

6:00 p.m.

WORK SESSION - Joint Land Use Discussion with Matrix Consultants

**AGENDA FOR COUNCIL MEETING
KLAMATH FALLS CITY COUNCIL
JULY 18, 2016
7:00 P.M.**

Matters for Council consideration not scheduled on the Agenda can be addressed by the general public under the "Public Comment" section on the agenda. Testimony must be presented according to Council procedure. Items of a non-emergency nature may be scheduled for future Council determination in order to provide sufficient time to analyze the issue.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

PRESENTATION OF SERVICE AWARDS

Jeff Fritz	Public Works/Wastewater Division	30 years
Larry Helms	Public Works/Water Division	25 years
Rob Dentinger	Police Department	20 years
Peter York	Police Department (June)	10 years
Ed Foreman	Police Department	10 years
Ryan Badker	Public Works/Wastewater Division	10 years

PUBLIC COMMENT

1. CONSENT AGENDA

- a. Approval of July 18, 2016 agenda and July 5, 2016 regular meeting minutes

LAND USE PUBLIC HEARING - QUASI JUDICIAL - NONE

LAND USE PUBLIC HEARING - LEGISLATIVE - NONE

GENERAL PUBLIC HEARING - NONE

LEGISLATIVE ACTION

2. MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN CITY OF KLAMATH FALLS AND PENINSULA AIRWAYS, INC.

- a. Report of Airport Director
- b. Move to authorize staff to execute Memorandum of Understanding with Peninsula Airways, Inc.

3. **CONTRACT WITH MEAD & HUNT, INC. FOR MODOC WETLANDS MITIGATION SITE IMPROVEMENTS CONSTRUCTION ADMINISTRATION SERVICES**
 - a. Report of Airport Director
 - b. Move to authorize staff to execute contract with Mead & Hunt, Inc. in the amount of \$31,047

4. **CONTRACT WITH MEAD & HUNT, INC. FOR TAXIWAY B CONSTRUCTION ADMINISTRATION SERVICES**
 - a. Report of Airport Director
 - b. Move to authorize staff to execute contract with Mead & Hunt, Inc. in the amount of \$675,300

5. **AWARD OF BID TOM AYRES CONTRACTOR, INC. FOR AIRPORT WETLAND MITIGATION SITE IMPROVEMENTS**
 - a. Report of Airport Director
 - b. Move to award bid, and authorize staff to execute contract with, Tom Ayres General Contractor, Inc. in the amount of \$189,700.00 with Notice to Proceed dependent on receiving FAA funding

6. **ORDINANCE RATIFYING THE CREATION OF AN INTERGOVERNMENTAL ENTITY FOR THE OPERATION, MAINTENANCE, AND USE OF A COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM, AND AUTHORIZING PARTICIPATION THEREIN - FIRST READING**
 - a. Report of Police Chief
 - b. Take public comment
 - c. Move to introduce the Ordinance by title for first reading

7. **A SPECIAL ORDINANCE GRANTING TO FALCON CABLE SYSTEMS COMPANY II, L.P., DBA CHARTER COMMUNICATIONS A FRANCHISE FOR A PERIOD OF TEN YEARS – FIRST READING**
 - a. Report of City Attorney
 - b. Take public comment
 - c. Move to introduce the Ordinance by title for first reading

8. ORDINANCE ADDING SECTION 5.700 TO AUTHORIZE CITY TO PETITION COURT FOR RECEIVERS TO ADDRESS RESIDENTIAL BLIGHT – SECOND AND FINAL READING

- a. Move to pass the Ordinance by title for second and final reading
- b. Move to adopt the Ordinance

OTHER MATTERS

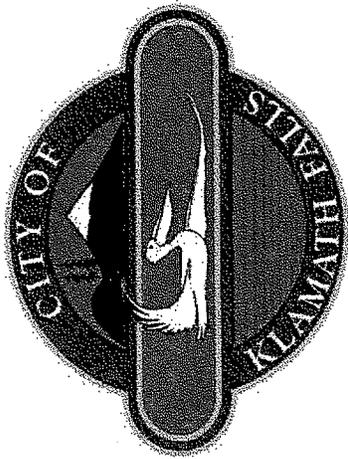
ADJOURNMENT

The City Council may recess/adjourn to Executive Session under ORS 192.660 as follows: ORS 192.660(2):

- (a) - Employment of Public Officers, Employees
- (b) - Discipline of Public Officers and Employees and Agents
- (d) - Labor Negotiations
- (e) - Real Property Transactions
- (f) - Exempt Public Records
- (g) - Trade Negotiations
- (h) - Consultation with Legal Counsel
- (i) - Performance Evaluations of Public Officers and Employees
- (i) - Public Investments

*****AMERICANS WITH DISABILITIES ACT NOTICE*****

Please contact the City Recorder's office, Klamath Falls City Hall, 500 Klamath Avenue, Klamath Falls, OR 97601, or call 541.883.5316 at least 48 hours prior to the scheduled meeting time if you need an accommodation to participate in the meeting. The City's TTY/TDD number is 541.883.5324



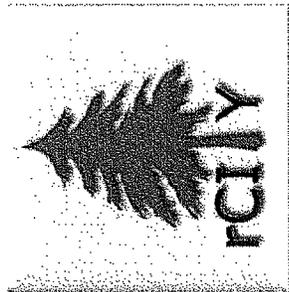
Certificate of Service

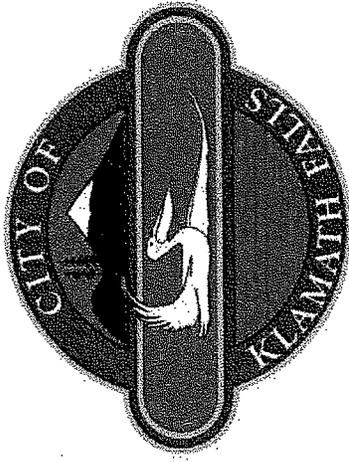
Awarded to:
Jeff Fritz
Public Works/Wastewater Division

For completion of:
30 Years of Service
on
July 1, 2016



Nathan Cherpeski, City Manager





Certificate of Service

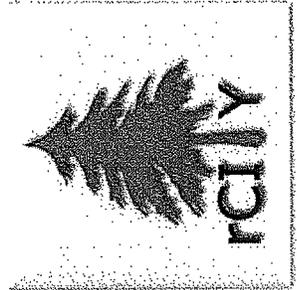
Awarded to:
Larry Helms
Public Works/Water Division

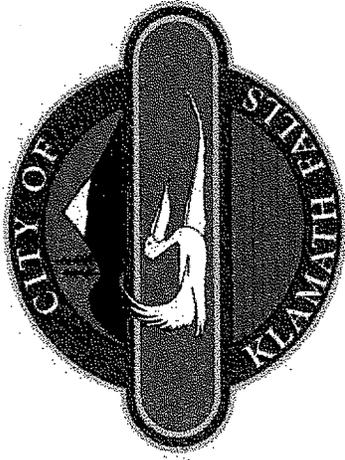
For completion of:
25 Years of Service

on
July 15, 2016



Nathan Cherpeski, City Manager



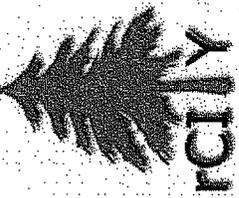


Certificate of Service

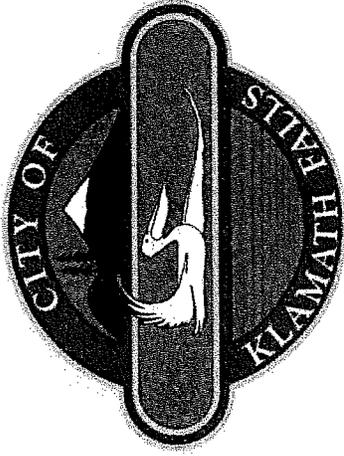
Awarded to:
Captain Robert Dentinger
Police Department

For completion of:
20 Years of Service

on
July 1, 2016



Nathan Cherpeski, City Manager



Certificate of Service

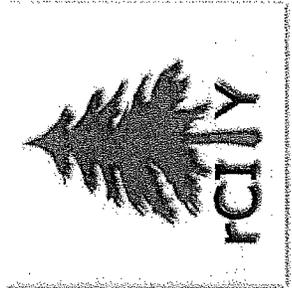
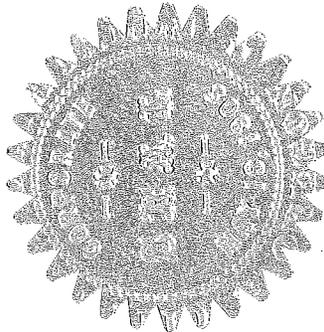
*Awarded to:
Peter York
Police Department*

*For completion of:
10 Years of Service*

*on
June 19, 2016*



Nathan Cherpieski, City Manager





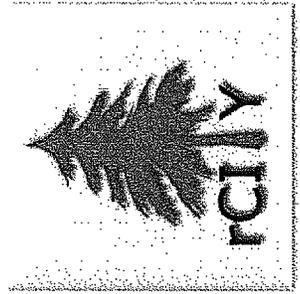
Certificate of Service

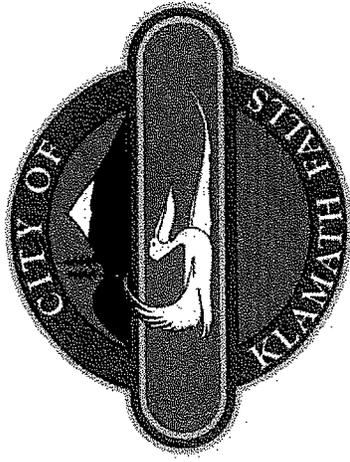
Awarded to:
Corporal Ed Foreman
Police Department

For completion of:
10 Years of Service
on
July 5, 2016



Nathan Cherpeski, City Manager





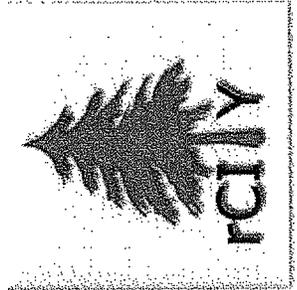
Certificate of Service

Awarded to:
Ryan Badker
Public Works/Wastewater Division

For completion of:
10 Years of Service
on
July 31, 2016



Nathan Cherpovski, City Manager



MINUTES
KLAMATH FALLS CITY COUNCIL
June 20, 2016

A regular meeting of the Klamath Falls City Council was held in the Council Chambers on the above date at 7:00 p.m. Mayor Todd Kellstrom called the meeting to order.

Council members present: Councilman Matt Dodson
Councilman Bill Adams
Councilwoman Trish Seiler

City staff members present: Nathan Cherpeski, City Manager
Joanna Lyons-Antley, City Attorney
Dave Henslee, Police Chief
Mark Willrett, Public Works Director
Susan Kirby, Support Services
Director
John Barsalou, Airport Director
Erik Nobel, Planning Manager
Chuck Cox, Streets Manager
Kelly Brennan, Maintenance Manager
Randy Travis, Water/Geothermal
Manager
Joe Wall, Management Assistant to the
City Manager
Joe Goetz, Airport Operations Manager
Linda Tepper, Airport Business
Manager
Andrew Lakey, Associate Engineer
Rod Denson, Water Infrastructure
Supervisor
Charles Anderson, Code Enforcement
Officer
Kristina Buckley, Assistant to the City
Recorder

Councilman Dodson **moved to excuse Councilman Tofell's and Councilman Hart's absence.** Councilwoman Seiler seconded. The motion carried with Councilman Dodson and Councilwoman Seiler voting aye. Councilman Adams voted no.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited

PRESENTATION OF SERVICE AWARDS. Mayor Kellstrom recognized Support Services, Parks Division Manager John Bellon's 20 years of service to the City. He also acknowledged Julie Hardt of the Public Works, Water Division for her 25 years of service to the City and Ray Schoenemann of the Public Works, Development Services Division for his 15 years of service to the City.

PUBLIC COMMENT

Mayor Kellstrom opened the public comment. Hearing or seeing no one, he closed the public comment.

1. CONSENT AGENDA. Councilman Adams **moved to remove item 1b from the Consent Agenda for further discussion.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye.

Councilman Adams **moved to approve the Consent Agenda as follows: Approved the Consent Agenda for June 20, 2016; Approved the June 6, 2016 regular meeting minutes; Authorized Execution of a 10 year Intergovernmental Traffic Signal Maintenance Agreement with Oregon Department of Transportation; Authorized execution of Amendment Number 01 to Local Agency Agreement No. 29197 between the City of Klamath Falls and the Oregon Department of Transportation for the City's Congestion Mitigation and Air Quality (CMAQ) Additional Paving Project.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye.

1b. AUTHORIZATION FOR CITY INSURANCE COVERAGE FOR FISCAL YEAR 2016-2017 FROM VARIOUS INSURANCE CARRIERS AS

PROPOSED BY THE CITY'S INSURANCE AGENT OF RECORD, GREAT BASIN INSURANCE. Great Basin Insurance representative Matt Hurley reviewed the numbers presented in the Agenda Report. Councilman Adams stated every year when there was an increase on insurance he became concerned. He had noticed and was not sure if it was industry wide, that auto liability insurance had increased. Mr. Hurley stated the market was somewhat hardened on that; distracted driving continued to increase with cell phone usage causing an increase in claims.

Councilman Adams **moved to authorize City Insurance Coverage for Fiscal Year 2016-2017 from Various Insurance Carriers as proposed by the City's Insurance Agent of Record, Great Basin Insurance.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

LAND USE PUBLIC HEARING - QUASI JUDICIAL

There were no land use public hearing quasi-judicial matters.

LAND USE PUBLIC HEARING - LEGISLATIVE

There were no land use public hearing legislative matters.

GENERAL PUBLIC HEARING

2. RESOLUTION FOR THE RECEIPT OF THE 2016/2017 STATE REVENUE SHARING FUNDS. Support Services Director Susan Kirby reviewed her written report.

Mayor Kellstrom opened the public hearing. Hearing or seeing no one, he closed the public hearing.

Councilwoman Seiler **moved to introduce the Resolution by title.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Resolution by title.

Councilwoman Seiler **moved to approve the Resolution.** Councilman Adams seconded. On Roll Call, Resolution No. 16-07 was approved with

Councilman Dodson, Councilman Adams and Councilwoman Seiler voting aye.

3. RESOLUTION ADOPTING THE 2016-2017 BUDGET OF THE CITY OF KLAMATH FALLS, OREGON, MAKING APPROPRIATIONS FOR FISCAL YEAR 2016-2017 AND LEVYING TAXES. Support Services Director Susan Kirby reviewed her written report.

Mayor Kellstrom opened the public hearing. Hearing or seeing no one, he closed the public hearing.

Councilman Adams **moved to introduce the Resolution by title.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Resolution by title.

Councilman Adams **moved to approve the Resolution.** Councilwoman Seiler seconded. On **Roll Call, Resolution No. 16-08** was approved with Councilman Dodson, Councilman Adams and Councilwoman Seiler voting aye.

4. RESOLUTION ADOPTING THE 2016-2017 BUDGET OF THE KLAMATH FALLS URBAN RENEWAL AGENCY, MAKING APPROPRIATIONS FOR FISCAL YEAR 2016-2017 AND LEVYING TAXES. Support Services Director Susan Kirby reviewed her written report.

Mayor Kellstrom opened the public hearing. Hearing or seeing no one, he closed the public hearing.

Councilman Dodson **moved to introduce the Resolution by title.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Resolution by title.

Councilman Dodson **moved to approve the Resolution.** Councilman Adams seconded. On **Roll Call, Resolution No. 16-09** was approved with Councilman Dodson, Councilman Adams and Councilwoman Seiler voting aye.

LEGISLATIVE ACTION

5. RESOLUTION EXTENDING CITY OF KLAMATH FALLS WORKERS' COMPENSATION COVERAGE TO CERTAIN PUBLIC SAFETY VOLUNTEERS FROM JULY 1, 2016 THROUGH JUNE 30, 2017. Support Services Director Susan Kirby reviewed her written report.

Councilman Adams **moved to introduce the Resolution by title.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Resolution by title.

Councilman Adams **moved to approve the Resolution.** Councilman Dodson seconded. On **Roll Call, Resolution No. 16-10** was approved with Councilman Dodson, Councilman Adams and Councilwoman Seiler voting aye.

6. AUTHORIZATION TO EXECUTE A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT WITH AFSCME LOCAL 2451. Support Services Director Susan Kirby reviewed her written report. Councilman Dodson commented he liked seeing the longer term contract.

Councilwoman Seiler **moved to approve the tentatively agreed contract with AFSCME Local 2451 as presented.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye.

7. ORDINANCE ADDING SECTION 5.700 TO AUTHORIZE CITY TO PETITION COURT FOR RECEIVERS TO ADDRESS RESIDENTIAL BLIGHT - FIRST READING (continued from 6-6-2016 Council Meeting). City Attorney Joanna Lyons-Antley reviewed her written report and she and Code Enforcement Officer Charles Anderson reviewed their PowerPoint Presentation, attached. Councilman Adams asked how the proposed lien would work in comparison to a different Code Enforcement lien as the City had trouble collecting on those. Ms. Lyons-Antley responded the proposed lien would be a high priority lien; whereas, the others were a very low priority so the proposed lien would be paid first after taxes. City Manager Nathan Cherpeski asked if, in practice, the taxes were paid by the receiver. Ms. Lyons-Antley responded yes.

Mayor Kellstrom opened the public comment.

