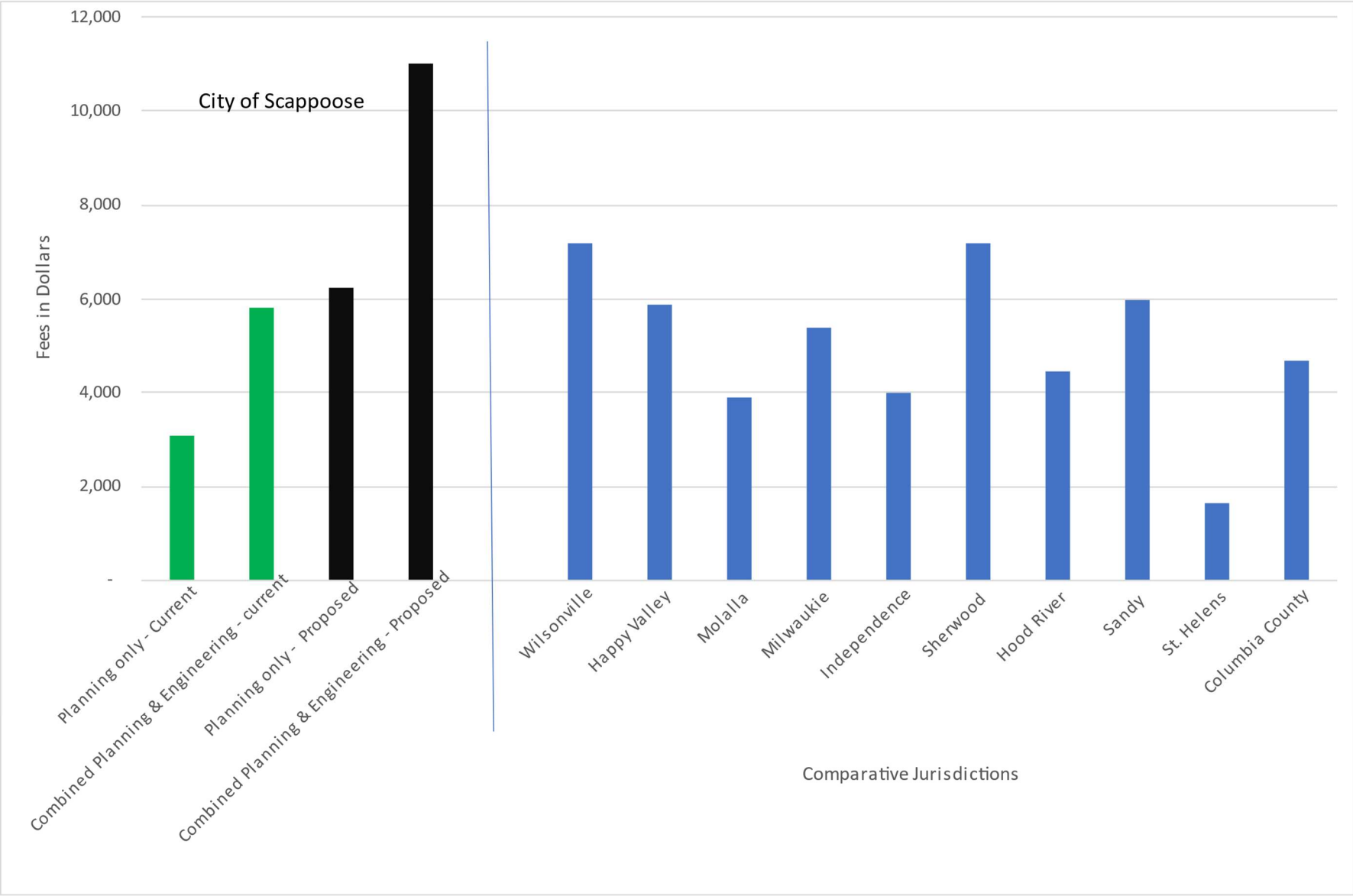
Appendix I – Comparative Land Use Fees: Annexations



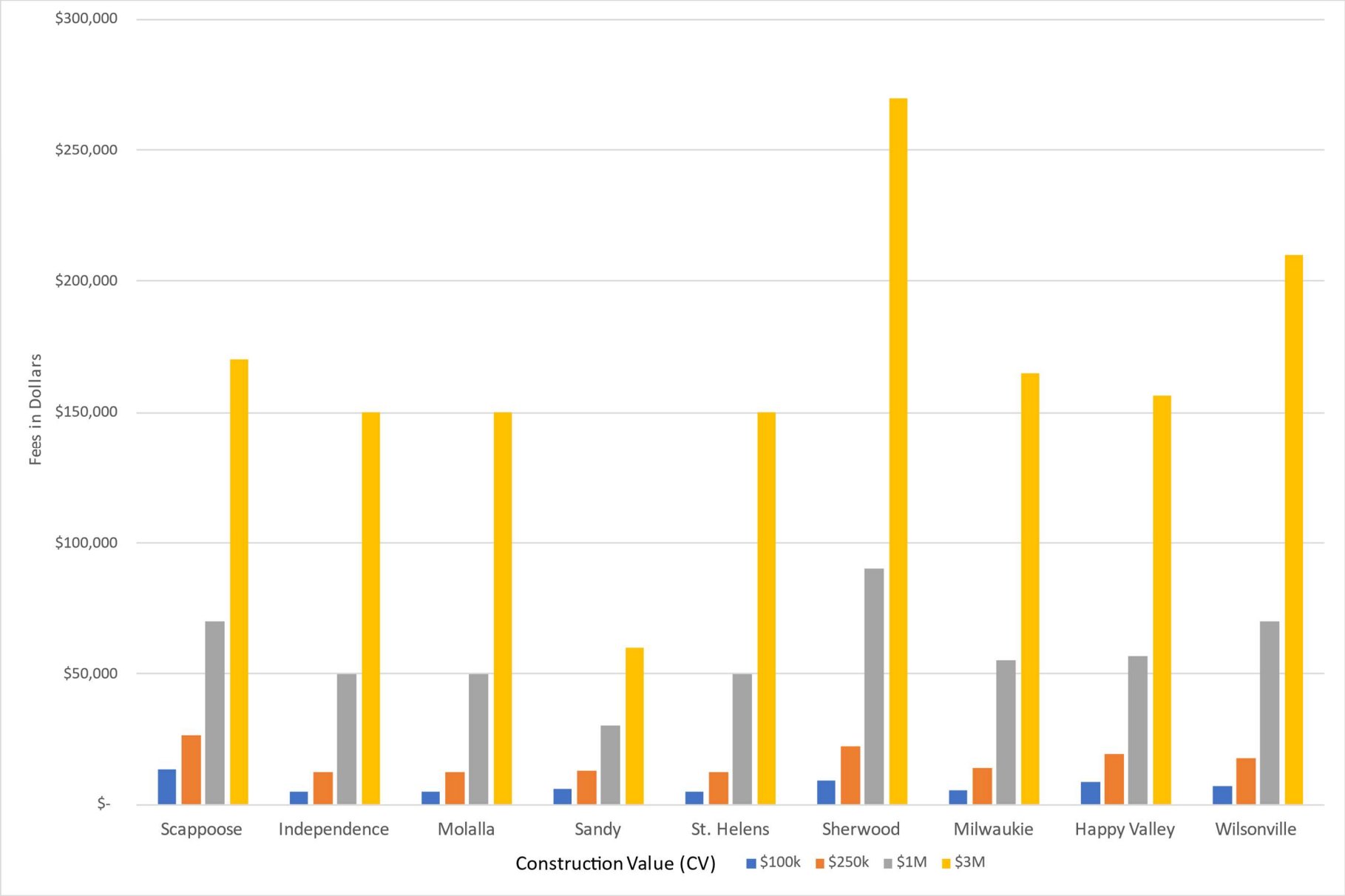
Appendix II – Comparative Land Use Fees: Site Development Review



Appendix III – Comparative Land Use Fees: Subdivisions (Preliminary and Final Plat Approval)