Terry Etters. Mr. Etters stated it appeared the City wanted to become "rehabbers" because all the examples he had seen were of rehabbed properties and realistically the City should allow a business person to do that as opposed to the City. He continued that if someone was living in the residence when it was declared blighted, it would cause different issues. He understood the taxes would be paid by the receiver and he had experienced issues in the past with the County on tax sales when they did not clear all the fees. Mr. Etters then asked what the criteria were for applying for or becoming a potential receiver. Mr. Cherpeski stated he believed the idea was the receivers were non-profit entities but in Oregon he believed that was required. Ms. Lyons-Antley stated there was a defined eligible receiver under statute; one of which was a non-profit. She noted she had not looked at other ones but one was non-profit. Mr. Etters asked if there would be the ability to apply to be a receiver. Mr. Cherpeski responded if Council adopted the Ordinance then staff would seek out entities to establish receivership contracts. Ms. Lyons-Antley stated the criteria would need to be defined; however, the criteria would be for a health and safety violation; therefore, not just any house could be included. Councilman Dodson asked Mr. Etters what his specific concerns were. Mr. Etters responded it appeared the City was trying to do the program as a rehabber and realistically, government should not be involved in rehabbing. It was not cost effective and a foundation, if set up correctly, could do that but otherwise the program was not going to work properly. Councilman Dodson stated the City was not planning on doing the work. Mr. Etters rebutted the City would set the regulations that were precepts of who the City would take the properties over from or what the reasoning for the taking over was and those should be set before the regulation was adopted.

Hearing or seeing no one further, Mayor Kellstrom closed the public comment.

Councilman Adams stated he was unsure how the City would set the parameters because he did not want people worried about living in a house they could not afford to fix and the City potentially taking it away. Mr. Anderson explained how on a list of blighted properties there was only one that could be occupied and that would be squatters at this time. To remove people was not the intent of the code; rather it was to address the empty

houses that sat rotting year after year, depreciating the value of surrounding properties. Mr. Cherpeski explained staff used the phrase "zombie house" frequently, which was a home that the person who had the mortgage had moved out of, was no longer making payments on, and the bank had not gone through the formal process of foreclosure. The house sat in a "zombie" state so staff would go to the property, find the owner, contact the owner and banks were not doing anything except collecting mortgage insurance. The code was a method to move the houses forward in that process. There was a process the City would have to go through with the court to file a petition and make findings and when that was done, those issues by state law had to come out of state code or building code. There were going to be specific things involving not only City staff but County building staff. The receiver would then receive a list of things that must be fixed. He did not know if staff would come to Council with findings then petition the court but staff could do that and Council could give some direction.

Councilman Dodson stated Mr. Eppers made a valid point about how to prevent the City from "going after" houses. Mr. Cherpeski explained when a property went to court, there was a list of things to be remedied so if the only item was to cut weeds, the receiver would cut the weeds but he could not imagine the City would go through the process for something that trivial. The City would pursue matters for life and safety. Councilman Dodson asked if it should just be the building and fire code then as opposed to referencing the Community Development Ordinance (CDO). Perhaps that would alleviate Mr. Eppers' fears. Mr. Anderson stated the City had adopted the international property maintenance code, which was a good standard for what the City was looking for in the community and the penalty was punitive fines but those did not always work out. Ms. Lyons-Antley stated she worded the proposed Ordinance in a very specific way to address threat to public health and safety.

Councilman Dodson **moved to introduce the Ordinance by title for first reading.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Ordinance by title.

8. REQUEST TO PERMIT ALCOHOL SALES AND CONSUMPTION IN A "BEER GARDEN" IN VETERANS PARK IN CONJUNCTION WITH THE LAKE JAM OREGON EVENT. Planning

Manager Erik Nobel reviewed his written report. Councilman Adams referenced minors being in the beer garden and in the area where alcohol would be served. He asked if that had been allowed in the past. Mr. Nobel responded traditionally the City had not done that; however, there were many other communities that had opened up beer and wine gardens to all ages. Councilman Adams reiterated Council had never granted that. Mr. Nobel responded he did not believe so. Mayor Kellstrom stated he thought the City had once or twice in the past but could not remember when. Councilwoman Seiler stated part of the information provided referenced a request for alcohol to be used throughout the entire park and she asked if that was not in staff's recommendation. Mr. Nobel responded no and stated that was the original request but the Parks Advisory Board (PAB) was not in support of that idea and they requested it be smaller in size so the next request was to have the lakeside portion of Veteran's Park for the beer garden, which was the lower portion between George Nurse Way and the lake. After visiting with Mr. Nunes the size was reduced to 17,000 square feet. Councilman Dodson stated Mr. Nunes had done similar events in other locations and requested Mr. Nunes talk about those events.

Michael Nunes. Mr. Nunes stated he had experience with these types of events and the proposed area was not a traditional beer garden; rather it was a place for someone to grab a beer and sit on a blanket and watch the show. The only reason they considered the whole park was because there was a past event that was approved for minors and adults in the same area, the Blues Event, and after discussions with Departments and Police Chief Henslee, it was determined the smaller area would be a better start for this event. He explained there would be a gate and an entrance where anyone who was drinking would have wristbands and the alcoholic beverage cups would have different colors than non-alcoholic beverage cups. There would be off duty officers with the event as well, which provided a second layer of control. Mr. Nunes further stated he would like to have a workshop with some of the Departments he had worked with about large events such as his proposed event. He chose Klamath Falls because of his connection to the community and it was important to look at things as other promoters would look at it. He was promoting Klamath Falls, the county, recreation, the park, etc. so if there was a better understanding of how many communities were doing the open area plan and if promoted correctly it showed zero tolerance, off duty officers, zero issue events. The event was a two-day event and if enough promoters could be brought on board then parks and areas like Veteran's Park could be used for dozens of

like-events to promote the area.

Councilman Dodson **moved to conditionally permit alcohol sales and consumption in a "beer garden" in Veteran's Park for the Lake Jam Oregon Event.** Councilman Adams seconded. The motion carried with Councilman Dodson and Councilman Adams voting aye. Councilwoman Seiler voted no.

9. AUTHORIZATION TO EXECUTE A CONTRACT WITH JESSE RODRIGUEZ CONSTRUCTION FOR THE PELICAN CITY BOOSTER STATION PHASE I (WATER LINE) PROJECT IN AN AMOUNT NOT-TO-EXCEED \$644,510.30. Associate Engineer Andrew Lakey reviewed his written report. Councilman Adams stated he became concerned when he saw that the lower bid was disqualified; however, he spoke with the Public Works Director prior to the meeting and was assured there were some issues with the bid and items being left out so after that discussion he was fine with the item as presented.

Councilman Adams **moved to authorize a Construction Services Contract with Jesse Rodriguez Construction for the Pelican City Booster Station Phase I (Water Line) Project in an amount not-to-exceed \$644,510.30.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

10. FEDERAL AVIATION ADMINISTRATION (FAA) GRANT APPLICATION #3-41-0030-036 FOR AIRPORT IMPROVEMENT PROGRAM (AIP) (MODOC WETLAND MITIGATION). Airport Director John Barsalou reviewed his written report. Councilwoman Seiler asked what would happen if Council chose to deny the item. Mr. Barsalou responded it would probably create many other problems for the airport and the day after staff prepared the Agenda item, staff received the grant application from the corps, which included the wetland permit. Staff thought it would be a long, drawn-out process but it was done.

Councilwoman Seiler **moved to authorize staff to submit application #3-41-0030-036 to Federal Aviation Administration (FAA) for Airport Improvement Program (AIP) grant in the amount of \$226,193.18 and to accept funding when offered.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye.

11. FEDERAL AVIATION ADMINISTRATION (FAA) GRANT APPLICATION #3-41-0030-037 FOR AIRPORT IMPROVEMENT PROGRAM (AIP) (TAXIWAY B CONSTRUCTION). Airport Director John Barsalou reviewed his written report.

Councilman Adams **moved to authorize staff to submit application #3-41-0030-037 to Federal Aviation Administration (FAA) for Airport Improvement Program (AIP) grant in the amount of \$7,303,385.41 and to accept funding when offered.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

12. AWARD OF BID TO ROCKY MOUNTAIN CONSTRUCTION, LLC. FOR TAXIWAY B CONSTRUCTION. Airport Director John Barsalou reviewed his written report.

Councilman Dodson **moved to award bid for Taxiway B Construction and authorize staff to execute contract with Rocky Mountain Construction, LLC in the amount of \$7,777,777.77 with Notice to Proceed dependent on receiving FAA funding.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

13. ORDINANCE AMENDING THE KLAMATH FALLS URBAN AREA TRANSPORTATION SYSTEM PLAN BY ADDING THE KLAMATH FALLS URBAN TRAIL MASTER PLAN - SECOND AND FINAL READING.

Councilwoman Seiler **moved to pass the Ordinance by title for second and final reading.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Ordinance by title.

Councilwoman Seiler **moved to adopt the Ordinance.** Councilman Dodson seconded. On **Roll Call, Ordinance No. 16-04** was adopted Councilman Dodson, Councilman Adams and Councilwoman Seiler voting aye.

OTHER MATTERS

Oregon Avenue Bike Lane. Councilman Dodson asked for Council feedback on two options for the proposed Oregon Avenue Bike Lane:

- The City not put any money into a protected bike lane on Oregon

Avenue; rather the funds be all through fundraising, grants, contributions, etc.; and

- Perform a "test run" for what eliminating parking on one side of Oregon Avenue would do. Notify property owners on both sides that for a month or two the City would erect "no parking" on one side then wait for feedback to determine if there were problems with accessibility, crossing the street, if there was enough parking, if alleys were in such bad shape the residents could not access parking spaces behind their houses, etc.

Councilwoman Seiler stated she continued to have concern and remained opposed to putting a bike lane on Oregon Avenue due to traffic. She suggested changing the route to send the cyclists from Nevada Street, Oregon Avenue and Biehn Street to Siskiyou Street then down California Avenue and they could access 11th Street and 9th Street or up 3rd Street or connect to California Avenue and Conger Avenue to connect to Main Street. She worried about the juxtaposition of traffic and bicycles on Oregon Avenue and that people would be losing 50 parking spaces. She noted the idea of proponents funding the bike lane through fundraising was a good idea but she could not support a bike lane on Oregon Avenue.

Ken Hay Funeral. Councilwoman Seiler stated she had the privilege of attending a funeral for Ken Hay, former City Parks Superintendent. Mr. Hay was committed to his work, to his colleagues and to his community. He was involved in many projects outside of his role of Parks Superintendent and would be greatly missed.

ADJOURNMENT

Councilwoman Seiler **moved to adjourn the meeting to Executive Session - ORS 192.660(2)(e) Real Property Transactions.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye. The meeting was adjourned to Executive Session at 8:25 p.m.

Kristina Buckley
Assistant to the City Recorder

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 2

Date: July 18, 2016

Department: Airport	Contact/Title: John Barsalou, Airport Director
Staff Presenter: John Barsalou	Telephone No.: 541-883-5373
City Manager Review: 	Email: jbarsalou@flykfalls.com

TOPIC: Memorandum of Understanding (MOU) between City of Klamath Falls and Peninsula Airways, Inc.

SUMMARY AND BACKGROUND:

In June of 2014, SkyWest/United Express ceased operations at the Crater Lake – Klamath Regional Airport leaving the Klamath Falls community without commercial air service for the first time since 1947.

City and Airport staff immediately began the process of seeking a new airline to provide air service to the community. City Staff attempted to contact every part 121 regional carrier still in the marketplace. One provider requested an ongoing subsidy of \$1,000,000 per year with service that didn't meet the community's need. City staff first met with Peninsula Airways, Inc. dba PenAir in July 2014. On July 27, 2015, PenAir provided the City with a Letter of Intent to begin service on November 3, 2015. Unfortunately, the Transportation Security Administration (TSA) declined to re-federalize the airport, which prevented the reinstatement of passenger screening services and put PenAir's plans on hold.

Airport staff was successful in getting the airport re-federalized in April of 2016 with a commitment from the TSA to have passenger screening services available by October 1, 2016. Subsequent to that news, PenAir announced on June 30th that they will begin service to and from Portland on October 5th with two daily round trip flights during the week and one daily roundtrip flight on the weekends.

To lessen PenAir's costs associated with starting service in Klamath Falls, the City and PenAir have agreed to a number of key investments outlined in a Memorandum of Understanding (MOU) covering such items as rent abatement, purchase of equipment and a minimum revenue guarantee for the first 180 days of operation.

FINANCIAL IMPACT:

The waiving of payment for terminal rent by PenAir for the first six months of operations will result in approximately \$14,340 in lost revenue to the Airport. The Airport budgeted \$110,000 for the purchase of a deicing truck for PenAir's use, which will be offset by revenue from PenAir

2

for leasing back the truck. The City has agreed to ensure that PenAir meets a minimum revenue threshold for each flight during their first 180 days of operation up to a \$200,000 cap. The City's share is \$100,000 from the Airport's Operating Fund and \$100,000 from our community partners at Sky Lakes Medical center.

As a result of air service returning, the Airport anticipates receiving over \$85,000 in additional revenue this fiscal year from increased fuel sales, landing fees, terminal rents, and passenger facility charges.

COUNCIL OPTIONS:

- Approve execution of MOU
- Direct staff to renegotiate MOU
- Decline to approve MOU

DOCUMENTS ATTACHED:

- MOU

RECOMMENDED MOTION/ACTION:

Move to authorize staff to execute a Memorandum of Understanding with Peninsula Airways, Inc.

NOTICE SENT TO:

Peninsula Airway, Inc.

2

MEMORANDUM OF UNDERSTANDING

WHEREAS, on the ___ day of ___, 2016, the City of Klamath Falls, hereinafter referred to as "City", and Peninsula Airways, Inc. dba PenAir, hereinafter referred to as "PenAir", desire for PenAir to provide air service from Portland International Airport to the Crater Lake - Klamath Regional Airport; and

WHEREAS, the City owns and operates the Crater Lake - Klamath Regional Airport, hereinafter referred to as "Airport"; and

WHEREAS, PenAir intends to provide twice daily flights Monday through Friday and once daily flights on Saturday and Sunday, starting October 5, 2016; and

WHEREAS, PenAir is a code share partner with Alaska Airlines and has electronic ticketing agreements with Alaska, Delta, and United Airline flights; and

WHEREAS, the City is committed to market the air service aggressively and desires to provide certain assurances to PenAir; and NOW THEREFORE, the parties agree to the following:

1. The parties will execute a license and operating agreement to authorize PenAir to operate flights out of the Airport. PenAir will pay no terminal rent for the first 6 months for use of the terminal space. PenAir agrees that utility costs for terminal building use are PenAir's responsibility and cost.
2. The parties will continue to work with the Transportation Security Administration to re-establish security procedures and processes at the Airport. The parties recognize that security screening is crucial to the success of the air service.
3. PenAir will provide twice daily roundtrip flights to PDX Monday through Friday and once daily roundtrip flights to PDX on Saturday and Sunday, starting October 5, 2016.
4. The City will provide a deicing truck for use by PenAir. PenAir will assist the City in locating a deicing truck. The City and PenAir agree to work out the lease arrangements for use of the deicing truck the City provides. PenAir agrees to operate the deicing truck at their cost.
5. As long as PenAir provides the flights as discussed in Section 3 above and PenAir agrees to sell tickets at least 60 (sixty) days in advance of the first roundtrip flight from Airport, the City agrees to provide the following revenue guarantee for the first 180 (one hundred and eighty) days of service. City will reimburse PenAir the difference in revenue between \$88,128 and the actual revenue per week.

5.1 Available seats 30 x 60% load factor x \$204 average fare = \$3,672 X 24 flights/week = **\$88,128**

"Available Seats" shall not include seats on cancelled flights.

5.2 PenAir will calculate the revenue on a weekly basis. No later than 14 (fourteen) days following each week ending on Saturday, PenAir will provide the City written notice of the flight revenue for the weekly period.

5.3 Within 30 days of receipt of the notice, the City will pay PenAir the difference between the amount determined in section 5.1 and the actual revenue per flight. The City's obligations under Section 5 shall not exceed a total of \$200,000.

6. PenAir agrees that its contract with Century Air (the Airport's Fixed Base Operator (FBO) is separate from this MOU.

7. PenAir shall indemnify, hold harmless and defend City, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages caused by or arising out of the negligent acts, errors or omissions of PenAir, or violation of any statute, ordinance or regulation. City shall indemnify, hold harmless and defend PenAir, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages caused by or arising out of the negligent acts, errors or omissions of City, or violation of any statute, ordinance or regulation.

8. The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without written authorization of the other.

9. All written notices given to the City by PenAir shall be addressed to and filed with the City Manager, at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the City to PenAir shall be addressed to 6100 Boeing Avenue, Anchorage, AK 99502, unless notice of change of address is received by the City.

10. If legal action is necessary by either party, exclusive venue for the enforcement of same shall lie in the Klamath County, Circuit Court.

11. This MOU may be terminated at any time by mutual written consent of the parties.

CITY OF KLAMATH FALLS

PENAIR

By: _____
City Manager

By: _____
Chief Operating Officer

Attest: _____
City Recorder

Attest: _____
Secretary

APPROVED AS TO FORM:

City Attorney

2

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 3

Date: July 18, 2016

Department: Airport

Staff Presenter: John Barsalou

City Manager Review: 

Contact/Title: John Barsalou, Airport Director

Telephone No.: 541-883-5373

Email: jbarsalou@flykfalls.com

TOPIC: Contract with Mead & Hunt, Inc. for Modoc Wetlands Mitigation Site Improvements Construction Administration Services

SUMMARY AND BACKGROUND:

On June 20, 2016, City Council authorized staff to submit a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant application for Modoc wetland mitigation site improvements. The improvements consist of the installation of two uncontrolled 48" culverts to connect the wetland mitigation site to Lake Ewauna.

Bids for the project were opened on June 2, 2016 and an award is expected to be made by City Council at this same meeting.

Mead & Hunt, the design engineers for the Modoc Wetlands Mitigation Site Improvements Project, has submitted a construction administration services contract in the amount of \$31,047.73. Their services will include pre-construction conference, review of contractor submittals, observing construction activity, reviewing contractor pay requests, and project closeout activities to include final construction report and as-builts.

Mead and Hunt's scope of services has been reviewed and approved by the FAA.

FINANCIAL IMPACT:

The proposed Mead & Hunt contract is for \$31,047 of which the FAA will pay 93.75% or \$29,106.57 and the Airport will pay the remaining 6.25% or \$1,940.43, which has been budgeted from the Airport Operating Fund.

COUNCIL OPTIONS:

- Approve the construction services contract with Mead & Hunt
- Direct staff to renegotiate contract with Mead & Hunt
- Reject contract

DOCUMENTS ATTACHED:

- Contract

RECOMMENDED MOTION/ACTION:

Move to authorize staff to execute a contract with Mead & Hunt, Inc. in the amount of \$31,047.

NOTICE SENT TO:

Mead & Hunt, Inc.

3

CONTRACT AGREEMENT

[Consultant Services – Mead & Hunt & CA Services / Wetland Mitigation Site Improvements]

THIS AGREEMENT executed on the date last signed below, by and between the CITY OF KLAMATH FALLS, a municipal corporation, herein referred to as "CITY," and Mead & Hunt, Inc., herein referred to as "CONSULTANT."

In consideration of the mutual promises set forth herein, CITY and CONSULTANT agree as follows:

1. Description of Work: CONSULTANT agrees to perform the services set forth in attached Exhibit A incorporated herein by this reference. Time is of the essence in completing this Contract and CONSULTANT agrees to complete the services set forth in Exhibit A within the time frame(s) provided in the Exhibit A.
2. Payment: CITY agrees to pay CONSULTANT a lump sum of Thirty-one Thousand Forty-seven and 73/100 Dollars (\$31,047.73). Payment is to be made within thirty (30) days of receipt of CONSULTANT's monthly billings.
3. Relationship of the Parties: The parties intend that an independent consultant relationship will be created by this Contract. CITY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONSULTANT. CONSULTANT is not to be considered an agent or employee of CITY for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits that CITY provides for CITY's employees. It is understood that CITY does not agree to use CONSULTANT exclusively. It is further understood that CONSULTANT is free to contract for similar services to be performed for other persons while they are under contract with CITY.
4. Liability and Insurance: The work to be performed under this Contract will be performed entirely at CONSULTANT's risk. CONSULTANT shall acquire, and maintain at its own expense for the duration of this Contract, Professional Liability Insurance issued by a responsible insurance company licensed to do business in the State of Oregon. The insurance shall afford limits of liability of \$1,000,000 to protect CITY against claims for damages occurring by reason of negligent acts, errors or omissions of CONSULTANT in conjunction with performance under this Agreement. The Professional Liability Insurance coverage shall be in an amount at least equal to the greater of either the amount required by Oregon Revised Statute 30.270 or such other insurance coverage amounts as may be required by the bid specifications of this Contract. CONSULTANT shall not commence work under the Contract until it has furnished CITY with a copy of said Professional Liability Insurance and required coverage as stated below:
 - 4.1 Workers' compensation coverage as required by law and to include employer's liability with limits of not less than \$500,000 per occurrence; or, alternatively, CONSULTANT shall provide documentation establishing that CONSULTANT is exempt from workers' compensation coverage pursuant to ORS Chapter 656.

4.2 If CONSULTANT uses automobiles to complete the contract, automobile liability insurance as a result of death or bodily injury to any persons, or destruction of or damage to any property arising out of the ownership, maintenance or use of any owned, non-owned or hired motor vehicle with limits of not less than \$500,000 per occurrence. All coverage shall be on an occurrence basis.

4.3 CONSULTANT shall maintain an excess/umbrella liability policy of not less than \$2,000,000 each occurrence and aggregate that will provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability.

4.4 The following inclusions to CONSULTANT'S certificate of insurance shall be made:

4.4.1 Waiver of transfer of rights of recovery against others to City of Klamath Falls;

4.4.2 The insurance is primary to and non-contributory with any insurance maintained by City of Klamath Falls;

4.4.3 All required coverage shall be written with companies that have at least an AmBest rating of A-; and

4.4.4 The insurance shall provide a 30 day notice of cancellation or material change; and the insurance certificate shall include endorsements for additional insured, naming "City of Klamath Falls, its elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement shall be attached to the certificate of insurance. The additional insured shall contain a severability of interest provision in favor of City of Klamath Falls and a waiver of subrogation in favor of City of Klamath Falls.

5. Compliance with Rules and Regulations: CONSULTANT shall comply with all rules and regulations as contained in all applicable Federal, State and local laws, rules and regulations and shall require any and all subcontractors to comply with all applicable provisions of the same and of this Contract, including the following Oregon Statutory provisions:

5.1 CONSULTANT shall make payment promptly, as due, to all persons supplying to CONSULTANT labor or material for the performance of the work to be performed under this Contract. CONSULTANT shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished. [ORS 279B.220(1)&(3)]

5.2 CONSULTANT shall pay all contributions or amounts due the Industrial Accident Fund from CONSULTANT, or any subcontractor, incurred in the performance of this Contract. [ORS 279B.220(2)]

5.3 CONSULTANT shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279B.220(4)]

5.4 CONSULTANT shall comply with the overtime and maximum hours of labor provisions of ORS 279B.020 and 279B.235.

5.5 CONSULTANT, and all other employers working under this Contract, will comply with the workers' compensation provisions of ORS 656.017 (unless CONSULTANT or other employers are exempt under ORS 656.126.) [ORS 279B.230(2)]

5.6 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT or a subcontractor by any person, or the assignee of the person in connection with this Contract as the claim becomes due, CITY may, at its option, pay such claim and charge the amount of payment against funds due or to become due CONSULTANT by reason of this Contract. [ORS 279C.515(1)]

5.7 CONSULTANT shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to employees of CONSULTANT, of all sums that the CONSULTANT agrees to pay for the services and all moneys and sums that the CONSULTANT collected or deducted from the wages of the CONSULTANT'S employees under any law, contract or agreement for the purpose of providing or paying for the services. [ORS 279B.230(1)]

5.8 CONSULTANT warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. CONSULTANT agrees it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract. CONSULTANT'S failure to comply with the tax laws of this state or a political subdivision of this state is a default for which CITY may terminate the contract and seek damages and other relief available under the terms of the contract or under applicable law.

6. Responsibility of CONSULTANT: CONSULTANT shall provide the services set forth herein in an efficient, expeditious, and professional manner in accordance with all applicable laws governing such work, and shall work closely with and be guided by CITY. CONSULTANT shall be responsible for the professional quality, technical adequacy and accuracy, and timely completion of services performed by CONSULTANT as set forth in Exhibit A. It is the intent of CITY that said services be completed to achieve the best possible results in accordance with generally accepted professional standards applicable to the types of services and work provided hereunder at the most economical cost. CONSULTANT shall be and remain liable, in accordance with applicable law, for all damage to and costs incurred by the CITY to the extent caused by, arising from or connected with the CONSULTANT'S negligent errors, omissions or performance of any of the services furnished under this Agreement.

7. Equal Employment Opportunity/Affirmative Action/Minority Business Enterprises:

7.1 Throughout the term of this Contract, CONSULTANT shall fully comply with the equal employment opportunity requirements of federal, state and local law and shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, or physical or mental disability. CONSULTANT'S policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, disciplinary action, lay-off and termination.

7.2 CONSULTANT shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ, and advance

in employment, women, minorities, the physically and mentally disabled and other disadvantaged groups.

7.3 CONSULTANT shall make a determined and good faith effort to utilize minority and female business enterprises in its contracted expenditures, including without limitation contracts for the acquisition of goods, services, materials, supplies and equipment used in the performance of this Contract.

7.4 CONSULTANT may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. By executing this Contract, CONSULTANT certifies that CONSULTANT has not discriminated and will not discriminate, in violation of this subsection, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the CONSULTANT violates this certification, the CITY may regard the violation as a breach of contract that permits: (a) termination of the contract; or (b) the CITY to exercise any remedies for breach of contract that are reserved or allowed in this Contract. [ORS 279A.110]

8. Indemnification: CONSULTANT shall indemnify, hold harmless and defend CITY, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature based upon, caused by or arising out of the negligent acts, errors or omissions of CONSULTANT, or violation of any statute, ordinance or regulation. CONSULTANT shall also indemnify CITY against all liability and loss in connection with, and shall assume full responsibility for, payment of all Federal, State and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to CONSULTANT's employees, including any subcontractors, engaged in performance of the contract.

9. Assignment: The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without written authorization of the other.

10. Notices: All written notices given to the CITY by CONSULTANT shall be addressed to and filed with the City Manager at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the CITY to CONSULTANT shall be addressed to Mead & Hunt, Inc. 133 Aviation Blvd, Ste. 100, Santa Rosa, CA 95403, unless notice of change of address is received by the CITY.

11. Legal Actions:

11.1 This Agreement shall be enforceable in Klamath County, Oregon, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in the Klamath County, Circuit Court.

11.2 If suit or action is taken to enforce any of the provisions of this Agreement, the party prevailing therein shall be entitled to recover from the other such sum as the Court

may adjudge reasonable as attorney fees therein, including any appeal thereof, in addition to all other sums provided by law.

12. Termination: This Contract may be terminated at any time by mutual written consent of the parties. Upon receiving a notice of termination of this Contract, CONSULTANT shall immediately cease all activities under this Contract, unless CITY expressly directs otherwise in such notice of termination.

12.1 Upon termination of this Contract, CONSULTANT shall deliver to CITY all documents, information, works in progress and other property that are or would be deliverables had the contract been completed. CITY shall have full ownership, including, but not limited to, intellectual property rights, and control of all such finished and unfinished reports, data, studies, photographs, charts or other work product.

12.2 Expiration or termination of this Contract shall not extinguish or prejudice CITY'S right to enforce this Contract with respect to any breach of a CONSULTANT warranty or any default or defect in CONSULTANT performance that has not been cured.

12.3 In the event that CITY terminates the Contract, CITY shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT pursuant to this Contract; provided, however, that CITY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Contract. CONSULTANT shall, not later than ten (10) calendar days after termination of this Contract by CITY, furnish to CITY such financial information as in the judgment of the CITY'S representative is necessary to determine the reasonable value of the services rendered by CONSULTANT.

12.4 CITY may terminate this Contract, in whole or in part, if any of the following occur:

12.1.1 If CONSULTANT fails to perform its duties to the satisfaction of CITY, or if consultant fails to fulfill in a timely and professional manner its obligations under this Contract, then CITY shall have the right to terminate this Contract effective immediately upon CITY giving written notice thereof to CONSULTANT.

12.1.2 CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONSULTANT'S work;

12.1.3 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or CITY is prohibited from paying for such work from the planned funding source;

12.1.4 CONSULTANT no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation or other law to be held by the CONSULTANT to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that CONSULTANT no longer meets requirements for such license or certificate; or

12.1.5 CONSULTANT commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so

fails to pursue the work as to endanger CONSULTANT'S performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten business days after delivery of CITY's notice, or such longer period of cure as CITY may specify in such notice.

IN WITNESS WHEREOF, the parties have executed this Agreement at Klamath Falls, Oregon, the day and year first above written.

CITY OF KLAMATH FALLS

CONSULTANT

By: _____
Mayor

By: _____
Consultant/CEO

Date: _____

Date: _____

Attest: _____
City Recorder

Attest: _____
Secretary

APPROVED AS TO FORM:

City Attorney

**Wetland Mitigation Site Improvements
Construction Administration Support
Scope of Services**

Task 1. Construction Administration

- a. CONSULTANT shall participate in a pre-construction conference with the contractor. The project engineer and wetland scientist will be in attendance and include a site visit with the contractor.
- b. CONSULTANT shall review contractor submittals.
- c. CONSULTANT will address contractor requests for information.
- d. CONSULTANT will provide construction observation including participation in weekly construction meetings and review of contractor performed quality control test results. A construction observer will be on-site during critical work elements including installation of work isolation measures, installation of culverts, and site inundation. The project engineer will attend weekly construction meetings via teleconference and conduct the substantial completion walk through.
- e. CONSULTANT will review contractor pay requests.
- f. CONSULTANT will review completion of punch list items and authorize final construction closeout.
- g. CONSULTANT will provide a final construction report.
- h. CONSULTANT will prepare an as-built construction report and as-built drawings immediately following acceptance of substantial completion (Year 0) in accordance with DSL monitoring report guidance including photographs, contour elevations, water features and expected wetland boundary. The as-built survey will include any changes from the construction drawings and be in 8.5 by 11-inches format.
- i. CONSULTANT will submit the as-built construction report to the DSL and USACE in conformance with permitting requirements.

Project Schedule

Task 1 - Construction Administration

Pre-construction Meeting	August 2016
Construction	August - October 2016
Construction Close-out	October 2016
As-Built Construction Report	November 2016

TASK 1 - CONSTRUCTION ADMINISTRATION	
Participate in pre-construction conference	\$4,902.03
Review contractor submittals	\$1,302.95
Address contractor RFIs	\$822.97
Provide construction observation	\$14,237.12
Review contractor pay requests	\$902.28
Review completion of punch list items and final pay request	\$719.97
Provide final construction report	\$1,364.75
Prepare and submit as-built construction report	\$6,795.66
LABOR AND EXPENSES TOTAL	\$31,047.73

The contract amount shall be lump sum in the amount of **\$31,047.73**.

KLAMATH FALLS CITY COUNCIL AGENDA REPORT



Agenda Item No. 4

Date: July 18, 2016

Department: Airport	Contact/Title: John Barsalou, Airport Director
Staff Presenter: John Barsalou	Telephone No.: 541-883-5373
City Manager Review: 	Email: jbarsalou@flykfalls.com

TOPIC: Contract with Mead & Hunt, Inc. for Taxiway B Construction Administration Services

SUMMARY AND BACKGROUND:

On June 20, 2016, City Council authorized staff to submit a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant application for the construction of Taxiway B. The project consists of a partial parallel taxiway on the east side of Runway 14/32 and a four-inch asphalt overlay of the eastside aircraft ramp that will be adjacent to the new taxiway.

On June 20, 2016, City Council awarded the construction bid for this project to Rocky Mountain Construction in the amount of \$7,777,777.77.

Mead & Hunt, the design engineers for the Taxiway B project, has submitted a construction administration services contract in the amount of \$675,300. Mead & Hunt, Inc. will provide pre-construction services, construction administration, resident engineering, post-construction services, and special services. Pre-construction and construction administration services will begin after the award of a construction contract, resident engineering will begin with the commencement of construction, post-construction services will conclude within ninety (90) days of final acceptance of construction, and special services will be completed within sixty (60) days of notice to proceed. Mead & Hunt will provide a Project Manager (PM) and Resident Engineer (RE) for the duration of the project.

Mead & Hunt's scope of services has been reviewed and approved by the FAA.

FINANCIAL IMPACT:

The proposed Mead & Hunt contract is for \$675,300 of which the FAA will pay 93.75% or \$633,093.75 and the Airport will pay the remaining 6.25% or \$42,206.25 which has been budgeted from the Airport Operating Fund.

COUNCIL OPTIONS:

- Approve the construction services contract with Mead & Hunt
- Direct staff to renegotiate contract with Mead & Hunt
- Reject contract

4

DOCUMENTS ATTACHED:

- Contract

RECOMMENDED MOTION/ACTION:

Move to authorize staff to execute contract with Mead & Hunt, Inc. in the amount of \$675,300

NOTICE SENT TO:

Mead & Hunt, Inc.

4

CONTRACT AGREEMENT
[Consultant Services – Mead & Hunt & CA Services / Taxiway B]

THIS AGREEMENT executed on the date last signed below, by and between the CITY OF KLAMATH FALLS, a municipal corporation, herein referred to as "CITY," and Mead & Hunt, Inc., herein referred to as "CONSULTANT."

In consideration of the mutual promises set forth herein, CITY and CONSULTANT agree as follows:

1. Description of Work: CONSULTANT agrees to perform the services set forth in attached Exhibit A incorporated herein by this reference. Time is of the essence in completing this Contract and CONSULTANT agrees to complete the services set forth in Exhibit A within the time frame(s) provided in the Exhibit A.
2. Payment: CITY agrees to pay CONSULTANT a sum not to exceed Six Hundred Thousand Seventy-Five Thousand and Three Hundred 00/100 Dollars (\$675,300.00) at the rates set forth in Exhibit A on a time and expenses basis. Payment is to be made within thirty (30) days of receipt of CONSULTANT's monthly billings.
3. Relationship of the Parties: The parties intend that an independent consultant relationship will be created by this Contract. CITY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONSULTANT. CONSULTANT is not to be considered an agent or employee of CITY for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits that CITY provides for CITY's employees. It is understood that CITY does not agree to use CONSULTANT exclusively. It is further understood that CONSULTANT is free to contract for similar services to be performed for other persons while they are under contract with CITY.
4. Liability and Insurance: The work to be performed under this Contract will be performed entirely at CONSULTANT's risk. CONSULTANT shall acquire, and maintain at its own expense for the duration of this Contract, Professional Liability Insurance issued by a responsible insurance company licensed to do business in the State of Oregon. The insurance shall afford limits of liability of \$1,000,000 to protect CITY against claims for damages occurring by reason of negligent acts, errors or omissions of CONSULTANT in conjunction with performance under this Agreement. The Professional Liability Insurance coverage shall be in an amount at least equal to the greater of either the amount required by Oregon Revised Statute 30.270 or such other insurance coverage amounts as may be required by the bid specifications of this Contract. CONSULTANT shall not commence work under the Contract until it has furnished CITY with a copy of said Professional Liability Insurance and required coverage as stated below:
 - 4.1 Workers' compensation coverage as required by law and to include employer's liability with limits of not less than \$500,000 per occurrence; or, alternatively, CONSULTANT shall provide documentation establishing that CONSULTANT is exempt from workers' compensation coverage pursuant to ORS Chapter 656.