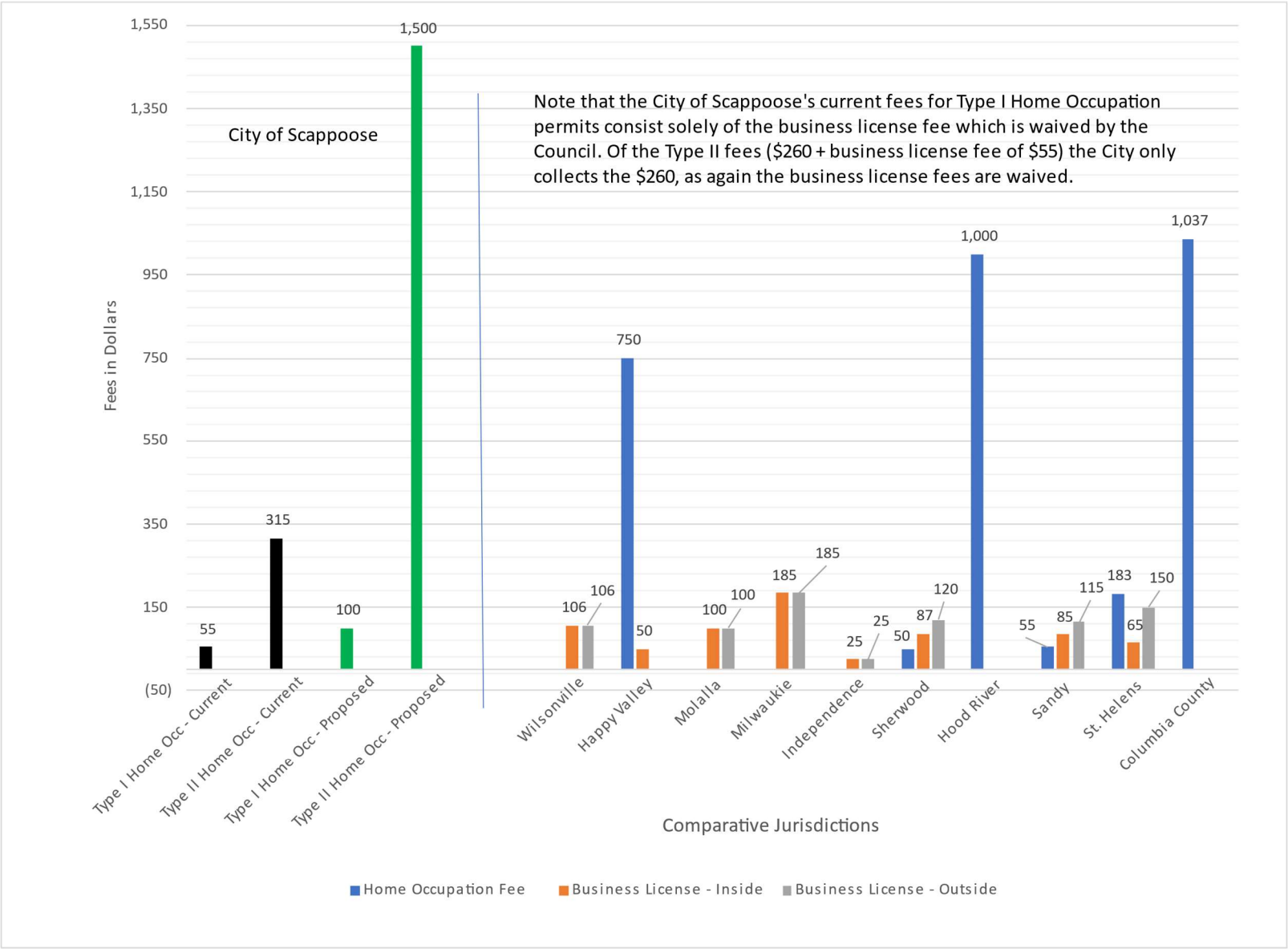


Appendix IV – Comparative Engineering Inspection/Plan Review Fees



Appendix V – Comparative Home Occupation/Business License Fees

Note: Engineering does not typically review these applications so no combined fees are indicated or proposed.



Appendix VI - Community Development Fee Proposal

(Note that current fees reflect combined Planning and Engineering unless otherwise stated)

	Current Fees 2022-23	Cost of Service	Current fees as % of Cost	Suggested		
				Engineering	Planning	Total
Components of Activities listed below						
Application Acceptance		\$ 98				
Initial Review and writing of incomplete memo		\$ 1,507				
Second Review		\$ 795				
Public noticing - pre- and post-hearing		\$ 432				
Staff Report - incl review		\$ 2,765				
Hearings - prep and presentation to (per land use action)						
Planning Commission		\$ 2,437				
City Council		\$ 934				
draft CC Staff Report		\$ 506				
first presentation		\$ 1,067				
second presentation		\$ 1,067				
Publications and notices	included					Billed based on actual cost
Street Renaming Fees						
Application Fee	\$ 2,776	\$ 3,512	79%	\$ 525	\$ 2,975	\$ 3,500
Site Development/Conditional Use App						
Site Development Land Use Fees						
Engineering - flat fee	\$ 1,000	\$ 3,000	33%			
ECV \$0-\$499k				\$ 2,000		\$ 2,000
ECV \$500k+				\$ 3,000		\$ 3,000
Planning- based on ECV						
\$0-\$49k	\$ 1,300	\$ 4,461	29%		\$ 1,500	\$ 1,500
\$50k-\$499k	\$ 1,560	\$ 4,461	35%		\$ 1,500	\$ 1,500
\$500k-\$999k	\$ 2,288	\$ 4,461	51%		\$ 4,500	\$ 4,500
\$1M-\$4.99M	\$ 4,004	\$ 4,461	90%		\$ 4,500	\$ 4,500
\$5M+	\$ 6,864	\$ 4,461	154%		\$ 4,500	\$ 4,500
Construction Doc Review - deposit	\$ 1,500	\$ 6,236	24%	\$ 2,500		\$ 2,500
% of Eng Construction Value (ECV) (max \$9,000)	3%			3%		
Third and subsequent review (each)	\$ 950			\$ 1,200		\$ 1,200
Food Cart Pod Permit						
Type I	\$ 520	\$ 1,953	27%	\$ 750	\$ 1,750	\$ 2,500
Type II	\$ 2,250	\$ 5,597	40%	\$ 2,100	\$ 3,900	\$ 6,000
2-year renewal	\$ 130			\$ 75	\$ 75	\$ 150
Subdivision Prelim Plat Land Use Application						
Base; < 5 acres	\$ 2,332	\$ 8,545		\$ 3,000	\$ 3,000	\$ 6,000
Engineering: > 5 acres (\$300/acre if greater than 5 acres)	\$ 300			\$ 500		\$ 500
Planning: per lot	\$ 156				\$ 250	\$ 250
Subdivision - Preliminary Plat						
Construction Doc Review - deposit	\$ 1,500	\$ 15,000		\$ 5,000		\$ 5,000
% of Eng Construction Value (ECV) (max \$9,000)	3%			3%		
Third and subsequent reviews (each)	\$ 950			\$ 1,200		\$ 1,200
Subdivision - Final Plat						
Base	\$ 1,416	\$ 2,400	59%	\$ 1,400	\$ 600	\$ 2,000
Per lot	\$ 51			\$ 35	\$ 15	\$ 50

Appendix VI - Community Development Fee Proposal

(Note that current fees reflect combined Planning and Engineering unless otherwise stated)

	Current Fees 2022-23	Cost of Service	Current fees as % of Cost	Engineering	Suggested Planning	Total
Partition						
Preliminary Plat						
Minor	\$ 1,520	\$ 2,282	67%	\$ 1,125	\$ 1,375	\$ 2,500
Major	\$ 3,540	\$ 4,463	79%	\$ 1,800	\$ 2,700	\$ 4,500
Final Plat						
Minor	\$ 760	\$ 767	99%	\$ 450	\$ 300	\$ 750
Major	\$ 1,520	\$ 1,777	86%	\$ 1,440	\$ 360	\$ 1,800
Construction Doc Review - deposit	\$ 1,500	\$ 2,970	51%	\$ 1,500		\$ 1,500
% of Eng Construction Value (ECV) (max \$9,000)				3%		
Third and subsequent reviews (each)	\$ 950			\$ 1,200		\$ 1,200
Public Improvements						
Construction Doc Review - deposit	\$ 1,500			\$ 2,500		\$ 2,500
% of Eng Construction Value (ECV) (max \$9,000)		\$ 10,765		3%		3%
Third and subsequent reviews (each)				\$ 1,200.00		\$ 1,200
Public Improvements Inspection Fee						
ECV < \$100k						
Base	\$ 1,500			\$ 1,500		\$ 1,500
% of ECV				6%		6%
ECV \$100k-\$500k						
Base	\$ 2,500			\$ 2,500		\$ 2,500
% of ECV				5%		5%
ECV \$500k-\$2.5M						
Base	\$ 7,500			\$ 7,500		\$ 7,500
% of ECV				4%		4%
ECV \$2.5M-\$5M						
Base	\$ 32,500			\$ 32,500		\$ 32,500
% of ECV				3%		3%
ECV \$5M-\$10M						
Base	\$ 57,500			\$ 57,500		\$ 57,500
% of ECV				2.5%		3%
ECV > \$10M						
Base	\$ 107,500			\$ 107,500		\$ 107,500
% of ECV				2%		2%
Additional Land Use Action Review						
Percentage of Planning Application Fee	25%				25%	
Erosion Control Review Fee						
	\$ 200			\$ 200		\$ 200
Elevation Certificate Review						
	\$ 150	\$ 144	104%	\$ 150		\$ 150
Building Permit Review - residential						
	\$ 173	\$ 88	197%	\$ 100		\$ 100
Third Party Review - Deposit						
	\$ 3,000			\$ 1,500	\$ 1,500	\$ 1,500
Right of Way/Utility/Public Improvement Permit (minimum fee)						
	\$ 200	\$ 289	69%	\$ 250		\$ 250
Engineering Document Review (per hour)						
	\$ 125	\$ 144	87%	\$ 150		\$ 150