4.2 If CONSULTANT uses automobiles to complete the contract, automobile liability insurance as a result of death or bodily injury to any persons, or destruction of or damage to any property arising out of the ownership, maintenance or use of any owned, non-owned or hired motor vehicle with limits of not less than \$500,000 per occurrence. All coverage shall be on an occurrence basis.

4.3 CONSULTANT shall maintain an excess/umbrella liability policy of not less than \$2,000,000 each occurrence and aggregate that will provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability.

4.4 The following inclusions to CONSULTANT'S certificate of insurance shall be made:

4.4.1 Waiver of transfer of rights of recovery against others to City of Klamath Falls;

4.4.2 The insurance is primary to and non-contributory with any insurance maintained by City of Klamath Falls;

4.4.3 All required coverage shall be written with companies that have at least an AmBest rating of A-; and

4.4.4 The insurance shall provide a 30 day notice of cancellation or material change; and the insurance certificate shall include endorsements for additional insured, naming "City of Klamath Falls, its elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement shall be attached to the certificate of insurance. The additional insured shall contain a severability of interest provision in favor of City of Klamath Falls and a waiver of subrogation in favor of City of Klamath Falls.

5. Compliance with Rules and Regulations: CONSULTANT shall comply with all rules and regulations as contained in all applicable Federal, State and local laws, rules and regulations and shall require any and all subcontractors to comply with all applicable provisions of the same and of this Contract, including the following Oregon Statutory provisions:

5.1 CONSULTANT shall make payment promptly, as due, to all persons supplying to CONSULTANT labor or material for the performance of the work to be performed under this Contract. CONSULTANT shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished. [ORS 279B.220(1)&(3)]

5.2 CONSULTANT shall pay all contributions or amounts due the Industrial Accident Fund from CONSULTANT, or any subcontractor, incurred in the performance of this Contract. [ORS 279B.220(2)]

5.3 CONSULTANT shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279B.220(4)]

5.4 CONSULTANT shall comply with the overtime and maximum hours of labor provisions of ORS 279B.020 and 279B.235.

5.5 CONSULTANT, and all other employers working under this Contract, will comply with the workers' compensation provisions of ORS 656.017 (unless CONSULTANT or other employers are exempt under ORS 656.126.) [ORS 279B.230(2)]

4

5.6 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT or a subcontractor by any person, or the assignee of the person in connection with this Contract as the claim becomes due, CITY may, at its option, pay such claim and charge the amount of payment against funds due or to become due CONSULTANT by reason of this Contract. [ORS 279C.515(1)]

5.7 CONSULTANT shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to employees of CONSULTANT, of all sums that the CONSULTANT agrees to pay for the services and all moneys and sums that the CONSULTANT collected or deducted from the wages of the CONSULTANT'S employees under any law, contract or agreement for the purpose of providing or paying for the services. [ORS 279B.230(1)]

5.8 CONSULTANT warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. CONSULTANT agrees it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract. CONSULTANT'S failure to comply with the tax laws of this state or a political subdivision of this state is a default for which CITY may terminate the contract and seek damages and other relief available under the terms of the contract or under applicable law.

6. Responsibility of CONSULTANT: CONSULTANT shall provide the services set forth herein in an efficient, expeditious, and professional manner in accordance with all applicable laws governing such work, and shall work closely with and be guided by CITY. CONSULTANT shall be responsible for the professional quality, technical adequacy and accuracy, and timely completion of services performed by CONSULTANT as set forth in Exhibit A. It is the intent of CITY that said services be completed to achieve the best possible results in accordance with generally accepted professional standards applicable to the types of services and work provided hereunder at the most economical cost. CONSULTANT shall be and remain liable, in accordance with applicable law, for all damage to and costs incurred by the CITY to the extent caused by, arising from or connected with the CONSULTANT's negligent errors, omissions or performance of any of the services furnished under this Agreement.

7. Equal Employment Opportunity/Affirmative Action/Minority Business Enterprises:

7.1 Throughout the term of this Contract, CONSULTANT shall fully comply with the equal employment opportunity requirements of federal, state and local law and shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, or physical or mental disability. CONSULTANT's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, disciplinary action, lay-off and termination.

7.2 CONSULTANT shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ, and advance

in employment, women, minorities, the physically and mentally disabled and other disadvantaged groups.

7.3 CONSULTANT shall make a determined and good faith effort to utilize minority and female business enterprises in its contracted expenditures, including without limitation contracts for the acquisition of goods, services, materials, supplies and equipment used in the performance of this Contract.

7.4 CONSULTANT may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. By executing this Contract, CONSULTANT certifies that CONSULTANT has not discriminated and will not discriminate, in violation of this subsection, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the CONSULTANT violates this certification, the CITY may regard the violation as a breach of contract that permits: (a) termination of the contract; or (b) the CITY to exercise any remedies for breach of contract that are reserved or allowed in this Contract. [ORS 279A.110]

8. Indemnification: CONSULTANT shall indemnify, hold harmless and defend CITY, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature based upon, caused by or arising out of the negligent acts, errors or omissions of CONSULTANT, or violation of any statute, ordinance or regulation. CONSULTANT shall also indemnify CITY against all liability and loss in connection with, and shall assume full responsibility for, payment of all Federal, State and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to CONSULTANT's employees, including any subcontractors, engaged in performance of the contract.

9. Assignment: The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without written authorization of the other.

10. Notices: All written notices given to the CITY by CONSULTANT shall be addressed to and filed with the City Manager at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the CITY to CONSULTANT shall be addressed to Mead & Hunt, Inc. 133 Aviation Blvd, Ste. 100, Santa Rosa, CA 95403, unless notice of change of address is received by the CITY.

11. Legal Actions:

11.1 This Agreement shall be enforceable in Klamath County, Oregon, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in the Klamath County, Circuit Court.

11.2 If suit or action is taken to enforce any of the provisions of this Agreement, the party prevailing therein shall be entitled to recover from the other such sum as the Court

may adjudge reasonable as attorney fees therein, including any appeal thereof, in addition to all other sums provided by law.

12. Termination: This Contract may be terminated at any time by mutual written consent of the parties. Upon receiving a notice of termination of this Contract, CONSULTANT shall immediately cease all activities under this Contract, unless CITY expressly directs otherwise in such notice of termination.

12.1 Upon termination of this Contract, CONSULTANT shall deliver to CITY all documents, information, works in progress and other property that are or would be deliverables had the contract been completed. CITY shall have full ownership, including, but not limited to, intellectual property rights, and control of all such finished and unfinished reports, data, studies, photographs, charts or other work product.

12.2 Expiration or termination of this Contract shall not extinguish or prejudice CITY'S right to enforce this Contract with respect to any breach of a CONSULTANT warranty or any default or defect in CONSULTANT performance that has not been cured.

12.3 In the event that CITY terminates the Contract, CITY shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT pursuant to this Contract; provided, however, that CITY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Contract. CONSULTANT shall, not later than ten (10) calendar days after termination of this Contract by CITY, furnish to CITY such financial information as in the judgment of the CITY'S representative is necessary to determine the reasonable value of the services rendered by CONSULTANT.

12.4 CITY may terminate this Contract, in whole or in part, if any of the following occur:

12.1.1 If CONSULTANT fails to perform its duties to the satisfaction of CITY, or if consultant fails to fulfill in a timely and professional manner its obligations under this Contract, then CITY shall have the right to terminate this Contract effective immediately upon CITY giving written notice thereof to CONSULTANT.

12.1.2 CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONSULTANT'S work;

12.1.3 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or CITY is prohibited from paying for such work from the planned funding source;

12.1.4 CONSULTANT no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation or other law to be held by the CONSULTANT to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that CONSULTANT no longer meets requirements for such license or certificate; or

12.1.5 CONSULTANT commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so

fails to pursue the work as to endanger CONSULTANT'S performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten business days after delivery of CITY's notice, or such longer period of cure as CITY may specify in such notice.

IN WITNESS WHEREOF, the parties have executed this Agreement at Klamath Falls, Oregon, the day and year first above written.

CITY OF KLAMATH FALLS

CONSULTANT

By: _____
Mayor

By: _____
Consultant/CEO

Date: _____

Date: _____

Attest: _____
City Recorder

Attest: _____
Secretary

APPROVED AS TO FORM:

City Attorney

4

Exhibit A

Crater Lake – Klamath Regional Airport City of Klamath Falls Taxiway B Construction Construction Services Work Scope July 7, 2016

Project Description: The project involves construction of a new partial parallel taxiway on the east side of Runway 14-32, between existing taxiways B and E. Final design is underway for the segment between Taxiway B and Runway 7-25. The construction will include, but is not limited to: new asphalt concrete (AC) pavement, edge lights, guidance signs, updates to Airfield Lighting Control and Monitoring System (ALCMS), electrical vault improvements, and miscellaneous drainage improvements.

The construction cost of the project is \$7,777,777.77. The construction contract time for this project is estimated to be one hundred twenty (120) calendar days to substantial completion, and an additional thirty (30) days to final acceptance, for a total contract time of one hundred fifty (150) days from notice to proceed. It is anticipated that this project will be funded under the Federal Aviation Administration (FAA) Airport Improvement Plan (AIP) grant with local matching funds provided by the City of Klamath Falls (CITY).

Scope of Services: Mead & Hunt, Inc. (CONSULTANT) will provide pre-construction services, construction administration, resident engineering, post-construction services, and special services. Pre-construction and construction administration services will begin after the award of a construction contract, resident engineering will begin with the commencement of construction, post-construction services will conclude within ninety (90) days of final acceptance of construction, and special services will be completed within sixty (60) days of notice to proceed. The CONSULTANT will provide a Project Manager (PM) and Resident Engineer (RE) for the duration of the project.

CONSULTANT work depends on close collaboration with the Airport, City of Klamath Falls (CITY), and upon information developed in coordination with the Airport's chosen contractor.

Assumptions: This scope of services was developed under the following assumptions:

- Estimated construction time for this project is one-hundred fifty (150) calendar days. The anticipated contract time will include one hundred twenty (120) calendar days for substantial completion and thirty (30) additional calendar days for closeout items.
- Day working hours for this project are anticipated to be twelve (12) hours per day, five (5) days per week, for the one hundred twenty (120) calendar day time duration and twelve (12) hours per day, three (3) working days per week for the additional thirty (30) calendar day time period.

- Night work for this project is anticipated to be twelve (12) hours, five (5) nights per week, for a duration of three (3) weeks.
- This project will require one (1) full-time Resident Engineer (RE) and one (1) part-time RE. RE means "Engineer" as defined in Section 10 (Section 10-42) of the General Provisions.

SECTION I - PRE-CONSTRUCTION SERVICES

1.0 Pre-Construction Conference

CONSULTANT will arrange and conduct the pre-construction conference. CONSULTANT will establish this meeting to review FAA and project specific requirements prior to commencing construction. The CITY will provide a meeting location, and participants are expected to include the CITY, Construction Contractor, Airport tenants affected by construction, and utility companies. The pre-construction conference will be attended by three (3) CONSULTANT staff. This task will include the following:

- Schedule meeting, send invitations, provide meeting materials, and prepare meeting exhibits.
- Obtain and review the project construction schedules from the Construction Contractor prior to presentation at the pre-construction conference. The CITY will be provided copies of the construction schedules.
- Preside at the pre-construction conference, prepare a record of the conference, submit record to the CITY for review and comment, and distribute the final record.
- CONSULTANT will assist CITY in completing National NAS Strategic Interruptions Service Level Agreement. Agreement shall be submitted via e-mail based on Schedules provided by Construction Contractor.

2.0 Initial Construction Layout (Not in Contract)

Horizontal and vertical control are provided in the design documents. Construction layout is the responsibility of the Construction Contractor per Section 50-06 of the General Provisions. Construction Layout is not included in CONSULTANT's scope of work.

3.0 Prepare Construction Management Plan (CMP)

A construction management plan will be generated in accordance with FAA Engineering Guidance 98-09. The CMP will include a summary of the following:

- Introduction
- Personnel
- Inspection Procedures and Frequencies
- Submittal Process
- Quality Control Testing

4

- Acceptance Testing
- Test Results
- Final Test and Quality Control Report

4.0 Prepare Project Files

The CONSULTANT will update the contract documents to include addenda items issued during bidding. CONSULTANT will provide five (5) half size print sets of "As-Bid" contract documents to the CITY, in addition to an electronic PDF version. CONSULTANT will prepare the quantity sheets, testing sheets, and lot layouts for acceptance testing.

5.0 Grant Administration Services

The CONSULTANT will assist the CITY with necessary project tracking documentation in order to submit federal reimbursement requests and make periodic draws on the grant. This work will include the following:

- Calculate invoice summary included in the grant draw request.
- Assemble supporting documentation to include invoices and estimates.
- Prepare form 5100-100, Application for Federal Assistance (Construction Programs).

SECTION II - CONSTRUCTION SERVICES

6.0 Construction Administration

CONSULTANT will provide project management support for the duration of the project with an assigned Project Manager (PM). Work will be performed under the supervision of the PM with assistance of office based engineering staff, supporting the items as appropriate, in addition of resident engineering staff quantified in Section 7.0.

The PM will review the project and make periodic site visits. The number, duration, and purpose of site visits is described below.

The CONSULTANT is generally expected to perform the following services:

- Site Visits
 - One (1) site visit for each of the twenty-two (22) anticipated weekly progress meetings.
 - One (1) site visit for substantial completion inspection.
- Monitoring of CONSULTANT staff and budgets, including supervision and coordination of sub-consultant contracts.
- Monthly invoicing to the CITY – Includes project activities, project billings, and anticipated effort for the following month.
- Provide interpretation of plans and specifications in the form of written responses to Construction Contractor's Requests For Information (RFI). It is expected that up to twenty (20) RFI's will be issued during the project.

- Review shop drawings and Construction Contractor submitted certificates for compliance with design concepts. It is expected that up to thirty (30) shop drawings will be reviewed.
- Submit pay applications using CITY standard forms.
- Furnish the CITY and FAA with weekly construction progress and inspection reports (FAA Form 5370-1) along with photos taken from the work week.
- Prepare change orders which include a cost estimate, cost/price analysis, and prepare and negotiate necessary interpretations and clarifications, additions and deletions to change orders, and supplemental agreements, as required. CONSULTANT will submit copies to CITY and the FAA for approval and signature before proceeding with the work. Additional design is not considered in this scope. It is expected that two (2) change orders will be processed for the project.
- Review Construction Contractor's weekly submitted payrolls for compliance with Federal and State law on classification and wage rates.
- Attend substantial completion inspection and issue notice of substantial completion.

7.0 Resident Engineering

The Resident Engineering staff will be on-site every day that the Construction Contractor is known to be on the project, for the one hundred fifty (150) contractual day project. This scope and fee is developed based upon the Construction Contractor working the following hours:

- Five (5) twelve (12) hour days per week for one hundred twenty (120) calendar days.
- Three (3) weeks of twelve (12) hour nights, five (5) nights per week for a duration of three (3) weeks
- Three (3) twelve (12) hour days per week for the thirty (30) calendar days during the project closeout time period.

CONSULTANT will perform the following:

- Monitor compliance with plans and specifications including:
 - Acquire field measurements
 - Provide entries in the construction diary
 - Coordinate and schedule staff
 - Answer questions
 - Observe quality control activities
 - Assist with quantity verification
 - Review daily acceptance testing
 - Report non-compliance issues to the CITY.
 - Record As-Built changes
- Maintain daily records of the Construction Contractor's progress and activities during the course of construction and include progress of work. These records will document work in progress, quality and quantity of materials delivered, test locations and results, instructions provided the

4

Construction Contractor, weather conditions, equipment use, labor requirements, safety problems, and required changes.

- Provide sufficient surveys and observe and check surveys conducted by the Construction Contractor in accordance with the plans and specifications.
- Review that testing required by the specifications is performed, and review materials reports prepared in accordance with the Construction Management Plan (CMP).
- The Resident Engineer will notify the CITY and Construction Contractor of failure of the work or materials to conform to the requirements of the contract, plans, or specifications. The Resident Engineer may reject nonconforming materials and will notify the Construction Contractor to suspend work in question, until such issues can be referred to the CITY for a final decision.
- Evaluate and determine the acceptability of substitute materials and equipment proposed by the Construction Contractor. CONSULTANT will evaluate the Construction Contractor's suggestions on drawing or specification modification, and report those suggestions to the CITY and FAA, as appropriate.
- Prepare periodic pay estimates, including the final estimate, during the project. The CONSULTANT will determine the amount owed to the Construction Contractor and recommend those payment amounts in writing to the Construction Contractor. The payment recommendations will demonstrate that work has progressed to the point indicated for payment and that, to the CONSULTANT's best knowledge, information, and belief, the quality of such work is in accordance with the contract documents.
- Monitor the Construction Contractor's compliance with the Construction Safety and Phasing Plan (CSPP) and bring non-compliance issues to the attention of the Construction Contractor.
- Establish and conduct weekly construction progress meetings with the Construction Contractor and CITY to discuss pertinent construction issues such as construction progress, schedule review, field observations, operational safety on the airport, RFI's, change orders, submittals, and QA/QC testing.
- Schedule and conduct an inspection with the CITY, Construction Contractor, and FAA representatives to determine whether the project has reached substantial completion in accordance with the plans and specifications. CONSULTANT will document items found to be deficient and provide the Construction Contractor a listing of those items.

CONSULTANT, with subconsultant resources, will perform acceptance testing in coordination with the Construction Contractor including the following:

- Acceptance testing shall be in accordance with the contract requirements and standard methods of FAA, ASTM, and AASHTO.

- Tests will be recorded on the appropriate forms.
- A summary and disposition of testing and materials inspection will be prepared including a record of deviating tests.
- Conduct materials inspections and acceptance tests required by the FAA and observe and evaluate such tests made by the Contractor in the field and laboratory as necessary in accordance with plans and specifications.

4

SECTION III – POST-CONSTRUCTION SERVICES

8.0 Final Inspection and Documentation

8.1 Final Punch List

CONSULTANT will prepare a punch list correspondence to include deficient items from the substantial completion inspection and will forward the correspondence to the Construction Contractor. Punch list will state the items in need of correction and will request a schedule for completion. CONSULTANT will include a copy in the Final Closeout Report.

8.2 Final Inspection

When the project is complete and ready for final acceptance, the CONSULTANT will arrange for inspection of the finished work by the CITY, CONSULTANT, and Construction Contractor. After final inspection and acceptance, CONSULTANT will prepare and submit the final cost estimate to the CITY.

9.0 Record Drawings, Equipment Manuals, Materials Book, AGIS upload

9.1 Record Drawings

CONSULTANT will prepare record drawings from Construction Contractor provided redlines along with inspector redlines. The record drawings will specify field constructed conditions included as part of this project, such as field surveying required to compute final quantities. Any drawings will become record information. CONSULTANT will provide the CITY with two (2) full size print sets of "Record Drawings" and one (1) CD containing the record drawing CAD files. One (1) full size print of "Record Drawings" and one (1) CD containing the record drawing CAD files will be provided to FAA.

CONSULTANT will update Form 5320-1, Pavement Strength Survey for the new Taxiway B pavement.

9.2 Equipment Manuals

CONSULTANT will review Construction Contractor provided equipment operation manuals. CONSULTANT will collect and bind the approved project equipment manuals into one document for use by the CITY. The CITY will receive two (2) hard copies of the bound document.

9.3 Materials Book

CONSULTANT will assemble the materials quality book for the project. The materials book will include an accounting for quality acceptance testing performed as part of this project, a summary of passing tests, as well as failing tests, and corrective measures taken to achieve satisfactory results. The CITY will receive two (2) hard copies of the bound document.

9.4 AGIS Data Upload

This Scope of Work includes performing a construction data upload in accordance with FAA Advisory Circular (AC) 150/5300-18B. As part of this task, CONSULTANT will perform the data upload and submit the required survey documentation to the airports geographical information system (AGIS) for review. The Crater Lake-Klamath Regional Airport currently does not have any information in the AGIS database. The CONSULTANT's scope of work for this task includes design survey and confirming accuracy requirements are met through Construction Contractor's Record Drawings for the newly constructed Taxiway B only. No new survey work will be completed for this task.

As required by the FAA, the CONSULTANT will develop a Statement of Work, Survey, and Quality Control Plan. These three (3) documents will be submitted to the Sponsor and FAA Program Manager for their review. The report will be submitted in portable document format (pdf) or by form provided on the Airport Surveying-GIS website.

This AGIS Data Upload excludes field survey and any AGIS data not directly associated with the construction of Taxiway B.

10.0 Final Closeout Report

CONSULTANT will prepare a final closeout report prepared in accordance with Engineering Guidance 2013-12 provided by the Northwest Mountain Region. The report will include the project closeout requirements identified in Paragraph 1 (a. – g.), Paragraph 4 (a. – m.), and a completed AIP Project Closeout Checklist. The CITY will provide copies of executed sponsor certifications to the CONSULTANT for inclusion into the final closeout report.

11.0 Airport Layout Plan and Operational Drawings Update

CONSULTANT will update the Airport Layout Plan (ALP) to reflect the new Taxiway B geometry and any associated geometric changes to connector taxiways. Only sheets of the ALP set which depict the geometric changes of this project will be updated.

CONSULTANT will submit two (2) PDF copies of the updated ALP sheets to the CITY and FAA.

CONSULTANT will update three (3) additional drawings related to the ALP. These drawings are limited to Runway and Taxiway Safety Area Dimensions, Airport Operations Diagram, and Airfield Lighting Obstructions and Wind Indicators diagrams. These drawings will be provided in PDF format to the CITY for use and incorporation into the Airport Certification Manual (ACM).

4

SECTION IV – SPECIAL SERVICES

12.0 Pavement Classification Number (PCN) Calculations and Analysis

CONSULTANT will perform PCN Calculations using FAA COMFAA program in accordance with AC 150/5335-5C. The two basic forms of calculating PCN is to use the “Technical Method” which uses detailed geotechnical information or to use the “Aircraft Method” which does not included detailed geotechnical information in the analysis. There is sufficient data available LMT’s main Runway 14-32 to perform the analysis based on the Technical Method. Without gathering additional geotechnical information, it is not possible to perform PCN using the Technical Method, therefore, the Aircraft Method will be used to perform the PCN calculation on Runway 7-25. Both methods are allowable per FAA AC 150/5335-5C.

CONSULTANT will work with the CITY to prepare and develop aircraft fleet mix. The fleet mix shall be used for the analysis on Runways 14-32 and 7-25.

- CITY will make available to CONSULTANT available fleet mix data available for Runways 14-32 and 7-25.
- CONSULTANT will request and obtain the available aircraft traffic data from the prepared “Using Aircraft Fleet Mix” based on purchased information available on the FAA Traffic Flow Management System Counts website.
- A total of three (3) PCN models will be completed.
 - Runway 14-32 will be completed using the Technical Method as described in AC 150/5335-5C.
 - Runway 7-25 will be completed using the Aircraft Method as described in AC 150/5335-5C.
 - Taxiway B will be completed using the Technical Method as described in AC 150/5335-5C.

SCHEDULE OF COMPLETION

The CONSULTANT will complete work as follows:

- Section I – Pre Construction Services prior to Contractor’s Construction Notice to proceed
- Section II – Construction Services in accordance with approved Contractor’s Schedule one-hundred twenty (120) calendar days to substantial completion and one hundred fifty (150) calendar days to final acceptance.
- Section III – Post Construction Services within ninety (90) days of final construction acceptance
- Section IV – Special Services within sixty (60) days of notice to proceed.

Estimated project schedule is included as Attachment 1 of this Scope of Services.

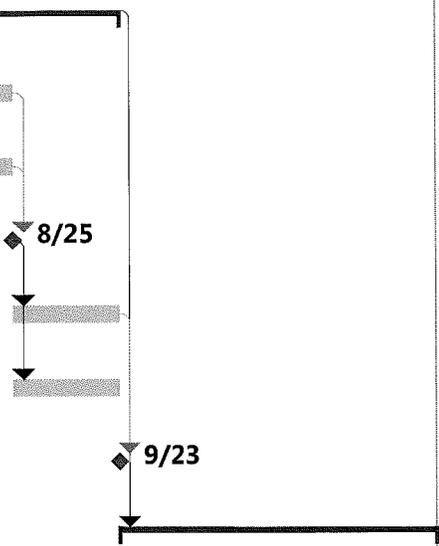
COMPENSATION FOR SERVICES

Payment for all work outlined in this Scope of Services shall be for a sum not to exceed the amount set forth in Attachment 2 of this Scope of Services on a time and expenses basis at the rates set forth in Attachment 3 of this Scope of Services.

4

ATTACHMENT 1
PROJECT SCHEDULE

ID	Task Name	Duration	Qtr 4, 2017					Qtr 1, 2018	
			Aug	Sep	Oct	Nov	Dec	Jan	
1	NTP	0 days							
2	Section I - Pre-Construction	14 day							
3	Prepare CMP	14 day							
4	Prepare Project Files	14 day							
5	Preconstruction Meeting	0 days							
6	Section II - Construction Services	150 day							
7	Construction Administration	120 day							
8	Resident Engineering	120 day							
9	Substantial Completion	0 days							
10	Construction Administration	30 day							
11	Resident Engineering	30 day							
12	Final Acceptance	0 days							
13	Section III - Post Construction Services	90 day							
14	Record Drawings	60 day							
15	Equipment Manuals	60 day							
16	Materials Book	60 day							
17	AGIS Data Upload	60 day							
18	Final Closeout Report	30 day							
19	ALP Update	30 day							
20	Section IV - Special Services	60 day							
21	PCN Calculations	60 day							



4

ATTACHMENT 2
ENGINEERING SERVICES COST ESTIMATE

Construction Engineering Fee
 AIRPORT: Crater Lake - Klamath Regional Airport
 LOCATION: Klamath Falls, OR
 AIP PROJECT NO.: 3-41-0030-37
 PROJECT NO.: 1115200-150967.01
 PROJECT DESCRIPTION: Taxiway B Construction

SECTION I - PRE-CONSTRUCTION	Engineering Fee
1.0 Preconstruction Conference	\$9,350.00
2.0 Initial Construction Layout - N.I.C.	\$0.00
3.0 Prepare Construction Management Plan (CMP)	\$2,668.00
4.0 Prepare Project Files	\$2,668.00
5.0 Grant Administration Assistance Expenses	\$5,326.00
	\$1,975.00
TOTAL SECTION I - PRE-CONSTRUCTION	\$21,987.00
SECTION II - CONSTRUCTION SERVICES	
6.0 Construction Administration Expenses	\$142,796.00
	\$12,980.00
TOTAL SECTION II - CONSTRUCTION SERVICES	\$155,776.00
SECTION III - CONSTRUCTION SERVICES, RE	
7.0 Resident Engineering Construction Staking - N.I.C.	\$322,968.00
Acceptance Testing (Included in RE)	-
Construction Administration (Included in RE) Expenses	\$46,640.00
TOTAL SECTION III - CONSTRUCTION SERVICES, RE	\$369,608.00
SECTION IV - POST CONSTRUCTION	
8.0 Final Inspection and Documentation	\$7,152.00
9.0 Record Drawings, Equipment Manuals, Materials Books, AGIS	\$26,569.00
10.0 Final Closeout Report	\$5,960.00
11.0 Airport Layout Plan and Operational Drawings Update Expenses	\$3,836.00
	\$1,260.00
TOTAL SECTION IV - POST CONSTRUCTION	\$44,777.00
SECTION V - SPECIAL SERVICES	
12.0 PCN Calculations and Analysis Expenses	\$8,716.00
	\$0.00
TOTAL SECTION V - SPECIAL SERVICES	\$8,716.00
TOTAL MEAD & HUNT FEES	\$600,864.00

DIRECT SUB CONSULTANTS	Fee
Field Inspection	\$0.00
Pavement/Soil Testing	\$74,436.00
Electrical Design	\$0.00
Environmental Site Assessment	\$0.00
Other	\$0.00
Expenses	\$0.00
TOTAL DIRECT SUB CONSULTANTS	\$74,436.00
TOTAL ENGINEERING FEES	\$675,300.00

Item No.	Senior Associate	Project Engineer	Engineer I (CA)	Engineer II (RE)	Engineer I (RE)	Admin. Assistant	Total Hours	Cost Summary
SECTION I - PRE-CONSTRUCTION								
1.0 Preconstruction Conference								
• Provide meeting materials	0	4	0	0	0	2	6	\$862.00
• Obtain and review construction schedules	0	8	0	0	0	0	8	\$1,416.00
• Arrange, conduct, and document pre-con conf	0	16	0	16	0	0	48	\$7,072.00
• Strategic events coordination form	0	1	0	2	0	0	3	\$465.00
Estimated Total Man-hours	0	28	0	16	16	2	62	
Summary Costs	\$0.00	\$4,956.00	\$0.00	\$2,304.00	\$1,936.00	\$154.00		\$9,350.00
2.0 Initial Construction Layout - N.I.C.								
Estimated Total Man-hours	0	0	0	0	0	0	0	\$0.00
Summary Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
3.0 Prepare Construction Management Plan (CMP)								
• Collect Data for CMP	0	2	4	0	0	0	6	\$838.00
• Prepare CMP	0	4	8	0	0	2	14	\$1,830.00
Estimated Total Man-hours	0	6	12	0	0	2	20	\$2,668.00
Summary Costs	\$0.00	\$1,062.00	\$1,452.00	\$0.00	\$0.00	\$154.00		\$2,668.00
4.0 Prepare Project Files								
• As-Bid Contract Documents	0	4	8	0	0	0	12	\$1,676.00
• Quantity and testing sheets, lot layouts	0	2	4	0	0	2	8	\$992.00
Estimated Total Man-hours	0	6	12	0	0	2	20	\$2,668.00
Summary Costs	\$0.00	\$1,062.00	\$1,452.00	\$0.00	\$0.00	\$154.00		\$2,668.00
5.0 Grant Administration Assistance								
• Calculate invoice summary	0	6	0	0	0	12	18	\$1,986.00
• Assemble supporting documentation	0	12	0	0	0	0	12	\$2,124.00
• FAA Form 5100-100	0	6	0	0	0	2	8	\$1,216.00
Estimated Total Man-hours	0	24	0	0	0	14	38	\$5,326.00
Summary Costs	\$0.00	\$4,248.00	\$0.00	\$0.00	\$0.00	\$1,078.00		\$5,326.00
Expenses								
Auto Rental	0	2	0	2	0	0	4 Days	\$80.00
Mileage	0	0	0	0	0	0	0 Miles	\$0.54
Lodging and Per Diem	0	1	0	1	1	0	3 Days	\$210.00
Travel and Airline Costs	0	1	0	1	1	0	3 Trips	\$300.00
Prints - 5 sets 11x17	0	0	0	0	0	0	5	\$25.00
Total Expenses								\$1,976.00
								SECTION I - PRE-CONSTRUCTION \$21,987.00

4

Item No.	Senior Associate	Project Engineer	Engineer I (CA)	Engineer II (RE)	Engineer I (RE)	Admin. Assistant	Total Hours	Cost Summary
	\$273.00	\$177.00	\$121.00	\$144.00	\$121.00	\$77.00		
SECTION II - CONSTRUCTION SERVICES								
6.0 Construction Administration								
• Project Coordination (22 Weeks)	22	176	0	0	0	44	242	\$40,546.00
• Progress Meetings (22 Trips)	0	264	0	0	0	0	264	\$46,728.00
• Substantial Completion Inspection (1 Trip)	0	12	0	0	0	0	12	\$2,124.00
• Monthly Invoicing	0	6	0	0	0	0	6	\$1,062.00
• RF1 Review (20)	0	20	40	0	0	0	60	\$8,380.00
• Submittals Review (30)	0	30	60	0	0	0	90	\$12,570.00
• Submit Pay Applications	0	24	48	0	0	10	82	\$10,826.00
• Weekly Progress Reports (22)	0	22	44	0	0	0	66	\$9,218.00
• Contract Change Orders (2)	0	16	32	0	0	0	48	\$6,704.00
• Certified Payroll Review	0	12	0	0	0	0	12	\$2,124.00
• Pay Request Review (6)	0	6	12	0	0	0	18	\$2,514.00
Estimated Total Man-hours	22	588	236	0	0	54	900	\$142,796.00
Summary Costs	\$6,006.00	\$104,076.00	\$28,556.00	\$0.00	\$0.00	\$4,156.00		
Expenses								
Auto Rental	0	22	0	0	0	0	22 Days	\$1,760.00
Lodging and Per Diem	0	22	0	0	0	0	22 Days	\$4,620.00
Travel and Airline Costs	0	22	0	0	0	0	22 Trips	\$6,600.00
Total Expenses								\$12,980.00
SECTION II - CONSTRUCTION SERVICES \$155,776.00								

Item No.	Senior Associate	Project Engineer	Engineer I (CA)	Engineer II (RE)	Engineer I (RE)	Admin. Assistant	Total Hours	Cost Summary
SECTION IV - SPECIAL SERVICES								
12.0 PCN Calculations and Analysis								
• Collect Data	0	2	4	0	0	0	6	\$838.00
• Perform PCN Calculations - Runway	0	16	20	0	0	0	36	\$5,252.00
• Perform PCN Calculations - Taxiway B	0	8	10	0	0	0	18	\$2,626.00
Estimated Total Man-hours	0	26	34	0	0	0	60	
Summary Costs	\$0.00	\$4,602.00	\$4,114.00	\$0.00	\$0.00	\$0.00		\$8,716.00
Expenses								
Auto Rental	0	0	0	0	0	0	0 Days	\$0.00
Lodging and Per Diem	0	0	0	0	0	0	0 Days	\$0.00
Travel and Airline Costs	0	0	0	0	0	0	0 Trips	\$300.00
Total Expenses								\$0.00
SECTION IV - SPECIAL SERVICES TOTAL:								\$8,716.00

4

ATTACHMENT 3
2016 STANDARD BILLING RATE SCHEDULE

MEAD & HUNT, Inc.
Western Standard Billing Rate Schedule
Effective January 1, 2016

Standard Billing Rates

Clerical.....	\$77.00 / hour
Interior Designer, Technical Editor	\$103.00 / hour
Senior Editor	\$152.00 / hour
Registered Land Surveyor.....	\$117.00 / hour
Accounting, Administrative Assistant.....	\$95.00 / hour
Technician I, Technical Writer	\$88.00 / hour
Technician II, Surveyor - Instrument Person	\$103.00 / hour
Technician III	\$111.00 / hour
Technician IV	\$134.00 / hour
Senior Technician	\$160.00 / hour
Engineer I, Scientist I, Architect I, Planner I	\$121.00 / hour
Engineer II, Scientist II, Architect II, Planner II	\$133.00 / hour
Engineer III, Scientist III, Architect III, Planner III	\$144.00 / hour
Senior Engineer, Senior Scientist, Senior Architect, Senior Planner, Senior Economist.....	\$164.00 / hour
Project Engineer, Project Scientist, Project Architect, Project Planner.....	\$177.00 / hour
Senior Project Engineer, Senior Project Scientist, Senior Project Architect, Senior Project Planner.....	\$216.00 / hour
Senior Associate.....	\$263.00 / hour
Principal	\$273.00 / hour
Senior Client/Project Manager.....	\$273.00 / hour

Expenses

Geographic Information or GPS Systems	\$32.00 / hour
Total Station Survey Equipment.....	\$16.00 / hour
Charges for other equipment may appear in a proposal	
Out-Of-Pocket Direct Job Expenses.....	cost plus 15%
Such as reproductions, sub-consultants / contractors, etc.	