Appendix VI - Community Development Fee Proposal

(Note that current fees reflect combined Planning and Engineering unless otherwise stated)

	Current Fees 2022-23	Cost of Service	Current fees as % of Cost	Suggested		
				Engineering	Planning	Total
Grading Permit						
0-50 cubic yards (CY)	\$ 150			150	\$	150
51-1,000 CY	\$ 50			50	\$	50
each additional 1,000 CY	\$ 650			650	\$	650
10,001 + CY	\$ 40			50	\$	50
each additional 1,000 CY						
GIS Data CD	\$ 100			\$ 100	\$	100
Public Works Design Standards						
Paper	\$ 35			\$ 35	\$	35
CD	\$ 40			\$ 40	\$	40
Paper and CD	\$ 50					
Annexation (also requires Zone Change)						
Initial Application Deposit						
< 5 acres	\$ 2,800	\$ 12,475	22%	\$ 1,400	\$ 2,100	\$ 3,500
> 5 acres (per acre; Eng \$3,000 max, Planning \$3,120 max)	\$ 560			\$ 280	\$ 420	\$ 700
Primary Election						
Administrative fee	\$ 520				\$ 550	\$ 550
Election cost deposit	\$ 1,560				\$ 1,600	\$ 1,600
Special Election						
Administrative fee	\$ 520				\$ 550	\$ 550
Election cost deposit	\$ 5,200				\$ 5,500	\$ 5,500
Comprehensive Plan Amendment	\$ 2,600	\$ 8,153	32%	\$ 1,600	\$ 6,400	\$ 8,000
Plan/Code Text Amendment	\$ 2,600	\$ 8,153	32%	\$ 1,600	\$ 6,400	\$ 8,000
Zone Change						
< 5 acres (each)	\$ 1,625	\$ 7,817	21%	\$ 900	\$ 2,100	\$ 3,000
> 5 acres (per acre; \$3,120 max; per change)	\$ 325			\$ 420	\$ 600	\$ 1,020
Property Line Adjustment	\$ 650	\$ 2,072	31%	\$ 700	\$ 1,300	\$ 2,000
Vacations						
Easements	\$ 260	\$ 2,915	9%	\$ 1,800	\$ 1,200	\$ 3,000
Streets	\$ 520	\$ 2,915	18%	\$ 1,800	\$ 1,200	\$ 3,000
Sensitive Lands Development Permit	\$ 1,105	\$ 3,467	32%	\$ 1,400	\$ 2,100	\$ 3,500
Variances						
Minor	\$ 455	\$ 2,254	20%	\$ 1,100	\$ 1,100	\$ 2,200
Major	\$ 1,105	\$ 3,956	28%	\$ 2,000	\$ 2,000	\$ 4,000
Appeals						
of Admin Decision	\$ 325	\$ 3,147	10%	\$ 100	\$ 900	\$ 1,000
of PC Decision	\$ 650	\$ 3,981	16%	\$ 150	\$ 1,350	\$ 1,500

Significant Amendment to existing Land Use Application causing re-notice and

% of original application fee

50% of
application fee

50% of
application fee

Appendix VI - Community Development Fee Proposal

(Note that current fees reflect combined Planning and Engineering unless otherwise stated)

	Current Fees 2022-23	Cost of Service	Current fees as % of Cost	Suggested		
				Engineering	Planning	Total
Similar Use Determination/Code Interpretation	\$ 260	\$ 423	61%		\$ 500	\$ 500
Modifications to approvals	50% of application fee					50% of application fee
Commercial Sign Permit	\$ 130	\$ 265	49%		\$ 265	\$ 265
Home Occupation						
Type I	\$ 55	\$ 83	66%		\$ 100	\$ 100
Type II	\$ 260	\$ 1,516	17%	\$ 300	\$ 1,200	\$ 1,500
Type I Home Occ fees are comprised of \$55 business license fee - currently waived by Council. Type II also contains business license fee of \$55 - also waived.						
Fence/Berm > 8 ft tall	\$ 260	\$ 1,654	16%	\$ 600	\$ 900	\$ 1,500
Historic Landmark Alteration	\$ 520	\$ 2,546	20%	\$ 250	\$ 2,250	\$ 2,500
Historic Landmark Addition/Removal	\$ 1,040	\$ 2,546	41%	\$ 250	\$ 2,250	\$ 2,500
Public Land Tree Removal or appeal of removal	\$ 52	\$ 348	15%		\$ 350	\$ 350
Temporary Use Permit	\$ 130	\$ 181	72%		\$ 200	\$ 200
Pre-Application Meeting	\$ 468					
Prep meeting		\$ 781		\$ -	\$ -	\$ -
		\$ 228		\$ 500	\$ 500	\$ 1,000
Inquiry Meeting	\$ 260					
Prep meeting		\$ 554		\$ -	\$ -	\$ -
		\$ 228		\$ 125	\$ 125	\$ 250
Planning Services Manager Research Fee (per hour)	\$ 99	85	116%		\$ 85	\$ 85
Conceptual Master Plan - AE Overlay	\$ 364	\$ 706	52%	\$ 280	\$ 420	\$ 700
Expedited Review	60% of application fee					60% of application fee
LUCS Review and Signature/Planner document signature	\$ 88	\$ 83	106%		\$ 85	\$ 85
Re-inspection fee	\$ 88	85	104%		\$ 85	\$ 85

CITY OF SCAPPOOSE

Council Action & Status Report

Date Submitted: April 11, 2023

Agenda Date Requested: April 17, 2023

To: Scappoose City Council

From: Alexandra Rains, City Manager
Huell Whitehaus, Assistant to Public Works Director

Subject: Intergovernmental Agreement with Scappoose Rural Fire District; Resolution 23-06; and, Ordinance 914 pertaining to Fire Safety Regulations and Enforcement

TYPE OF ACTION REQUESTED:

☒ Resolution

☒ Ordinance

☐ Formal Action

☐ Report Only

ISSUE:

Should the City of Scappoose enter into an intergovernmental agreement with the Scappoose Rural Fire District to extend authority to that agency to enforce the provisions of the Fire Code within City limits?

INTRODUCTION:

The City of Scappoose adopted Ordinance 906 late last year to regulate the use of fireworks within City limits. Ordinance 906 was spurred by concern surrounding the use of fireworks and the effects that fireworks can have on both fire and life-safety issues, in addition to public health and welfare. While the ordinance does regulate the use of fireworks, Scappoose Rural Fire District's (SRFD) status as an independent special service district, separate from the City, limits SRFD's ability to enforce fire and life-safety regulations. The IGA and proposed Scappoose Municipal Code update via Ordinance 914 seek to provide SRFD with the necessary authority to enforce fire and life-safety regulations through use of the Scappoose Municipal Court.

Request for Council Action

ANALYSIS:

City staff met with SRFD Fire Chief Jeff Pricher to discuss how best to provide SRFD with the authority necessary to enforce the adopted Fire Code through the Municipal Court. An intergovernmental agreement between SRFD and the City is the appropriate instrument by which such authority may be granted to SRFD. ORS 190.010 provides Oregon local governments with the authority to enter into intergovernmental agreements (IGAs) to provide services. The draft IGA between SRFD and the City is attached as **Exhibit A**. Draft Resolution 23-06 – a resolution authorizing the City to enter into the IGA – is included as **Exhibit B**.

An update to the Scappoose Municipal Code is necessary to account for the authority and enforceability of fire and life-safety regulations contemplated by the draft IGA. Staff identified Title 8, Chapter 8.08 – Fire Prevention Regulations, as the most appropriate section in which the authority extended to SRFD can be included. The proposed code update (1) adds a new section requiring compliance with the most recently adopted Oregon Fire Code and (2) modifies an existing section to establish SRFD's Master Fee Schedule as the reference for penalties for violations. The code update is contemplated by Ordinance 914 (**Exhibit C**).

EXHIBITS:

Exhibit A – An Intergovernmental Agreement between Scappoose Rural Fire District and City of Scappoose, Oregon Relating to Fire Code Enforcement

Exhibit B – Resolution 23-06, A Resolution Authorizing an Intergovernmental Agreement Between Scappoose Rural Fire Protection District and City of Scappoose Relating to Fire Code Enforcement

Exhibit C – Ordinance 914

FINANCIAL IMPACT:

Staff proposes that the City be entitled to 5% of any citation revenue received pursuant to the updated SMC Chapter 8.08 for administrative overhead costs related to the Municipal Court. SRFD and City staff expect that formal enforcement mechanisms through the Municipal Court will be infrequent.

OPTIONS FOR COUNCIL CONSIDERATION:

1. Adoption of Resolution 23-06, authorizing the IGA between SRFD and the City.
2. Adoption of Ordinance 914 (first reading).
3. Take no action regarding the draft IGA or Ordinance 914.

Request for Council Action

SUGGESTED MOTIONS:

Please note that two motions are required – one for Resolution 23-06, and another for Ordinance 914:

- (1) I move Council adopt Resolution 23-06, A Resolution Authorizing an Intergovernmental Agreement Between Scappoose Rural Fire Protection District and City of Scappoose Relating to Fire Code Enforcement.
- (2) I move Council adopt Ordinance 914, An Ordinance Amending the Scappoose Municipal Code Title 8, Chapter 8.08.

Request for Council Action

**INTERGOVERNMENTAL AGREEMENT BETWEEN SCAPPOOSE RURAL FIRE PROTECTION DISTRICT AND
CITY OF SCAPPOOSE, OREGON RELATING TO FIRE CODE ENFORCEMENT**

This Agreement is entered into by Scappoose Rural Fire Protection District, a municipal corporation of the State of Oregon (hereinafter SRFD), and the City of Scappoose, a municipal corporation of the State of Oregon (hereinafter City), collectively, "the parties," pursuant to the authority granted by ORS Chapter 190.

WHEREAS, the City possesses the power, authority, and responsibility to enforce municipal codes and regulations within its boundaries; and

WHEREAS, SRFD has provided and will continue to provide fire protection and emergency medical services within the City's boundaries since January 1, 1980; and

WHEREAS, SRFD adopted the Oregon Fire Code, with Amendments, with the adoption of SRFD Ordinance No. 17-02; and

WHEREAS, SRFD does not currently possess the authority to issue citations for violations of the Oregon Fire Code (hereinafter Fire Code) within the City's boundaries; and

WHEREAS, the City adopted Ordinance 906, An Ordinance Regulating Fireworks in the City of Scappoose; Amending Scappoose Municipal Code Title 8, Creating Chapter 8.26, Fireworks; and Rescinding Resolution 22-11; and

WHEREAS, the parties desire to enter into an agreement to provide SRFD with the authority to issue citations for violations of the Fire Code within the City's boundaries; and

WHEREAS, the parties have recognized a need to provide a venue for the enforcement of citations issued by SRFD; and

WHEREAS, the City of Scappoose Municipal Court can provide such a venue, and the City agrees to provide its municipal court services to enforce the adopted Fire Code.

NOW, THEREFORE, pursuant to ORS 190.010, the City and SRFD hereby agree:

1. Fire Code Enforcement Services. For the term of this Agreement, SRFD will:
 - a. Possess the authority for the enforcement and issuance of citations for fire-related violations of the most recently adopted Fire Code, Scappoose Municipal Code, or any emergency order pertaining fire and life-safety issued by local, state, or federal agencies within the boundaries of or applicable to the City.
 - b. Possess the authority to confiscate illegal fireworks which are categorically banned within the boundaries of the City.
 - c. Possess the authority to confiscate legal fireworks used in violation of the provisions of SMC Chapter 8.26.

- d. Notify the City's Municipal Court of any citations issued by SRFD within the boundaries of the City.
 - e. Attend or provide testimony to the Scappoose Municipal Court, as necessary.
2. Issuance of Citations. For the term of this Agreement, SRFD will:
- a. Issue citations in accordance with the most currently adopted SRFD Master Fee Schedule for violations of the adopted Fire Code.
 - b. Issue citations in accordance with the Scappoose Municipal Code for fire and life-safety violations specific to the Scappoose Municipal Code.
3. Indemnification.
- a. SRFD Held Harmless. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, the City shall indemnify and hold harmless SRFD and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of the City, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against SRFD, the City shall defend the same as its sole cost and expense; provided that SRFD reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against SRFD, and its officers, agents, and employees, or any of them, or jointly against SRFD and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.
 - b. City Held Harmless. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, SRFD shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of SRFD, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against the City, SRFD shall defend the same at its sole cost and expense; provided that the City reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against the City, and its officers, agents, and employees, or any of them, or jointly against the City and SRFD and their respective officers, agents, and employees, or any of them, SRFD shall satisfy the same.
 - c. Liability Related to City Ordinances. Policies. Rules and Regulations. In executing this Agreement, SRFD does not assume liability or responsibility for, or in any way release the City from any liability or responsibility which arises in whole, or in part, from the existence or effect of City ordinances, policies, customs, rules or regulations, whether written or unwritten. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance,

policy, custom, rule or regulation is at issue, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, SRFD, or an individual officer assigned to the City, the City shall satisfy the same, including all chargeable costs and reasonable attorney fees. If a claim, suit, administrative proceeding or action determines that a City policy or ordinance is unconstitutional and/or violates a person's rights, the City shall indemnify County and any involved individual officer. The City's defense and indemnification of an individual officer pursuant to this section shall be in accordance with ORS 30.285. The sole intent of this provision is to make the City liable for the defense and indemnity of claims that allege municipal liability as a result of a City ordinance, policy, custom, rule or regulation, and is not intended to override the provisions of 3a and 3b that make each party liable for its own actions.

4. Termination Process. Either party may initiate a process to terminate this agreement as follows:
 - a. Notice of Termination. If either party wishes to terminate this agreement, they shall provide the other party with a 30-day written notice of intent to terminate the Agreement.
5. Fee Revenue and Administrative Costs.
 - a. For revenue received from citations issued pursuant to the enforcement of the Fire Code, the City shall retain 5% of the fee for administrative overhead costs to the City. SRFD shall receive 95% of the fee revenue resulting from citations issued in accordance with Section 2(a) of this Agreement.
6. Duration. This Agreement is effective upon authorization and signature by both parties. The term of this agreement is effective upon execution by both parties and shall renew annually unless terminated by the parties in accordance with Section 4 of this Agreement.
7. Amendments. This Agreement may be amended at any time by mutual written agreement of the parties.
8. Agreement Administration:
 - a. Agreement Administrators. The City Manager (City) and Fire Chief (SRFD) shall serve as agreement administrators to review agreement performance and resolve operational problems.
 - b. Agreement Dispute Issues. Agreement dispute issues involving agreement language interpretation or cost matters shall be referred to the City Manager and Fire Chief.
 - c. Audits and Inspections. The records and documents with respect to all matters covered by this agreement shall be subject to inspection, review or audit by SRFD or City during the term of this Agreement and three years after termination.
9. Third Party Beneficiaries. SRFD and City are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, or is intended to give, or shall

be construed to give or provide any benefit or right, whether directly or indirectly, to any third party unless such person is individually identified by name herein and expressly described as intended beneficiaries of this contract.

10. Written Notice. Any notice of change, termination or other communication having a material effect on this Agreement shall be made upon the Fire Chief and the City Manager, and either hand-delivered, or sent by certified or registered mail, postage prepaid. Except as provided in this Agreement, it is agreed that thirty (30) calendar days shall constitute reasonable notice for the exercise of any right in the event that applicable law specifically requires such notice.
11. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to the principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") shall be brought and conducted solely within the Columbia County Circuit Court for the State of Oregon; provided, however that if a Claim is brought in a federal forum, it shall be brought and maintained within the United States District Court for the District of Oregon.
12. Force Majeure. Neither County nor City shall be held responsible for delay or default caused by fire, riot, pandemic, strike, or acts of God, terrorism, or war where such cause was beyond reasonable control.
13. Survival. The terms, conditions, representations, and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.
14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, each of which shall constitute one and the same instrument.
15. Warranties. The parties represent and warrant that they have the authority to enter into and perform this Agreement, and that this Agreement, when executed, shall be a valid and binding obligation enforceable in accordance with its terms.
16. Entire Agreement and Waiver of Default. The parties agree that this Agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval of SRFD, which shall be attached to the original Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates listed below:

CITY OF SCAPPOOSE

By: _____

Name Printed: _____

Date: _____

Approved as to Form:

Legal Counsel for City of Scappoose

SCAPPOOSE RURAL FIRE PROTECTION DISTRICT

By: _____

Name Printed: _____

Date: _____

Approved as to Form:

Legal Counsel for Scappoose Rural Fire Protection District

DRAFT

RESOLUTION NO. 23-06

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN SCAPPOOSE RURAL FIRE PROTECTION DISTRICT AND CITY OF SCAPPOOSE RELATING TO FIRE CODE ENFORCEMENT

WHEREAS, ORS 190.010 allows Oregon units of local government to enter into written agreements with another unit of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have the authority to perform; and,

WHEREAS, the City of Scappoose ("City") possesses the power, authority, and responsibility to enforce municipal codes and regulations within its boundaries; and,

WHEREAS, Scappoose Rural Fire Protection District ("SRFD") does not currently possess the authority to issue citations for violations of the Oregon Fire Code within the City's boundaries; and,

WHEREAS, City and SRFD desire to enter into an agreement to provide SRFD with the authority to issue citations for violations of the Fire Code within the City's boundaries; and

WHEREAS, City and SRFD agree that an instrument to enforce the provisions of the Fire Code is necessary to protect the fire and life-safety of Scappoose residents.

NOW, THEREFORE BE IT RESOLVED,

SECTION 1: RECITALS. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2: APPROVAL. The Scappoose City Council hereby authorizes the City Manager to enter the City of Scappoose into an intergovernmental agreement with the Scappoose Rural Fire Protection District. The intergovernmental agreement is attached hereto as **Exhibit A** and incorporated herein by this reference.

SECTION 3: EFFECTIVE DATE. This Resolution shall take effect upon its passage and approval.