Travel Expense	\$0.90 / mile
Air and Surface Transportation	cost plus 15%
Lodging and Sustenance	cost plus 15%

Billing & Payment

Travel time is charged for work required to be performed out-of-office. A minimum of two hours will be billed for any work out-of-office.

Invoicing is on a monthly basis for work performed. Payment for services is due within 30 days from the date of the invoice. An interest charge of 1.5% per month is made on the unpaid balance starting 30 days after the date of invoice.

This schedule of billing rates is effective January 1, 2016, and will remain in effect until December 31, 2016, unless unforeseen increases in operational costs are encountered. We reserve the right to change rates to reflect such increases.

4

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 5

Date: July 18, 2016

Department: Airport	Contact/Title: John Barsalou, Airport Director
Staff Presenter: John Barsalou	Telephone No.: 541-883-5373
City Manager Review: 	Email: jbarsalou@flykfalls.com

TOPIC: Award of Bid to Tom Ayres Contractor, Inc. for Airport Wetland Mitigation Site Improvements

SUMMARY AND BACKGROUND:

On November 8, 2015, City Council authorized an amendment to the contract with Mead & Hunt for Environmental Phase II Project 2014/2015. This amendment covered work necessary to implement the provisions of the Wetland Site Action Plan Update dated July 2015. The Action Plan Update, which was approved by both the Department of State Lands and the Corps of Engineers, recommended the connection of the wetland mitigation site to Lake Ewauna by installing two uncontrolled 48" culverts.

On May 5, 2016, the FAA approved the final plans and specifications for the project and authorized the Airport to seek bids for the wetland mitigation site improvements. An advertisement for bids was placed in the Daily Journal of Commerce on April 29th and May 2nd and in the Herald and News on April 29th and May 1st. A pre-bid meeting was held on May 12th and the following bids were received on June 2nd.

Tom Ayres General Contractor, Inc.	\$189,700.00
Bob's Excavating, Inc.	\$204,975.00

Bids were reviewed by Mead & Hunt, the engineers for the project. The bid submitted by Tom Ayres is found to be unresponsive because the bid was missing the Certification of Bidder as Primary Contractor (Section 00320). The Certification of Bidder is a required bid document as specified in the Bidder's Checklist (Section 00300). The bid also did not include a complete Oregon Bidder Certification (Section 00340), but this omission has no effect on the City's determination that the bid is unresponsive.

The bid submitted by Bob's Excavating did not include a complete Equal Employment Opportunity Report Statement (Section 00371); however, according to Section 00371, this omission may be waived by the City. The City chooses to waive this omission.

Based on discussion with Airport staff, Mead & Hunt recommended deeming the Tom Ayres bid as non-responsive and awarding the contract to Bob's Excavating. Staff sent notice of that decision to both bidders.

5

On June 14, 2016, Tom Ayres General Contractor, Inc. filed a bid protest, which was heard by the City Manager on June 22, 2016. The City Manager filed his findings and recommended that given the facts as presented at the hearing and in reviewing the documents, both bidders substantially complied in this instance and the Tom Ayers bid be deemed responsive.

Notice to Proceed will be dependent upon receipt of FAA funding, which is expected in the next 90 days. A permit from the US Army Corps of Engineers for the work was received after the bids were opened. The Corps permit was received on June 7, 2016.

The engineer's estimate was \$175,250.00. The Tom Ayres bid is 8.2% higher than the engineer's estimate and Bob's Excavating's bid is 17% higher than the engineer's estimate. The main deviations from the engineer's estimate were as follows: bids were lower than the engineer's estimate for the Temporary Water Management Plan and higher than the engineer's estimate of for the 48" Culvert. Staff would also like to note that the FAA no longer requires an explanation for bids not within 10% of the engineer's estimate. This FAA requirement was updated in 2014 and now only requires a price analysis for bids where there are two or more bidders. Under FAA guidance, both old and current, the bid is considered acceptable by FAA standards.

FINANCIAL IMPACT:

The bid is for \$189,700 with the FAA funding 93.75% of the cost (\$177,843.75) and the Airport providing a match of 6.25% (\$11,856.25), which is budgeted in the Airport's FY 2017 budget. Rejecting all bids would have a negative financial impact and creates problems with the Corp permit.

COUNCIL OPTIONS:

1. Reject all bids and rebid project.
2. Accept the findings of the City Manager and award bid to Tom Ayers General Contractor, Inc. as lowest responsible bidder.

DOCUMENTS ATTACHED:

- Engineer's Recommendation
- Bid Protest Documents and City Manager Findings

RECOMMENDED MOTION/ACTION:

Move to award bid, and authorize staff to execute a contract with, Tom Ayres General Contractor, Inc. in the amount of \$189,700.00 with Notice to Proceed dependent on receiving FAA funding.

NOTICE SENT TO:

Bob's Excavating, Inc.
Tom Ayres General Contractor, Inc.

5



Mead & Hunt, Inc.
M & H Architecture, Inc.
9690 NE Cascades Parkway, Suite 100
Portland, Oregon 97220
503-546-1404
mead&hunt.com

June 7, 2016

Mr. John Barsalou
Airport Director
Klamath Falls Airport
6775 Arnold Avenue
Klamath Falls, OR 97603

Re: Crater Lake - Klamath Regional Airport
Wetland Mitigation Site Improvements – Recommendation of Award
AIP: 3-41-0030-34/36

Dear John:

We have completed our review of the Contractor's bid proposals for the aforementioned project and have the following comments and recommendations.

Two bids were received, one from Bob's Excavating, Inc. and one from Tom Ayres General Contractor, Inc. The following is a table summarizing the bid results:

BIDDER	Total
Bob's Excavating, Inc. 4821 Tingley Lane Klamath Falls, OR 97603	\$204,975.00
Tom Ayres General Contractor, Inc. P.O. Box 965 Bend, OR 97709-0965	\$189,700.00
Engineer's Estimate	\$175,250.00

After review of the bidder's proposals, we verified there were no mathematical errors found in the bids submitted and Tom Ayres General Contractor is the apparent low bidder.

A price analysis was conducted by comparing the competitive bids. Two bids were received and were within approximately eight percent of each other and the lowest bid was within eight percent of the engineer's estimate, leading to the conclusion that the apparent low bid is fair and reasonable.

5

Mr. John Barsalou
June 3, 2016
Page 3

Both bidders are licensed by the Oregon Construction Contractors Board and provided the necessary bid bond.

The bid proposals were further examined for adherence to the requirements listed in the Instructions to Bidders (Section 00100). The following issues were identified:

1. The bid submitted by Tom Ayres General Contractor was missing the Certification of Bidder as Primary Contractor (Section 00320) which is a required bid document as specified in the Bidder's Checklist (Section 00300). This is considered an omission in the bid.
2. The bid submitted by Tom Ayres General Contractor did not include a complete Oregon Bidder Certification (Section 00340) as a response to item B was not provided. This may be considered an informality rather than an omission as the bidder did provide an Oregon Certified Contractor Board Number (186041) and business address in Oregon.
3. The bid submitted by Bob's Excavating did not include a complete Equal Employment Opportunity Report Statement (Section 00371) as responses to items 1 and 2 were not provided. Responses to items 3 and 4 were verified to be in conformance with 41 CFR 60-1.40(2) as the bidder has less than fifty employees, they are not subject to the reporting requirements. Omission of responses to items 1 and 2 may be considered an informality as the contract includes the required Equality Opportunity Clauses which the bidder is responsible to comply with upon award.

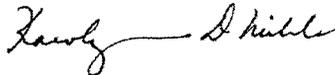
As specified in Section 102.1 (Page 00100-2, Paragraph 5), "the City, in its sole discretion, may deem any Bid non-Responsive and subject to rejection which contains omissions, erasures, alterations, or additions of any kind, or items uncalled for, or in which any of the Bid items are unbalanced to the potential detriment of the City, or which, in any manner, fail to conform to the conditions or intent of these Contract Documents. Further, "the City reserves the right to accept or reject any or all Bids, and to waive any informalities and/or irregularities in said Bids" per Section 102.11.00 (Page 00100-5).

As the apparent low bidder, Tom Ayres General Contracting, submitted a bid with an omission, this is grounds to determine that bid non-responsive and subject to rejection. I recommend the City reject the bid from Tom Ayres General Contracting based on this omission and further waive the informalities as noted above. Therefore, I recommend that the City issue a Notice of Intent to Award the contract to the second low bidder, Bob's Excavating. The contract execution and notice to proceed will be contingent upon receipt of the US Army Corps of Engineers permit and project grant funding.

Please contact me at 503-548-1496 with any questions.

Sincerely,

Mead & Hunt, Inc.



Kari D. Nichols, P.E.
Project Manager

5

CRATER LAKE - KLAMATH REGIONAL AIRPORT
WETLAND MITIGATION SITE IMPROVEMENTS

BID TABS

Item No.	Section/ Item	Item Description	Est. Qty.	Units	Engineer's Estimate		Tom Ayres GC		Bob's Excavating	
					Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	GP-105	MOBILIZATION	1	LS	\$25,000.00	\$25,000.00	\$28,500.00	\$28,500.00	\$20,000.00	\$20,000.00
2	SECTION 015730	TEMPORARY WATER MANAGEMENT PLAN	1	LS	\$65,000.00	\$65,000.00	\$47,500.00	\$47,500.00	\$53,600.00	\$53,600.00
3	P-152	DRAINAGE EXCAVATION	750	CY	\$25.00	\$18,750.00	\$40.00	\$30,000.00	\$20.00	\$15,000.00
4	D-701	REMOVE 36-INCH CMP PIPE	50	LF	\$75.00	\$3,750.00	\$100.00	\$5,000.00	\$40.00	\$2,000.00
5	D-701	REMOVE 12-INCH PVC PIPE	425	LF	\$10.00	\$4,250.00	\$20.00	\$8,500.00	\$15.00	\$6,375.00
6	D-701	48-INCH RCP CULVERT (CLASS IV)	180	LF	\$325.00	\$58,500.00	\$390.00	\$70,200.00	\$600.00	\$108,000.00
TOTAL in Figures						\$175,250.00		\$189,700.00		\$204,975.00

5



CITY OF KLAMATH FALLS, OREGON

500 KLAMATH AVENUE – P.O. BOX 237
KLAMATH FALLS, OREGON 97601



Sister City
ROTORUA, NEW ZEALAND

June 22, 2016

Re: June 21, 2016 Protest Hearing Findings

Background

An advertisement for bids was placed in the Daily Journal of Commerce on April 29th and May 2nd and in the Herald and News on April 29th and May 1st. The Airport's instructions to bidders were in the document entitled, "Contract Documents and Specifications."

The following bids were received on June 2nd:

Tom Ayres General Contractor, Inc.	\$189,700
Bob's Excavating, Inc.	\$204,975

The engineer's estimate was \$175,250. Tom Ayres General Contracting bid is 8.2% higher than the engineer's estimate and Bob's Excavating's bid is 17% higher than the engineer's estimate.

Upon review, the Airport's project engineer Mead and Hunt made the following observations (summarized):

1. The bid submitted by Tom Ayres General Contractor was missing the Certification of Bidder as Primary Contractor (Section 00320), a required bid document as specified in the Bidder's Checklist (Section 00300). This is considered an omission in the bid.
2. The bid submitted by Tom Ayres General Contractor did not include a complete Oregon Bidder Certification (Section 00340), as a response to item B which was also not provided. This may be considered an informality rather than an omission as the bidder did provide an Oregon Certified Contractor Board Number (186041) and business address in Oregon.
3. The bid submitted by Bob's Excavating did not include a complete Equal Employment Opportunity Report Statement (Section 00371), as responses to items 1 and 2 were not provided. Responses to items 3 and 4 were verified to be in conformance with 41 CFR 60-1.40(2) as the bidder has less than fifty employees, they are not subject to the reporting requirements. Omission of responses to items 1 and 2 may be considered an informality as the contract includes the required Equality Opportunity Clauses which the bidder is responsible to comply with upon award.

Based on that review, they recommended declaring the Ayers bid as non-responsive and awarding to Bob's Excavating.

A protest was filed on June 14, 2016 by Tom Ayers General Contractor.

Mayor & Council
541.883.5316

City Attorney
541.883.5323

City Manager
541.883.5316

TTY 541.883.5324 (Hearing Impaired); Fax 541.883.5399

5

Tom Ayers General Contractor claims that the City should award the contract to the "lowest responsible bidder" regardless of whether all of the forms were completed and information is correct. The Airport agrees that the contract should be awarded to the lowest responsible bidder

ORS 279A.010(r) defines "lowest responsible bidder":

(r) "Lowest responsible bidder" means the lowest bidder who:

(A) Has substantially complied with all prescribed public contracting procedures and requirements;

(B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and

(D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.

Issue

The issue to be decided here is what does substantially complied mean in this context?

Neither contractor completed all the required forms completely or complied 100% with the requirements in the bid documents. All the forms in question are referenced in section 102.1 where it states use of the forms is mandatory. The EEOC form 00371 has some language that states it may be required; however, it was one of the forms listed in section 102.1.

The bid document states in Division 1, Section 102.11.00 entitled "Rejection of Bids":

The City reserves the right to accept or reject any or all Bids, and to waive any informalities and/or irregularities in said Bids. In all matters pertaining to the Bids, the City shall make such decisions that are, in its sole judgment, in the best interests of the City.

The City has the flexibility to reject those bids that are non-responsive and to waive *informalities and/or irregularities in said Bids*. The City agreed to waive irregularities in the items below:

2. The bid submitted by Tom Ayres General Contractor did not include a complete Oregon Bidder Certification (Section 00340), as a response to item B, which was also not provided. This may be considered an informality rather than an omission as the bidder did provide an Oregon Certified Contractor Board Number (186041) and business address in Oregon.

3. The bid submitted by Bob's Excavating did not include a complete Equal Employment Opportunity Report Statement (Section 00371), as responses to items 1 and 2 were not provided. Responses to items 3 and 4 were verified to be in conformance with 41 CFR 60-1.40(2) as the bidder has less than fifty employees, they are not subject to the reporting requirements. Omission of responses to items 1 and 2 may be considered an informality as the contract includes the required Equality Opportunity Clauses which the bidder is responsible to comply with upon award.

Those items are not in question. The issue is whether failing to include form 00320 is a substantive irregularity. The form is required. However, both bidders included form 00330 the

First-Tier Subcontractor Disclosure. Both bidders clearly wrote "none" on the form. Can it be reasonably implied that they will do at least 33% of the work even without the certification found in form 00320? The answer is yes.

In the past the City has rejected bids as non-responsive for the failure to provide or sign form 00330. However, in the instances I am aware of those contractors had several subcontractors listed and it was unclear that they would do the required 33%. Because Tom Ayers Contractor did not list any subcontractors, they obviously intend to do the work with their own forces.

Decision

In my opinion, the form Tom Ayers failed to provide and the incomplete form by Bob's Excavating can both be considered informalities and irregularities that the City has the discretion to allow. Given the facts as presented to me at the hearing and in reviewing the documents, I believe both bidders substantially complied in this instance. It is my determination that the Tom Ayers bid be deemed responsive and that the bid be awarded to them as the lowest responsible bidder.

Regards,



Nathan Cherpeski
City Manager and Hearings Officer

- c: Lewis Friend, Bob's Excavating, Inc. (via email)
- Taylor Ayres, Tom Ayres General Contractor, Inc. (via email)
- Tyler Storti, Stewart Sokol & Larkin, LLC (via email)
- Joanna Lyons-Antley, City Attorney (via email)
- John Barsalou, Crater Lake – Klamath Regional Airport (via email)
- Linda Tepper, Crater Lake – Klamath Regional Airport (via email)
- Elisa Olson, City Recorder (via email)



Mead & Hunt, Inc.
 M & H Architecture, Inc.
 9600 NE Cascades Parkway, Suite 100
 Portland, Oregon 97220
 503-548-1494
 mead@mhuf.com

June 7, 2016

Mr. John Barsalou
 Airport Director
 Klamath Falls Airport
 6775 Arnold Avenue
 Klamath Falls, OR 97603

Re: Crater Lake - Klamath Regional Airport
 Wetland Mitigation Site Improvements - Recommendation of Award
 AIP: 3-41-0030-34/36

Dear John:

We have completed our review of the Contractor's bid proposals for the aforementioned project and have the following comments and recommendations.

Two bids were received, one from Bob's Excavating, Inc. and one from Tom Ayres General Contractor, Inc. The following is a table summarizing the bid results:

BIDDER	Total
Bob's Excavating, Inc. 4821 Tingley Lane Klamath Falls, OR 97603	\$204,975.00
Tom Ayres General Contractor, Inc. P.O. Box 965 Bend, OR 97709-0965	\$189,700.00
Engineer's Estimate	\$175,250.00

After review of the bidder's proposals, we verified there were no mathematical errors found in the bids submitted and Tom Ayres General Contractor is the apparent low bidder.

A price analysis was conducted by comparing the competitive bids. Two bids were received and were within approximately eight percent of each other and the lowest bid was within eight percent of the engineer's estimate, leading to the conclusion that the apparent low bid is fair and reasonable.