PASSED AND ADOPTED by the City Council this ____ day of April, 2023 and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

Joseph A. Backus, Mayor

Attest: _____
Susan M. Reeves, MMC, City Recorder

ORDINANCE NO. 914

**AN ORDINANCE AMENDING THE SCAPPOOSE MUNICIPAL CODE TITLE 8,
CHAPTER 8.08 (FIRE PREVENTION REGULATIONS)**

WHEREAS, the City of Scappoose (“City”) desires to provide authority to the Scappoose Rural Fire Protection District (“SRFD”) to enforce the adopted Oregon Fire Code (“Fire Code”) within the boundaries of the City; and

WHEREAS, SRFD does not currently possess the authority necessary to issue citations for violations of the adopted Oregon Fire Code within the City’s boundaries; and

WHEREAS, the City and SRFD have recognized a need to provide a venue for the enforcement of citations issued by SRFD; and

WHEREAS, the Scappoose Municipal Court can provide such a venue; and

WHEREAS, Title 8, Chapter 8.08 of the Scappoose Municipal Code (SMC) provides for Fire Prevention Regulations pertaining; and

WHEREAS, this ordinance adds a new section to SMC Title 8, Chapter 8.08 to provide SRFD with the requisite authority to enforce the Fire Code.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF SCAPPOOSE ORDAINS AS
FOLLOWS:**

Section 1. Title 8, Chapter 8.08 of the Scappoose Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and hereby incorporated by reference.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3. This ordinance is effective thirty (30) calendar days after passage.

PASSED AND ADOPTED by the City Council this ____ day of May, 2023, and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

Joseph A. Backus, Mayor

First Reading:
Second Reading:

Attest: _____
Susan M. Reeves, MMC, City Recorder

Chapter 8.08FIRE PREVENTION REGULATIONSSections:

8.08.010 Burning--Permit required.

8.08.020 Compliance with regulations.

~~8.08.030 Violation--Penalty.~~

8.08.030 Compliance with and Enforcement of Adopted Fire Code.

8.08.040 Violation--Penalty.

8.08.010 Burning--Permit required. A. It is unlawful for anyone to burn or to set fire to any grass, brush, rubbish, waste material, or any other combustible material within the city without first having obtained a written or printed permit to do so from the Scappoose ~~rural fire protection district~~ Rural Fire Protection District. This section applies to the burning of waste material or debris within approved barrels and incinerators, as well as, all other burning. All burning shall be done safely under supervision, and with adequate protection.

B. If any fire shall escape and injure or endanger the property of another, this shall constitute prima facie evidence that such burning was not safe and was not under adequate protection and was in violation of this section.

C. When anyone shall apply for a permit, the fire chief or their designee shall issue one, unless it appears to ~~him~~ the fire chief or their designee that such burning would be hazardous or the atmospheric conditions are such that the burning would cause air pollution to an unacceptable degree.

D. The specifications that must be met to constitute an incinerator of an approved type will be set by the fire chief or their designee. The burning of garbage, including, but not limited to, food and kitchen waste, is prohibited. Burning shall be limited to residential backyard type. No commercial or industrial burning is allowed except by special permit from ~~fire chief~~ Scappoose Rural Fire Protection District.

8.08.020 Compliance with regulations. All burning within the city shall comply with the most current rules and regulations of the U.S. Environmental Protection Agency, the Oregon Department of Environmental Quality, the Oregon Department of Forestry, and the Scappoose Rural Fire Protection District. ~~U.S. Department of Environmental Quality, Northwest Oregon Region, which are now or are hereafter in effect, and the rules and regulations of the Scappoose rural fire protection district now or hereafter in effect.~~

8.08.030 Compliance with and Enforcement of Adopted Fire Code.

A. The Scappoose Rural Fire Protection District shall have the authority to enforce the provisions of the most recently adopted Oregon Fire Code, including any applicable amendments, within the

boundaries of the city.

EXHIBIT C

B. The authority delegated and/or extended to Scappoose Rural Fire Protection District is made by an intergovernmental agreement executed by both parties. If such agreement is terminated, this section shall become null and void.

8.08.040 Violation--Penalty. A. One warning of a violation shall be given and any violation thereafter, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars for violations of Section 8.08.010.

B. Citations of violations in accordance with any section of this Title shall be made through the Scappoose Municipal Court and shall generally follow the rules and procedures outlined in Chapter 8.20 - Nuisances for the administration of citations.

C. The penalties for violations of Section 8.08.030 shall be made in accordance with the most recently adopted version of the Scappoose Rural Fire Protection District's Master Fee Schedule.

CITY OF SCAPPOOSE

Council Action & Status Report

Date Submitted:	April 11, 2023
Agenda Date Requested:	April 17, 2023
To:	Scappoose City Council
From:	Alexandra Rains, City Manager Peter Watts, City Attorney
Subject:	Comcast Franchise Agreement

TYPE OF ACTION REQUESTED:

☐ Resolution

☒ Ordinance

☐ Formal Action

☐ Report Only

ISSUE: The City's existing Franchise Agreement with Comcast has expired. A new agreement has been negotiated and is being presented for Council's consideration.

ANALYSIS: The agreement has been provided in its entirety for Council review. However, there are a few sections in particular staff would like to draw Council's attention to:

Section 2.4 Term. The proposed term for this agreement is 10 years.

Section 3.11 Cable Service to Public Buildings. The agreement includes new language that is consistent with Comcast policy and the updated FCC 621 order from 2019, which allows Comcast to eliminate complimentary services, i.e. free basic cable. For Scappoose, complimentary services are currently being extended to the Police Department, High School, Otto Peterson and Grant Watts Elementary Schools, Scappoose Middle School, the Scappoose Fire Department and the Senior Center. Staff contacted each recipient to inquire whether these services were being used and all but the Police Department said they either did not use the service, or were paying for cable services over and above the basic package. That said, its unlikely Comcast would eliminate these services at all but, if they did, it would have extremely minimal impact.

Section 4.2 Filing Rates and Charges. New language is proposed for this section because the FCC, through its Effective Competition Order, eliminated rate regulation at the local level.

Attachments:

Exhibit A – Redlined version of the agreement

Exhibit B – Ordinance 913

FISCAL IMPACT: The franchise fee will remain at 5%, the legal limit for the industry. For FY 22-23, revenue was budgeted at \$110,000.

Another fiscal impact of note is the elimination of the City's PEG Fee. This annual fee of \$10,000 was provided to the City by Comcast for the administration of a Public Access Channel for the Franchise area. The intended purpose of the Public Access Channel was sharing of government programming and general education. The City is unable to meet the requirements for a Public Access Channel which includes providing a minimum of twenty-five (25) hours of locally produced and original programming per week. We did discuss the possibility of joining another public access channel but there are no other functioning channels in the County.

Despite the lack of a Public Access Channel, the City has found other methods to provide access to government content and general education such as our YouTube channel, recordings of Council meetings on our website, live streaming of meetings via Microsoft Teams, our City App and City newsletter. These methods are relatively inexpensive, and Staff feels confident they are equal to, if not better than, a Public Access Channel considering how people currently acquire news and other information.

RECOMMENDATION: Staff recommends Council adopt Ordinance 913 as presented.

SUGGESTED MOTION: I move Council adopt Ordinance 913 as presented.

ORDINANCE NO. 913

AN ORDINANCE RELATED TO THE CABLE TELEVISION FRANCHISE AGREEMENT AND REPEALING ORDINANCE NO. 822.

This Cable Television System Franchise Agreement ("Agreement") is entered into this day ____ 2023, by and between **SCAPPOOSE, OREGON** ("Franchising Authority"), and **COMCAST OF OREGON II, INC.**

WHEREAS, the Grantor is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain a cable television system within the municipal boundaries of the Grantor; and

WHEREAS, the Grantor has considered the financial condition, technical ability and legal qualifications of Grantee; and

WHEREAS, the Grantor, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of Grantee to provide cable television service within the Grantor's boundaries; and

WHEREAS, the Grantee is willing to accept this Agreement subject to terms and conditions, and to abide by those terms and conditions; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's application to provide cable television service within the City;

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Item 1. Ordinance 823, which was adopted by Council on September 4, 2012, is hereby repealed.

Item 2. The following agreement is hereby adopted:

SECTION I **Definition of Terms**

I.I Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Basic Cable" means any service tier that includes the retransmission of local television broadcast signals and other programming provided by the Grantee.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended.