5

Mr. John Barsalou
June 3, 2016
Page 3

Both bidders are licensed by the Oregon Construction Contractors Board and provided the necessary bid bond.

The bid proposals were further examined for adherence to the requirements listed in the Instructions to Bidders (Section 00100). The following issues were identified:

1. The bid submitted by Tom Ayres General Contractor was missing the Certification of Bidder as Primary Contractor (Section 00320) which is a required bid document as specified in the Bidder's Checklist (Section 00300). This is considered an omission in the bid.
2. The bid submitted by Tom Ayres General Contractor did not include a complete Oregon Bidder Certification (Section 00340) as a response to item B was not provided. This may be considered an informality rather than an omission as the bidder did provide an Oregon Certified Contractor Board Number (186041) and business address in Oregon.
3. The bid submitted by Bob's Excavating did not include a complete Equal Employment Opportunity Report Statement (Section 00371) as responses to items 1 and 2 were not provided. Responses to items 3 and 4 were verified to be in conformance with 41 CFR 60-1.40(2) as the bidder has less than fifty employees, they are not subject to the reporting requirements. Omission of responses to items 1 and 2 may be considered an informality as the contract includes the required Equality Opportunity Clauses which the bidder is responsible to comply with upon award.

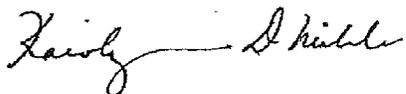
As specified in Section 102.1 (Page 00100-2, Paragraph 5), "the City, in its sole discretion, may deem any Bid non-Responsive and subject to rejection which contains omissions, erasures, alterations, or additions of any kind, or items uncalled for, or in which any of the Bid items are unbalanced to the potential detriment of the City, or which, in any manner, fail to conform to the conditions or intent of these Contract Documents. Further, "the City reserves the right to accept or reject any or all Bids, and to waive any informalities and/or irregularities in said Bids" per Section 102.11.00 (Page 00100-5).

As the apparent low bidder, Tom Ayres General Contracting, submitted a bid with an omission, this is grounds to determine that bid non-responsive and subject to rejection. I recommend the City reject the bid from Tom Ayres General Contracting based on this omission and further waive the informalities as noted above. Therefore, I recommend that the City issue a Notice of Intent to Award the contract to the second low bidder, Bob's Excavating. The contract execution and notice to proceed will be contingent upon receipt of the US Army Corps of Engineers permit and project grant funding.

Please contact me at 503-548-1496 with any questions.

Sincerely,

Mead & Hunt, Inc.



Kari D. Nichols, P.E.
Project Manager

5

CRATT AKE - KLAMATH REGIONAL AIRPORT
WETLAND MITIGATION SITE IMPROVEMENTS

B ABS

Item No.	Section/ Item	Item Description	Est. Qty.	Units	Engineer's Estimate		Tom Ayres GC		Bob's Excavating	
					Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	GP-105	MOBILIZATION	1	LS	\$25,000.00	\$25,000.00	\$28,500.00	\$28,500.00	\$20,000.00	\$20,000.00
2	SECTION 015730	TEMPORARY WATER MANAGEMENT PLAN	1	LS	\$65,000.00	\$65,000.00	\$47,500.00	\$47,500.00	\$53,600.00	\$53,600.00
3	P-162	DRAINAGE EXCAVATION	750	CY	\$25.00	\$18,750.00	\$40.00	\$30,000.00	\$20.00	\$15,000.00
4	D-701	REMOVE 36-INCH CMP PIPE	60	LF	\$75.00	\$3,750.00	\$100.00	\$5,000.00	\$40.00	\$2,000.00
5	D-701	REMOVE 12-INCH PVC PIPE	425	LF	\$10.00	\$4,250.00	\$20.00	\$8,500.00	\$15.00	\$6,375.00
6	D-701	48-INCH RCP CULVERT (CLASS IV)	180	LF	\$325.00	\$58,500.00	\$390.00	\$70,200.00	\$600.00	\$108,000.00
TOTAL in Figures						\$175,250.00	\$189,700.00	\$189,700.00	\$204,975.00	\$204,975.00

U

SECTION 00320

CERTIFICATION OF BIDDER AS PRIMARY CONTRACTOR

_____, as a principal official of the Bidder, certify that _____ is directly responsible for and will accomplish a minimum of thirty-three percent (33%) of the dollar value of the project based on the Bid prices submitted. "Directly responsible for and will accomplish" means that employees of the Bidder will perform all those work tasks not indicated as being performed by separate subcontractors. As an additional condition, the Bidder represents that he, or she, shall be responsible for the greatest share of the dollar value of the Work, i.e., no subcontractor is responsible for a greater share of the dollar value of the Work.

Signature

Date

Name & Title of Signer
(Please Print or Type)

5



CITY OF KLAMATH FALLS, OREGON

500 KLAMATH AVENUE - P.O. BOX 237
KLAMATH FALLS, OREGON 97601



Sister City
ROTORUA, NEW ZEALAND

June 16, 2016

✓
City Manager Nathan Cherpeski
500 Klamath Ave.
Klamath Falls, OR 97601

Re: Bid Protest for Wetland Mitigation Site Improvements

Dear Mr. Cherpeski:

I am submitting the Klamath Falls Airport's response to the protest filed by Tom Ayres General Contractor, Inc., through their counsel, Tyler Storti, for the Wetland Mitigation Site Improvements.

Background

An advertisement for bids was placed in the Daily Journal of Commerce on April 29th and May 2nd and in the Herald and News on April 29th and May 1st. The Airport's instructions to bidders were in the document entitled, "Contract Documents and Specifications." Attached as Exhibit A is a true and correct copy of the Contract Documents and Specifications.

The following bids were received on June 2nd:

Tom Ayres General Contractor, Inc.	\$189,700
Bob's Excavating, Inc.	\$204,975

The engineer's estimate was \$175,250. Tom Ayres General Contracting bid is 8.2% higher than the engineer's estimate and Bob's Excavating's bid is 17% higher than the engineer's estimate.

Bids were reviewed by Mead & Hunt, the engineers for the project. A true and correct copy of the letter is attached as Exhibit B. According to Mead and Hunt, the following issues were identified in the letter summarizing the bid:

The bid proposals were further examined for adherence to the requirements listed in the Instructions to Bidders (Section 00100). The following issues were identified:

1. The bid submitted by Tom Ayres General Contractor was missing the Certification of Bidder as Primary Contractor (Section 00320), attached as Exhibit C-1, which is a required bid document as specified in the Bidder's Checklist (Section 00300). This is considered an omission in the bid.
2. The bid submitted by Tom Ayres General Contractor did not include a complete Oregon Bidder Certification (Section 00340), as a response to item B which was also not provided. This may be considered an informality rather than an omission as the bidder did provide an Oregon Certified Contractor Board Number (186041) and business address in Oregon.

5

3. The bid submitted by Bob's Excavating did not include a complete Equal Employment Opportunity Report Statement (Section 00371), as responses to items 1 and 2 were not provided.

Responses to items 3 and 4 were verified to be in conformance with 41 CFR 60-1.40(2) as the bidder has less than fifty employees, they are not subject to the reporting requirements. Omission of responses to items 1 and 2 may be considered an informality as the contract includes the required Equality Opportunity Clauses which the bidder is responsible to comply with upon award.

Mead and Hunt Engineer Kari Nichols recommended issuing a Notice of Intent to Award the contract to Bob's Excavating.

Attached as Exhibit C-2 is Section 00340, Oregon Bidder Certifications, as submitted by Tom Ayres General Contractor. Attached as Exhibit D, Equal Employment Opportunity Report Statement as submitted by Bob's Excavating.

For these reasons, on June 9, 2016, the Airport issued a Notice of Intent to Award to Bob's Excavating. A true and correct copy of the Notice of Intent to Award is attached as Exhibit E.

On June 14, 2016, the Airport received a protest from Tom Ayers General Contractor. This protest was timely because it was within the seven days allowed by state law and the contract provisions.

Tom Ayers General Contractor claims that the City should award the contract to the "lowest responsible bidder" regardless of whether all of the forms were completed and information is correct. The Airport agrees that the contract should be awarded to the lowest responsible bidder. ORS 279A.010(r) defines "lowest responsible bidder":

(r) "Lowest responsible bidder" means the lowest bidder who:

(A) Has substantially complied with all prescribed public contracting procedures and requirements;

(B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and

(D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.

(emphasis added).

As a result, state law requires that the bidders substantially comply with all prescribed public contracting procedures and requirements to be the "lowest responsible bidder." The Airport, when it advertised for the project, set out the procedures and requirements that bidders had to follow in the Contract Documents and Specifications.

5
These procedures and what will be considered a requirement and what may be considered an informality is the standard for which the bids are judged by the Airport. See attached Exhibit F, *Dental v. City of Salem*, 196 Or App 574, 583-585 (2004) (upholding city's rejection of bids as

nonresponsive due to failure to include required information because the city did not abuse its discretion for complying with city's purchasing manual).

The Airport's Contract Documents and Specifications require submission of specific forms. Division 1, Section 102.1 and 300 require submission of the forms "Certification of Bidder as Primary Contractor" and "EEO Compliance." Section 102.1 states, in pertinent part:

In order to assure consideration, Bids must be submitted by **June 2, 2016 at 2:00 p.m.** and made in strict accordance with the following:

Bids shall be submitted upon the Bid forms provided within these documents; use of these forms is mandatory:

* * *

00320 Certification of Bidder as Primary Contractor

* * *

00340 Bidder Certifications

* * *

00371 EEO Compliance

(Ex. A, pp. 9-10)

Section 300 states, in pertinent part:

Bidder's attention is called to the following forms, which must be executed in full as required with the bid:

B. SECTION 00320 CERTIFICATION OF BIDDER AS PRIMARY CONTRACTOR

This form is to completed, signed and dated by bidder.

C. SECTION 00340 BIDDER CERTIFICATIONS

The bidder shall complete the certification and insert name of bidder and title.

* * *

G. SECTION 00371 EEO COMPLIANCE: The bidder shall check the appropriate boxes, sign and date the form.

(Ex. A, p. 25)

It is notable that the documents must be executed in full; however, the City has a large amount of discretion. This discretion for determining whether a bid is nonresponsive, and thus is rejected, is contained in Division 1, Sections 102.1, 102.11.00 and 103.1.01. All three sections state that the City "in its sole discretion" determines what bids are responsive.

Division 1, Section 102.1 states, that the City:

in *its sole discretion*, may deem any Bid non-Responsive and subject to rejection which contains omissions, erasures, alterations, or additions of any kind, or items uncalled for, or in which any of the Bid items are unbalanced to the potential detriment of the City, or

5

which, in any manner, fail to conform to the conditions or intent of these Contract Documents.

(emphasis added) (Ex. A, p. 10).

Division 1, Section 102.11.00 entitled "Rejection of Bids" states:

The City reserves the right to accept or reject any or all Bids, and to waive any informalities and/or irregularities in said Bids. In all matters pertaining to the Bids, the City shall make such decisions that are, in its sole judgment, in the best interests of the City.

(emphasis added)(Ex. A, p. 13).

Division 1, Section 103.1.01 entitled "Responsive" states, in pertinent part:

The City will consider all material submitted by the Bidder to determine whether the Bidder's offering is in substantial compliance with the Bid Solicitation, Contract Documents and all prescribed public bidding procedures and requirements. Failure to complete and submit all the documents required by these Instructions to Bidders may render a bid non-Responsive and may be grounds for rejection of the bid. * * *

The City, *in its sole discretion*, may deem a Bid non-Responsive and subject to rejection which contains omissions, erasures, alterations, or additions of any kind, or items uncalled for, or in which any of the Bid items are unbalanced to the potential detriment of the City, or which, in any manner, fail to conform to the conditions or intent of these Contract Documents.

(emphasis added)(Ex. A, p. 16).

The term "in its sole discretion" means that as long as the City is reasonable and equitable in its application of its procedures and requirements, the City has discretion to determine whether the prescribed procedures and requirements are met. Again, this determination of whether the bidder meets the procedures and requirements are necessary for the City to determine who is the "lowest responsible bidder."

As demonstrated below, the Airport was reasonable and equitable in its application of the rules. The Airport found that when a bidder did not submit a form, that this was a requirement that was not in substantial compliance with the rules and thus nonresponsive. The Airport found that when a bidder submitted a form, but did not complete the form, that other information could be considered and the absence of an answer was an informality.

Tom Ayers

In this case, Tom Ayers General Contractor did not submit the form, "Certification of Bidder as Primary Contractor" (Section 00320). In Division 1, Section 00320, the form states the following:

CERTIFICATION OF BIDDER AS PRIMARY CONTRACTOR

I, _____, as a principal official of the Bidder, certify that is directly responsible for and will accomplish a minimum of thirty-three percent (33%) of the dollar value of

the project based on the Bid prices submitted. "Directly responsible for and will accomplish" means that employees of the Bidder will perform all those work tasks not indicated as being performed by separate subcontractors. As an additional condition, the Bidder represents that he, or she, shall be responsible for the greatest share of the dollar value of the Work, i.e., no subcontractor is responsible for a greater share of the dollar value of the Work.

(Ex. A, p. 47)

For the reasons stated above, submission of the form was required, and thus the Airport found it to be unresponsive and rejected the bid.

Tom Ayers General Contractor made a second error. The company submitted, but did not completely fill out Oregon Bidder Certification (Section 00340) because a response to whether the bidder was a resident or non-resident bidder was not provided. Exhibit C. The Airport did not deem this as an omission that was detrimental, and thus it was an "informality" because it was reasonable to assume that Tom Ayers General Contractor is a resident bidder based on the submission of the Construction Contractor's Board number and the business address in Oregon.

Bob's Excavating

In this case, Bob's Excavating submitted, but did not completely fill out the form, "Equal Employment Opportunity Report Statement." Exhibit D. In Division 1, Section 00371, the "Equal Employment Opportunity Report Statement," the form states in pertinent part:

Each bidder shall complete and sign the Equal Employment Opportunity Report Statement. A bid may be considered unresponsive and may be rejected, *in the Owner's sole discretion*, if the bidder fails to provide the fully executed statement or fails to furnish the required data. *The bidder shall also, prior to award, furnish such other pertinent information* regarding its own employment policies and practices as well as those of its proposed subcontractors as the FAA, the Owner, or the Executive Vice Chairman of the President's Committee may require.

* * *

EQUAL EMPLOYMENT OPPORTUNITY REPORT STATEMENT (41 CFR 60-1.7b)

The bidder shall complete the following statements by checking the appropriate blanks. *Failure to complete these blanks may be grounds for rejection of the bid:*

1. The Bidder has ___ has not ___ developed and has on file at each establishment affirmative action programs pursuant to 41 CFR 60-1.40 and 41 CFR 60-2.
2. The Bidder has ___ has not ___ participated in any previous contract or subcontract subject to the equal opportunity clause prescribed by Executive order 11246, as amended.
3. The Bidder has ___ has not ___ filed with the Joint Reporting Committee the annual compliance report on Standard Form 100 (EEO-1 Report).
4. The Bidder Does ___ does not ___ employ fifty or more employees.

(emphasis added)(Ex. A, p. 33).

5

The Airport did not deem this as an omission because the language in the form allows the Owner to deem the bid as unresponsive and reject the bid. This language implies that the City has the ability to deem the omission for questions one and two as an informality. Further, the language in the form states that "other pertinent information" shall be provided prior to award as required.

Conclusion

Tom Ayres General Contracting did not submit the Certification of Bidder as Primary Contractor form which is mandatory. Tom Ayres General Contracting submitted, but did not complete the Oregon Bidder Certification, an oversight deemed as an informality because the information could be gained from other parts of the bid.

Bob's Excavating submitted, but did not complete the Equal Employment Opportunity Report Statement, but the terms of the form states that the City has discretion on whether to deem it an informality, and the City may require additional information prior to award of the bid.

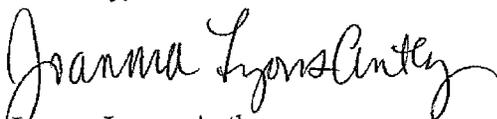
The City has sole discretion in whether a bidder meets the City's procedures and requirements. However, the Airport would argue that as long as the City is reasonable and equitable in its application of its procedures and requirements, the Airport's decision to deem errors in a bid as informality or nonresponsive should be upheld.

As demonstrated, the Airport was reasonable and equitable in its application of the rules. The Airport found that when a bidder did not submit a form, that this was a requirement that was not in substantial compliance with the rules and thus nonresponsive. The Airport found that when a bidder submitted a form, but did not complete the form, that other information could be considered and could be considered an informality.

One consequence of rejecting all bids and re-bidding the Wetland Mitigation Site Improvements project could put the entire project in jeopardy. The concerns are that: (1) the bids are already known so price could increase; (2) bid prices possibly increase due to weather-related construction concerns; (3) there is a limited window of time in which construction can occur due to in-water work period (July 1st – January 31st) restrictions imposed by the regulating agencies; (4) the USACE NWP permit has already been issued based on the current conditions. Delaying the project could result in changed conditions necessitating a new permit or other unknown requirements, i.e., possible extension of permit deadline, and (5) we could incur additional administrative costs that may not be FAA eligible.

For these reasons, it is in the City's best interests to move forward with the project as bid with Bob's Excavating, Inc.

Sincerely,



Joanna Lyons-Antley
City Attorney

5



CITY OF KLAMATH FALLS, OREGON

500 KLAMATH AVENUE – P.O. BOX 237
KLAMATH FALLS, OREGON 97601



Sister City
ROTORUA, NEW ZEALAND

June 15, 2016

Via – E-mail

Tyler J. Storti
Stewart Sokol & Larkin LLC
Attorneys at Law
2300 SW First Avenue Suite 200
Portland OR 97201-5047

Re: Tom Ayres General Contractor, Inc. /Crater Lake-Klamath Regional Airport
Wetland Mitigation Site Improvements/Bid Protest

Dear Mr. Storti:

This is to acknowledge receipt of the Protest of the Notice of Intent to Award in the above mentioned project on June 14, 2016.