- C. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) Video programming, or (b) other programming service, and (2) Subscriber Interaction, if any, which is required for the selection or use of such video Programming or other programming service.
- D. "Cable System" shall have the meaning specified in the definition of "Cable System" in the Cable Act.
- E. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- F. "Franchising Authority" means the City of Scappoose or the lawful successor, transferee, or assignee thereof
- G. "Grantee" means Comcast of Oregon II, Inc., or its lawful successor, transferee, or assignee.
- H. "Gross Revenues" mean any revenue derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, following Generally Accepted Accounting Principles ("GAAP"), consistent with federal and state law, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee; (2) unrecovered bad debt; (3) advertising agency commissions and launch fees to the extent consistent with GAAP, and (4) franchise fees and any Public, Education and Government (PEG) amounts received from Subscribers. Gross Revenues shall also not include revenue from any other sources or services unless and until such source or service is finally, specifically and expressly declared to be a cable service under federal law or regulation, by Congress or the Federal Communications Commission.
- I. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but shall not mean the Franchising Authority.
- J. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority or other utilities in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- K. "Service Area" means the legal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.9.
- L. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.
- M. "Subscriber" means a Person who lawfully receives Cable Service of the

Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

Notwithstanding anything to the contrary, any easement for such use which has already been granted by the Franchising Authority to a telephone or other utility company shall to the fullest extent be interpreted so as to grant Grantee the same rights and privileges as have been granted to the telephone or other utility company (the "Other Grants"), to the extent the grant herein does not violate the terms and conditions of the Other Grants or unreasonably interfere with the uses allowed therein. In such easements, the words "telephone" or "telephone company," "public utility" and the like shall to the fullest extent be interpreted to include the Grantee.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither the Franchising Authority nor the Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.3 Competitive Equity.

(A) The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Service Area; provided, the Franchising Authority agrees that, within ninety (90) days of the Grantees request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this section.

(B) Notwithstanding any provision to the contrary, at any time that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for

purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Service Area without a franchise or other similar lawful authorization granted by the Franchising Authority, then Grantee may seek modifications as per (A) above, or the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Grantee's notice.

2.4 Term. The Franchise granted hereunder shall be for an initial term of ten (10) years commencing on the effective date of the Franchise as set forth in Section 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5 Technological Development Review. Within sixty (60) days' notice of the fifth anniversary of the effective date of the Franchise, or a subsequent anniversary, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new cable law and regulation, and community needs and interests, with consideration of all financial, technological, and operational impacts that may affect the Grantee; including public, educational, and government access channel(s) and capital fees. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review. If, after completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the expressed agreement of the Grantee, may modify the obligations and/or extend the term of the Franchise accordingly.

SECTION 3 **Standards of Service**

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. Prior to the commencement of any construction, extension or relocation of Grantee's Cable System in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

3.2 Restoration of Public Ways. When any excavation or construction activity is made by the Grantee within the Public Ways, the Grantee shall promptly restore the affected portion of the Public Way to a condition reasonably comparable to the condition existing immediately prior to the excavation or construction activity, and in compliance with legally adopted City and State standards, to the extent that they are applicable. The restoration shall be in compliance with lawful specifications, requirements and regulations of the Franchising Authority in effect at the time of such restoration. Grantee shall repair any defect or inadequacy in the restoration within sixty (60) days after receiving written notice from the Franchising Authority. In the event that Grantee fails to satisfactorily restore the affected portion of the Public Way, the Franchising Authority may restore or cause to restore such Public Way, and the reasonable cost thereof shall be paid by the Grantee within forty-five (45) days after invoice date; provided, that the Franchising Authority provides Grantee reasonable notice to restore, and Grantee fails to restore such Public Way within the time period specified by the Franchising Authority. If the Franchising Authority determines that the defect or inadequacy of the restored area presents an imminent danger to public health or safety or the defect or inadequacy causes or threatens to cause substantial damage to adjacent pavement, utilities, structures, or other improvements, the Franchising Authority may require that the repairs be made or that acceptable temporary measures be taken within twenty four (24) working hours or three (3) days following the time of the request.

3.3 Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) business days, the Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas (although not the direct responsibility of the City) or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.4, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation. In the case of the failure of Grantee to comply with the terms of this, Section 3.4, the superintendent of streets or other proper officer of the Franchising Authority, may take action to relocate in or remove from the Public Way any property of Grantee, at the expense of the Grantee; provided, however, Grantee is given notice with opportunity to cure and, shall not be penalized for any good faith dispute regarding payment due from any such third party.

3.5 Reservation of Franchising Authority - Public Ways. Nothing in this Franchise shall prevent the Franchising Authority from constructing sewers, grading, paving, repairing or altering any street, alley, or public highway, repairing or removing water mains, or maintaining, repairing, constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the

use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with constructing sewers, grading, paving, repairing or altering any street, alley, or public highway, repairing or removing water mains, or maintaining, repairing, constructing or establishing any other public work or improvement, or any other government owned facilities in the Public Ways, Grantee's Cable System shall be removed or replaced in accordance with Section 3.3 hereof. Any and all such removal or replacement shall be at the expense of Grantee except for installation or repair of a communications system owned by the Franchising Authority or other public entity providing commercial services in competition with the Grantee or an affiliate of Grantee. If in response to a request by the Franchising Authority the Grantee removes or replaces any portion of its Cable System at its own expense in order to accommodate the installation or repair of a communications systems used by the Franchising Authority or other public entity to provide commercial services in competition with Grantee or its affiliates, then the Franchising Authority or other government entity shall reimburse Grantee for the reasonable expense of the removal or replacement.

3.6 Vegetation Management. Grantee may trim all trees and vegetation which overhang Public Ways, whether such trees or vegetation originate within or without the Public Ways, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation from touching or interfering with Grantee's property, so long as no trees and vegetation are trimmed or cut back further than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of said Grantee property. Nothing contained in this Section 3.6 shall prevent Grantee, when necessary and with the approval of the owner of the private property on which they may be located, from cutting down and removing any trees and vegetation which overhang the Public Way.

3.7 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.8 Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric or other services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section 3.8 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances. The Franchising Authority shall notify the Grantee with thirty (30) days following receipt of subdivision requests from developers for areas within the Service Area. The developers are responsible for providing adequate advance notification and access to Grantee and other potential users of an open trench. Notwithstanding the foregoing, Grantee shall not be required to utilize any open trench.

3.9 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residents in the Service Area subject to the density requirements specified in this Section 3.9. Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscriber at no cost to said Subscriber for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to

extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals twelve (12). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. The parties acknowledge that as of the Effective Date of this Franchise agreement, Grantee continues to provide Complimentary Services to certain schools, libraries, and public institutions within the Franchise Area. In the event Grantee elects, to the extent permitted by Applicable Laws, to invoice the Franchising Authority for Complimentary Services, Grantee agrees that it will do so only after providing City with one hundred twenty (120) days' prior written notice. Grantee agrees not to unfairly or unreasonably discriminate against the Franchising Authority with respect to other Oregon served local franchising authorities, with respect to the costs to be imposed for Complimentary Services.

The Franchising Authority shall have the right to discontinue the receipt of all or a portion of the Complimentary Services provided by the Grantee in the event Grantee elects to impose a charge against the Franchising Authority for the Complimentary Services as set forth in the preceding paragraph.

3.12 Emergency Use. In accordance with, and at the time required by, the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with such regulations and consistent with FCC approved Oregon State EAS plan, and local area EAS plan applicable to Columbia County.

3.13 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the relocations under sections 3.3 and 3.4 hereof, the Franchising Authority shall reimburse Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If funds are controlled by another government entity, the Franchising Authority shall make application for such funds on behalf of Grantee.

3.14 System Standards. The Cable System shall meet or exceed all applicable technical and performance standards of the FCC.

The Grantee shall also comply with all applicable testing requirements of the FCC. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing

the Cable System within the Service Area to determine compliance with the provisions of applicable FCC technical standards. Representatives of the Franchising Authority may witness the tests.

Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantee's business office, and shall be available for inspection by the Franchising Authority upon written request during Grantee's normal business hours. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copies of such tests results prepared in accordance with FCC rule.

3.15 Customer Service Standards/Complaint Resolution. Grantee shall comply with the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as such may be amended from time to time.

Grantee may arrange for payment stations or drop boxes or its equivalent within the city limits of the Franchising Authority where Subscribers may drop or deliver their bill payment for cable service. Grantee may operate and maintain a cable store within the city limits of the Franchising Authority where Subscribers may drop or pick-up equipment, or drop or deliver their bill payment related to their cable service. Should a Subscriber have an unresolved complaint regarding Cable Service with Grantee, the Subscriber shall be entitled to file a complaint with the Franchising Authority and thereafter to meet or discuss jointly with representatives of the Franchising Authority and Grantee within 30 days of filing the complaint with the Franchising Authority to address and resolve the Subscriber's complaint. For purposes of this paragraph, a "complaint" is a grievance related to the Cable Service provided by Grantee within the Service Area that is reasonably remediable by Grantee, but does not include grievances regarding the content of programming or information services other than broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the subscriber's problem satisfactorily to subscriber.

3.16 Franchising Authority Non-Liability. In the event it shall be necessary to cut or remove any cables, wires or equipment of Grantee in order to get to fire ladders or other apparatus to a building during a city conflagration or emergency, the Franchising Authority shall not be liable for any damage done to such cables, wires or equipment; provided, however, that the Franchising Authority shall hold Grantee, its employees, officers and assigns harmless from any claims, injury (including accidental death) or damage that results from the cutting or removing of Grantee's wires, cables or equipment.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of annual Gross Revenues (as defined in Section 1.1 of this Franchise). In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The Grantee shall make such payments quarterly, following the effective date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Each payment

shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.2 Filing Rates and Charges. Throughout the term of this Agreement, Grantee shall maintain on file a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and Franchising Authority consider the terms set forth in this Section

4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this

period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor

an extinguishment of any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be

required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, or a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given, unless the requesting party and Franchising Authority agree to an extension of time.

SECTION 5

Books, Records, and Maps

5.1 Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee which is not providing Cable Service in the Service Area. In the event the Grantee asserts that certain information is proprietary or confidential in nature, the Grantee shall identify generally the information which it deems proprietary or confidential and the reasons for its confidentiality in writing.

The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Maps. Grantee shall maintain as built drawings for the Cable System at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. As built drawings shall be updated as changes occur in the Cable System serving the Service Area. Upon written request of the Franchising Authority, Grantee shall make available to the Franchising Authority maps showing the

location of Grantee's lines within the Public Ways in the Service Area within thirty (30) days of request for the same. The City recognizes that the information contained in such maps is confidential and proprietary, and remains the property of the Grantee and shall not be left behind. The City shall safeguard such information from the public record unless affirmatively and expressly required to disclose and provide access by state or federal law.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be non-cancellable except upon thirty (30) days prior written notice to the Franchising Authority.

Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this Section 6.1.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of its Cable System, provided that the Franchising Authority shall give Grantee written notice of its obligation to indemnify the Franchising Authority within thirty (30) days of receipt of a claim or action pursuant to this Section 6.2. Notwithstanding the foregoing, Grantee shall not indemnify the Franchising Authority for any damages, liability, or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety. No bond or other surety shall be required of Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days advance written notice thereof stating the specific reasons for such requirement. Such reasons must demonstrate a change in Grantee's legal, financial or technical qualifications that would materially prohibit or impair Grantee's ability to comply with the terms and conditions of this Franchise.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in

the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 (C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law. A complete verbatim record and transcript shall be made of the hearing. Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 Force Majeure. The Grantee shall not be held in default under, or in

noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This includes, but is not limited to earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, terrorist act, epidemic or pandemic. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System within the Service Area is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

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

SECTION 8

Miscellaneous Provisions

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

8.2 Entire Document. This Ordinance constitutes the entire Franchise between the Grantee and the Franchising Authority. Amendments to the Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly scaled and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail. General updates may be communicated electronically as appropriate and agreed to by both parties.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Scappoose
Attention: City Recorder
33568 E. Columbia Avenue
Scappoose, OR 97056

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Oregon If, Inc.
Attention: Government Affairs
11308 SW 68th Parkway

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section 8.3.

8.4 Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof: such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is _____ pursuant to the provisions of applicable law. This Franchise shall expire on _____, unless extended by the mutual agreement of the parties, or rendered null and void pursuant to Section 8.7 hereof.

8.7 Acceptance. This Ordinance shall take effect thirty (30) days after its enactment by the City Council and approval by the Mayor, but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the Recorder Grantee's acceptance of the terms, conditions and obligations to be compiled with or performed by it hereunder.

ORDINANCE NO. 913

**AN ORDINANCE RELATED TO THE CABLE TELEVISION FRANCHISE
AGREEMENT AND REPEALING ORDINANCE NO. 823.**

This Cable Television System Franchise Agreement ("Agreement") is entered into this _____ day of May 2023, by and between **SCAPPOOSE, OREGON** ("Franchising Authority"), and **COMCAST OF OREGON II, INC.**

WHEREAS, the Grantor is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain a cable television system within the municipal boundaries of the Grantor; and

WHEREAS, the Grantor has considered the financial condition, technical ability and legal qualifications of Grantee; and

WHEREAS, the Grantor, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of Grantee to provide cable television service within the Grantor's boundaries; and

WHEREAS, the Grantee is willing to accept this Agreement subject to terms and conditions, and to abide by those terms and conditions; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's application to provide cable television service within the City;

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Item 1. Ordinance 823, which was adopted by Council on September 4, 2012, is hereby repealed.

Item 2. The Council authorizes the City Manager to execute the attached agreement.

First reading:

Second reading:

CITY OF SCAPPOOSE, OREGON

Mayor Joseph A. Backus

Attest:

City Recorder Susan M. Reeves, MMC

SECTION I
Definition of Terms

I.I Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Basic Cable" means any service tier that includes the retransmission of local television broadcast signals and other programming provided by the Grantee.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- C. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) Video programming, or (b) other programming service, and (2) Subscriber Interaction, if any, which is required for the selection or use of such video Programming or other programming service.
- D. "Cable System" shall have the meaning specified in the definition of "Cable System" in the Cable Act.
- E. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- F. "Franchising Authority" means the City of Scappoose or the lawful successor, transferee, or assignee thereof
- G. "Grantee" means Comcast of Oregon II, Inc., or its lawful successor, transferee, or assignee.
- H. "Gross Revenues" mean any revenue derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, following Generally Accepted Accounting Principles ("GAAP"), consistent with federal and state law, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee; (2) unrecovered bad debt; (3) advertising agency commissions and launch fees to the extent consistent with GAAP, and (4) franchise fees and any Public, Education and Government (PEG) amounts received from Subscribers. Gross Revenues shall also not include revenue from any other sources or services unless and until such source or service is finally, specifically and expressly declared to be a cable service under federal law or regulation, by Congress or the Federal Communications Commission.
- I. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but shall not mean the Franchising Authority.
- J. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated

for compatible uses now or hereafter held by the Franchising Authority or other utilities in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

- K. "Service Area" means the legal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.9.
- L. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.
- M. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

Notwithstanding anything to the contrary, any easement for such use which has already been granted by the Franchising Authority to a telephone or other utility company shall to the fullest extent be interpreted so as to grant Grantee the same rights and privileges as have been granted to the telephone or other utility company (the "Other Grants"), to the extent the grant herein does not violate the terms and conditions of the Other Grants or unreasonably interfere with the uses allowed therein. In such easements, the words "telephone" or "telephone company," "public utility" and the like shall to the fullest extent be interpreted to include the Grantee.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither the Franchising Authority nor the Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.3 Competitive Equity.

(A) The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Service Area; provided, the Franchising Authority agrees that, within ninety (90) days of the Grantees request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments;

customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this section.

(B) Notwithstanding any provision to the contrary, at any time that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Service Area without a franchise or other similar lawful authorization granted by the Franchising Authority, then Grantee may seek modifications as per (A) above, or the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Grantee's notice.

2.4 Term. The Franchise granted hereunder shall be for an initial term of ten (10) years commencing on the effective date of the Franchise as set forth in Section 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5 Technological Development Review. Within sixty (60) days' notice of the fifth anniversary of the effective date of the Franchise, or a subsequent anniversary, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new cable law and regulation, and community needs and interests, with consideration of all financial, technological, and operational impacts that may affect the Grantee; including public, educational, and government access channel(s) and capital fees. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review. If, after completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the expressed agreement of the Grantee, may modify the obligations and/or extend the term of the Franchise accordingly.

SECTION 3 **Standards of Service**

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. Prior to the commencement of any construction, extension or relocation of Grantee's Cable System in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

3.2 Restoration of Public Ways. When any excavation or construction activity is made by the Grantee within the Public Ways, the Grantee shall promptly restore the affected portion of the Public Way to a condition reasonably comparable to the condition existing immediately prior to the excavation or construction activity, and in compliance with legally adopted City and State standards, to the extent that they are applicable. The restoration shall be in compliance with lawful specifications, requirements and regulations of the Franchising Authority in effect at the

time of such restoration. Grantee shall repair any defect or inadequacy in the restoration within sixty (60) days after receiving written notice from the Franchising Authority. In the event that Grantee fails to satisfactorily restore the affected portion of the Public Way, the Franchising Authority may restore or cause to restore such Public Way, and the reasonable cost thereof shall be paid by the Grantee within forty-five (45) days after invoice date; provided, that the Franchising Authority provides Grantee reasonable notice to restore, and Grantee fails to restore such Public Way within the time period specified by the Franchising Authority. If the Franchising Authority determines that the defect or inadequacy of the restored area presents an imminent danger to public health or safety or the defect or inadequacy causes or threatens to cause substantial damage to adjacent pavement, utilities, structures, or other improvements, the Franchising Authority may require that the repairs be made or that acceptable temporary measures be taken within twenty four (24) working hours or three (3) days following the time of the request.

3.3 Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) business days, the Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas (although not the direct responsibility of the City) or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.4, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation. In the case of the failure of Grantee to comply with the terms of this, Section 3.4, the superintendent of streets or other proper officer of the Franchising Authority, may take action to relocate in or remove from the Public Way any property of Grantee, at the expense of the Grantee; provided, however, Grantee is given notice with opportunity to cure and, shall not be penalized for any good faith dispute regarding payment due from any such third party.

3.5 Reservation of Franchising Authority - Public Ways. Nothing in this Franchise shall prevent the Franchising Authority from constructing sewers, grading, paving, repairing or altering any street, alley, or public highway, repairing or removing water mains, or maintaining, repairing, constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with constructing sewers, grading, paving, repairing or altering any street, alley, or public highway, repairing or removing water mains, or maintaining, repairing, constructing or establishing any other public work or improvement, or any other government owned facilities in the Public Ways, Grantee's Cable System shall be removed or replaced in accordance with Section 3.3 hereof. Any and all such removal or replacement shall be at the expense of Grantee except for installation or repair of a communications system owned by the Franchising Authority or other public entity providing commercial services in competition with the Grantee or an affiliate of Grantee.

If in response to a request by the Franchising Authority the Grantee removes or replaces any portion of its Cable System at its own expense in order to accommodate the installation or repair of a communications systems used by the Franchising Authority or other public entity to provide commercial services in competition with Grantee or its affiliates, then the Franchising Authority or other government entity shall reimburse Grantee for the reasonable expense of the removal or replacement.

3.6 Vegetation Management. Grantee may trim all trees and vegetation which overhang Public Ways, whether such trees or vegetation originate within or without the Public Ways, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation from touching or interfering with Grantee's property, so long as no trees and vegetation are trimmed or cut back further than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of said Grantee property. Nothing contained in this Section 3.6 shall prevent Grantee, when necessary and with the approval of the owner of the private property on which they may be located, from cutting down and removing any trees and vegetation which overhang the Public Way.

3.7 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.8 Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric or other services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section 3.8 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances. The Franchising Authority shall notify the Grantee with thirty (30) days following receipt of subdivision requests from developers for areas within the Service Area. The developers are responsible for providing adequate advance notification and access to Grantee and other potential users of an open trench. Notwithstanding the foregoing, Grantee shall not be required to utilize any open trench.

3.9 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residents in the Service Area subject to the density requirements specified in this Section 3.9. Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscriber at no cost to said Subscriber for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section

3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals twelve (12). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. The parties acknowledge that as of the Effective Date of this Franchise agreement, Grantee continues to provide Complimentary Services to certain schools, libraries, and public institutions within the Franchise Area. In the event Grantee elects, to the extent permitted by Applicable Laws, to invoice the Franchising Authority for Complimentary Services, Grantee agrees that it will do so only after providing City with one hundred twenty (120) days' prior written notice. Grantee agrees not to unfairly or unreasonably discriminate against the Franchising Authority with respect to other Oregon served local franchising authorities, with respect to the costs to be imposed for Complimentary Services.

The Franchising Authority shall have the right to discontinue the receipt of all or a portion of the Complimentary Services provided by the Grantee in the event Grantee elects to impose a charge against the Franchising Authority for the Complimentary Services as set forth in the preceding paragraph.

3.12 Emergency Use. In accordance with, and at the time required by, the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with such regulations and consistent with FCC approved Oregon State EAS plan, and local area EAS plan applicable to Columbia County.

3.13 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the relocations under sections 3.3 and 3.4 hereof, the Franchising Authority shall reimburse Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If funds are controlled by another government entity, the Franchising Authority shall make application for such funds on behalf of Grantee.

3.14 System Standards. The Cable System shall meet or exceed all applicable technical and performance standards of the FCC.

The Grantee shall also comply with all applicable testing requirements of the FCC. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the Cable System within the Service Area to determine compliance with the provisions of applicable FCC technical standards. Representatives of the Franchising Authority may witness the tests. Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantee's business office, and shall be available for inspection by the Franchising Authority upon written request during Grantee's normal business hours. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copies of such tests results prepared in accordance with FCC rule.

3.15 Customer Service Standards/Complaint Resolution. Grantee shall comply with the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as such may be amended from time to time.

Grantee may arrange for payment stations or drop boxes or its equivalent within the city limits of the Franchising Authority where Subscribers may drop or deliver their bill payment for cable service. Grantee may operate and maintain a cable store within the city limits of the Franchising Authority where Subscribers may drop or pick-up equipment, or drop or deliver their bill payment related to their cable service.

Should a Subscriber have an unresolved complaint regarding Cable Service with Grantee, the Subscriber shall be entitled to file a complaint with the Franchising Authority and thereafter to meet or discuss jointly with representatives of the Franchising Authority and Grantee within 30 days of filing the complaint with the Franchising Authority to address and resolve the Subscriber's complaint. For purposes of this paragraph, a "complaint" is a grievance related to the Cable Service provided by Grantee within the Service Area that is reasonably remediable by Grantee, but does not include grievances regarding the content of programming or information services other than broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the subscriber's problem satisfactorily to subscriber.

3.16 Franchising Authority Non-Liability. In the event it shall be necessary to cut or remove any cables, wires or equipment of Grantee in order to get to fire ladders or other apparatus to a building during a city conflagration or emergency, the Franchising Authority shall not be liable for any damage done to such cables, wires or equipment; provided, however, that the Franchising Authority shall hold Grantee, its employees, officers and assigns harmless from any claims, injury (including accidental death) or damage that results from the cutting or removing of Grantee's wires, cables or equipment.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of annual Gross Revenues (as defined in Section 1.1 of this Franchise). In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The Grantee shall make such payments quarterly, following the effective date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.2 Filing Rates and Charges. Throughout the term of this Agreement, Grantee shall

maintain on file a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and Franchising Authority consider the terms set forth in this Section 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, or a transfer to an entity directly or indirectly owned or controlled by Comcast

Corporation. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given, unless the requesting party and Franchising Authority agree to an extension of time.

SECTION 5

Books, Records, and Maps

5.1 Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee which is not providing Cable Service in the Service Area. In the event the Grantee asserts that certain information is proprietary or confidential in nature, the Grantee shall identify generally the information which it deems proprietary or confidential and the reasons for its confidentiality in writing.

The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Maps. Grantee shall maintain as built drawings for the Cable System at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. As built drawings shall be updated as changes occur in the Cable System serving the Service Area. Upon written request of the Franchising Authority, Grantee shall make available to the Franchising Authority maps showing the location of Grantee's lines within the Public Ways in the Service Area within thirty (30) days of request for the same. The City recognizes that the information contained in such maps is confidential and proprietary, and remains the property of the Grantee and shall not be left behind. The City shall safeguard such information from the public record unless affirmatively and expressly required to disclose and provide access by state or federal law.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be non-

cancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this Section 6.1.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of its Cable System, provided that the Franchising Authority shall give Grantee written notice of its obligation to indemnify the Franchising Authority within thirty (30) days of receipt of a claim or action pursuant to this Section 6.2. Notwithstanding the foregoing, Grantee shall not indemnify the Franchising Authority for any damages, liability, or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety. No bond or other surety shall be required of Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days advance written notice thereof slating the specific reasons for such requirement. Such reasons must demonstrate a change in Grantee's legal, financial or technical qualifications that would materially prohibit or impair Grantee's ability to comply with the terms and conditions of this Franchise.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 (C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of

any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law. A complete verbatim record and transcript shall be made of the hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This includes, but is not limited to earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, terrorist act, epidemic or pandemic. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System within the Service Area is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative

impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8

Miscellaneous Provisions

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

8.2 Entire Document. This Ordinance constitutes the entire Franchise between the Grantee and the Franchising Authority. Amendments to the Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly scaled and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail. General updates may be communicated electronically as appropriate and agreed to by both parties.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Scappoose
Attention: City Recorder
33568 E. Columbia Avenue
Scappoose, OR 97056

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Oregon II, Inc.
Attention: Government Affairs
11308 SW 68th Parkway
Tigard, OR 97223

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section 8.3.

8.4 Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof: such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of

which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is ____, pursuant to the provisions of applicable law. This Franchise shall expire on ____, unless extended by the mutual agreement of the parties, or rendered null and void pursuant to Section 8.7 hereof.

8.7 Acceptance. This Ordinance shall take effect thirty (30) days after its enactment by the City Council and approval by the Mayor, but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the Recorder Grantee's acceptance of the terms, conditions and obligations to be compiled with or performed by it hereunder.

COMCAST OF OREGON II, INC.

CITY OF SCAPPOOSE

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

CITY OF SCAPPOOSE

6.

April 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		March 28 50-Year SAC meeting, 6pm	March 29	March 30	March 31	1
2	3 Council work session 6pm Council meeting 7pm	4	5	6	7	8 Annual Town Meeting (ATM)
9	10	11	12	13 Planning Commission 7pm	14	15
16	17 Urban Renewal Agency, 6pm Council meeting 7pm	18	19	20 EDC ~ noon Park & Rec 6pm	21	22 Earth Day Event
23/30	24	25	26	27 Planning Commission 7pm	28	29

CITY OF SCAPPOOSE

May 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Council work session 6pm Council meeting 7pm	2	3	4	5	6
7	8	9	10 Budget Committee 5:30pm	11 Budget Committee 5:30pm (if needed)	12	13 Farmers Market 9am – 2pm
14	15 Council work session 6pm Council meeting 7pm	16 Budget Committee 5:30pm (if needed)	17	18 Park & Rec 6pm	19	20 Farmers Market 9am – 2pm
21	22	23	24	25 Planning Commission 7pm	26	27 Farmers Market 9am – 2pm
28	29 City Offices Closed	30 50-Year SAC meeting, 6pm	31			