In accordance with Section 102.13.00 Protest Procedures of the bid book "D," states:

Hearing:

Upon receipt of a protest, the City will suspend the award process until a hearing has been conducted before the City Manager (or his/her designee):

1. The hearing will be held within ten (10) days of receipt of the protest.
2. All other Bidders will be notified of the hearing.
3. The protester, other interested Bidders, City staff and other interested parties will be afforded an opportunity to appear and present their position and/or concerns at the hearing.
4. The City Council reserves the right to conduct a hearing in conjunction with its decision to award the Contract.

E. Recommendation: On the basis of the hearing, the City Manager shall make written findings and recommendations on the protest to the City Council. The City Manager's

5

Mayor & Council
541.883.5316

City Attorney
541.883.5323

City Manager
541.883.5316

TTY 541.883.5324 (Hearing Impaired); Fax 541.883.5399

To: Tyler Storti
Date: June 15, 2016
Page: 2

findings and recommendations shall be accompanied by written minutes of the hearing. All persons appearing at the hearing shall be provided copies of the findings and recommendations.

You are hereby notified that the City Manager will hold a hearing on **Tuesday, June 21, 2016 at 9:30 a.m. in the City Hall Annex Conference Room.**

Sincerely,



Elisa Olson, MMC
City Recorder

c: Nathan Cherpeski, City Manager
Joanna Lyons-Antley, City Attorney
John Barsalou, Airport Director
Linda Tepper, Airport Business Manager
Tom Ayres General Contract – by email
Bob's Excavating, Inc. – by email

5

STEWART SOKOL & LARKIN LLC

ATTORNEYS AT LAW

John Spencer Stewart PC *†♦□#
Jan D. Sokol*†□
Thomas A. Larkin*♦□
James M. Daigle PC*□
Lawrence A. Wagner*
Tyler J. Storti*□

2300 SW FIRST AVENUE
SUITE 200
PORTLAND, OREGON 97201-5047
(503) 221-0699
FAX (503) 223-5706
www.lawssl.com

Jesse C. Ormond*
William Brent Hamilton Jr.
Mario R. Nicholas†
Adam S. Heder‡

E-mail: tstorti@lawssl.com

All Members of Oregon Bar
* Washington Bar
† District of Columbia Bar
♦ Alaska Bar
□ Idaho Bar
Wyoming Bar
‡ California Bar

June 14, 2016

By E-Mail: eolson@klamathfalls.city, Fax: 541-883-5399 and U.S. Mail

Ms. Elisa Olson
City Recorder
City of Klamath Falls
500 Klamath Avenue
P.O. Box 237
Klamath Falls, OR 97601

Re: Tom Ayres General Contractor, Inc. / Crater Lake-Klamath Regional
Airport Wetland Mitigation Site Improvements / Bid Protest

Our File: _____

Protest of Notice of Intent to Award

Dear Ms. Olson:

This firm represents Tom Ayres General Contractor, Inc. ("Ayres"), which submitted the lowest responsive and responsible bid in connection with the above-referenced public procurement contract - AIP No. 3-41-0030-34/36 (the "Contract"). Ayres is in receipt of the Notice of Intent to Award ("Notice") dated June 9, 2016, which evinces an intent to award the Contract to the other bidder, Bob's Excavating, which submitted a substantially higher bid than Ayres. This constitutes Ayres' protest of that Notice. The specific bases for the protest are set forth below. Pursuant to applicable law and the City's own Bid Documents, the City is mandatorily required to award the Contract to Ayres as the lowest responsive and responsible bidder.

The Notice acknowledges that Ayres submitted the lowest bid, but rejects that bid on the basis that it was missing the "Certification of Bidder as Primary Contractor (Section 00320)" form, which the Notice describes as a "required bid document as specified in the Bidder's Checklist (Section 00300)."

5

Ms. Elisa Olson
June 14, 2016
Page 2

However, the Notice attempts to accept Bob's Excavating's bid, even though it "did not include a complete Equal Employment Opportunity Report Statement (Section 00371)." The Notice argues that Bob's Excavating's omission "may be waived" and that the City "chooses to waive this omission," even though the City refused to waive Ayres' identical omission of a similarly "mandatory" form.

We note that, whereas Ayres is based in Bend, Oregon, the principal place of business for Bob's Excavating, Inc. is in Klamath Falls, Oregon. The utterly inconsistent application of the City's discretion can only be explained by unfair favoritism for a local contractor at the expense of the City's taxpayers and in violation of the letter and spirit of Oregon's public bidding laws.

Under Oregon law, ORS 279C.375(1), "the contracting agency **shall** award the contract to the **lowest** responsible bidder." (emphasis added) "Shall is a command: it is 'used in laws, regulations, or directives to express what is mandatory.'" *Preble v. Dept. of Rev.*, 331 Or 320, 324 (2000). This mandatory imperative is consistent not only with fundamental fairness and the tenets underlying the competitive bidding system, but it also directly serves the policies codified in ORS Chapter 279C that all "public improvement contracts awarded under this chapter must be based on competitive bidding," and that "contracting agencies shall make **every effort** to construct public improvements at the least cost to the contracting agency." ORS 279C.300; 279C.305(1) (emphasis added).

Here, there is no question that Ayres' bid price was substantially lower than Bob's Excavating's bid.

The City's only rationale for declaring Ayres' bid unresponsive was because it inadvertently omitted the Certification of Bidder form, yet the City waived Bob's Excavating's identical omission of the EEOC Report form. Both the Certification of Bidder form and the EEOC form are listed in the Instructions to Bidders as being mandatorily required. See Section 102.1 ("Bids **shall** be submitted upon the Bid forms provided with these documents; **use of these forms is mandatory.**"); see also Section 00300 Bidder's Checklist (listing both forms, "which must be executed in full as required with the bid.").

Throughout the Bid Documents, the City is allowed to waive certain informalities and mistakes. This is consistent with applicable law. For example, OAR 137-049-0350 encourages public owners to "carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes," and to "waive, or permit an Offeror to correct, a minor informality." The regulation defines a "minor informality" as "a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors." OAR 137-049-0350(1) and (2).

5

STEWART SOKOL & LARKIN LLC
ATTORNEYS AT LAW

Ms. Elisa Olson
June 14, 2016
Page 3

The mistaken omission of the Certification of Bidder form is exactly the type of "matter of form" contemplated by the regulations that the City is allowed and encouraged to waive or allow Ayres to correct. To do so would not have materially prejudiced Bob's Excavating, especially given that Bob's Excavating also omitted a mandatorily required form and particularly where such action would have saved the City a substantial amount of money.

There is no material difference between the failure to submit either form that could possibly impact the City or unfairly prejudice the other bidder. There is no rational or fair discrepancy to be drawn between the failure to submit a fully completed version of one form versus the other.

The City's purely inconsistent application of the governing standards to overlook Bob's Excavating's omission and to refuse to do so for Ayres' identical omission can only be explained by favoritism for the local contractor. Such favoritism and bias is specifically prohibited by applicable law and is exactly the type of cronyism the public bidding laws are designed to prevent. See, e.g., ORS 279C.335(2) (only allowing exemptions to public bidding laws if "unlikely to encourage favoritism in awarding public improvement contracts or to substantially diminish competition . . ."); *Twohy Bros. Co. v. Ochoco Irr. Dist.*, 108 Or 1, 28 (1922) ("The purpose of requiring bids is to guard against favoritism, improvidence, extravagance and corruption in awarding municipal contracts . . ."). As a public agency spending public funds, the City is not allowed to inconsistently apply the governing laws and regulations to unfairly favor a local contractor at the expense of an equally qualified bidder when that other bidder submitted a substantially lower bid.

Ayres's experience, expertise, integrity and work ethic are unquestionable. In fact, Ayres is currently engaged in successfully performing another project for the City. Ayres takes very seriously the public policies embodied in the competitive bidding laws of the State of Oregon and always does its best to follow and to enforce those requirements. It deserves and expects that the City will do the same. It does not expect or ask for special treatment, but only to be treated fairly and consistently with the express requirements of the Bid Documents, which in this case indisputably and mandatorily require that Ayres be awarded the Contract. Ayres is entitled to this Contract, and the tax payers are entitled to receive the benefits of the work for the lowest price.

We trust the City will abide by its Bid Documents and applicable law and correct the erroneous rejection of Ayres' bid and proceed with the award of the Contract to Ayres. Thank You.

Ms. Elisa Olson
June 14, 2016
Page 4

Very truly yours,

STEWART SOKOL & LARKIN LLC

Tyler J. Storti

Tyler J. Storti

TJS:dls

cc: Linda Tepper, Airport Business Manager (ltepper@flykfalls.com)
Bob's Excavating, Inc. (lewis@bobsexcavating.com)
Tom Ayres General Contractor, Inc. (taayres@aol.com)

5

STEWART SOKOL & LARKIN LLC

A T T O R N E Y S A T L A W

2300 SW FIRST AVENUE

SUITE 200

PORTLAND, OREGON 97201-5047

(503) 221-0699

FAX (503) 223-5706

www.lawssl.com

John Spencer Stewart PC *†♦□#
Jan D. Sokol*†□
Thomas A. Larkin*♦□
James M. Daigle PC*□
Lawrence A. Wagner*
Tyler J. Storti*□

Jesse C. Ormond*
William Brent Hamilton Jr.
Mario R. Nicholas‡
Adam S. Heder‡

All Members of Oregon Bar
* Washington Bar
† District of Columbia Bar
♦ Alaska Bar
□ Idaho Bar
Wyoming Bar
‡ California Bar

FAX COVER SHEET

TO: Ms. Elisa Olson
City of Klamath Falls
FAX (541) 883-5399

FROM: Andrew C. Moffat

SUBJECT: Tom Ayres General Contractor, Inc. / Crater Lake-Klamath Regional
Airport Wetland Mitigation Site Improvements / Bid Protest

DATE: June 14, 2016

PAGES: 5

COMMENTS:

Attached please find correspondence from Mr. Storti.

Thank you.

PLEASE CALL (503) 221-0699 IF YOU HAVE A PROBLEM WITH THIS TRANSMITTAL.

NOTICE

THIS FACSIMILE TRANSMISSION MAY CONTAIN INFORMATION WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, OR TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CONTACT US IMMEDIATELY SO THAT WE MAY ARRANGE FOR RETURN OF THE DOCUMENTS.

5

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 6

Date: July 18, 2016

Department: Police

Staff Presenter: Dave Henslee

City Manager Review: 

Contact/Title: Dave Henslee/Chief of Police

Telephone No.: 541.883.5336

Email: dhenslee@klamathfalls.city

TOPIC: Ordinance Ratifying the Creation of an Intergovernmental Entity for the Operation, Maintenance, and Use of a County-Wide Interoperable Communications System, and Authorizing Participation Therein - First Reading

SUMMARY AND BACKGROUND:

For many years, the emergency communications system used by 911 and first responders in Klamath County has been managed by an executive board representing the users. The governance is under the County per an intergovernmental agreement that the participating members agreed to in 2010. The equipment was obtained through grants and the participants contribute to a maintenance fund. That fund, and the ownership of the equipment under this agreement are held by Klamath County.

The partner agencies agreed it would be more effective, and financially responsible, to create an intergovernmental entity to manage the Klamath County radio network through an intergovernmental agreement. The newly formed intergovernmental entity would own the radio equipment, hold bank accounts for entity funds, and pursue grants and other revenue without need for continued Klamath County approval. Initially, Klamath County was identified as the starting point given their role as the current governance and that they would be participating in the new governance. The process of forming an entity to control and manage a county-wide radio system has been on-going for a number of years and is coming to a completion.

There are a few key points regarding the process to this point.

- 1) The formation documents were prepared by an attorney working for the Klamath Interoperability Radio Group (KIRG). The expense associated with the preparation of the documents was paid by KIRG.
- 2) The agreement does not change the City of Klamath Falls fee structure or management philosophy. The significant difference is the KIRG Executive Board will be able to make, and act upon, decisions without the need for Klamath County approval.
- 3) Klamath County has been charging administrative fees to manage a KIRG fund. The administrative fees have become excessive and are currently at 20% of the fund balance.

This agreement will transfer the KIRG fund balance to KIRG and administrative fees will no longer exist.

ORS 190.085 requires each participating entity to adopt an Ordinance ratifying an Intergovernmental Agreement to create an intergovernmental entity.

FINANCIAL IMPACT:

There is no additional financial impact. The Police Department currently pays fees associated with the operation and maintenance of the county-wide radio system. The current cost is \$18,000 and is included in the operating budget for the Police Department.

COUNCIL OPTIONS:

- Approve the Ordinance and continue participation in the Klamath County Interoperability Radio Group.
- Reject the Ordinance and discontinue participation in the KIRG.
- Provide staff with other direction.

DOCUMENTS ATTACHED:

- Memo regarding KIRG formation
- Proposed Intergovernmental Agreement to form KIRG
- KIRG Bylaws
- Proposed Ordinance

RECOMMENDED MOTION/ACTION:

- Take public comment
- Move to introduce the Ordinance for first reading by title

NOTICE SENT TO:

- Klamath Interoperability Radio Group

6

To: Participating Members
From: Keith Endacott, E-Board secretary
Re: Klamath Interoperable Radio Group (KIRG) formation:

For many years the emergency communications system used by 911 and first responders in Klamath County has been managed by an executive board representing the users. The governance is under the county per an intergovernmental agreement from 2010 that the participating members agreed to. The equipment was obtained through grants and the participants contribute to a maintenance fund. That fund, and the ownership of the equipment under this agreement are held at the county.

It had been determined and often discussed that it would be better to have a new entity formed through a new intergovernmental agreement. That entity would be able to own the equipment, hold bank accounts for the funds and pursue grants and other revenue without going through the county. The county was identified as the starting point given their role as the current governance and that they would be participating in the new governance.

That process has been going on for a number of years and is coming to its completion. The commissioners will vote on their participation in the agreement on March 29th and we are told will be moving forward in their ordinance process. Given that, as a representative of a participating government (Fire District, Municipality, Special District etc.) it is time to enter into the agreement.

There are a few key points to point out about the process so far.

- First, the formation documents were all prepared by the attorney recommended by SDAO, Eileen Eakins paid for out of our funds. In other words, they've been prepared by our attorney.
- Secondly, the new agreement does not change those aspects that you are used to. The fee structure remains and the management structure remains. The significant difference will be for the executive board which will now be able to make and act upon its decisions without going through the county for approval.
- Third, the county has been charging the fund administrative fees that have become excessive (currently at 20%). Because this agreement moves the funds to the new entity these fees will no longer be charged.

The formation process:

- Each member enters into the agreement by adopting an ordinance – April board meeting
- Publish ordinance as part of the agenda for your May meeting – prior to the May meeting
- Read the ordinance, vote to adopt and adopt the ordinance – May board meeting
- Forward the signed agreement and ordinance to the E-Board – after the May board meeting
- The E-board compiles all the agreements, each would have gone into effect 30 days after its adoption date and forwards to the attorney – during of June
- The attorney files with the state, for the effective date of July 1st 2016 – by July 1st

I've attached the ordinance for your organization along with a timeline to help your board with the process. Members of the E-board are here to assist you in working with your boards. Please get this information to your boards in a timely manner for them to consider our hope is that you have been keeping them briefed and this will be review. If anyone would like assistance from the E-board at your board meetings please let John Ketchum or Keith Endacott know. We are highly committed to this and are happy to assist.

6

Here is some explanation to the ordinance process provided by our attorney when we asked for clarification.

The questions was posed to her as this: Is an ordinance the "cleanest" way or the only "legal" way?

HER ANSWER:

Oregon law requires each participating entity to adopt an ordinance ratifying the IGA:

190.085 Ordinance ratifying intergovernmental agreement creating entity. (1) Prior to the effective date of an intergovernmental agreement creating an intergovernmental entity, each of the parties to the intergovernmental agreement shall enact an ordinance ratifying the creation of the intergovernmental entity. An ordinance enacted under this subsection shall:

(a) Declare that it is the intent of the governing body enacting the ordinance to create an intergovernmental entity by intergovernmental agreement;

(b) Specify the effective date of the intergovernmental agreement;

(c) Set forth the public purposes for which the intergovernmental entity is created; and

(d) Describe the powers, duties and functions of the intergovernmental entity.

(2) Not later than 30 days after the effective date of an intergovernmental agreement creating an intergovernmental entity under ORS 190.010, the parties to the intergovernmental agreement shall file with the Secretary of State copies of the ordinances required under this section together with a statement containing the name of the intergovernmental entity created, the parties to the agreement, the purpose of the agreement and the effective date of the agreement

So, the ordinance is the only way to go. Ordinances enact law; resolutions adopt policies. So, ordinances have more legal "bite." Ordinances aren't all that scary. The process isn't that different from adopting a resolution – just more formal. Maybe it will help to give them some guidance on what is legally required for special districts to adopt ordinances:

198.540 Notice prior to adoption of ordinance affecting regulation. (1) Except in an emergency, an ordinance adopting, amending or repealing a regulation shall not be considered or voted upon by a district board unless the ordinance is included in the published agenda of the meeting. The agenda of a meeting shall state the time, date and place of the meeting, give a brief description of the ordinances to be considered at the meeting and state that copies of the ordinances are available at the office of the district board.

(2) The presiding officer shall cause the agenda to be published not more than 10 days nor less than four days before the meeting, in one or more newspapers of general circulation within the district or, if there is no such newspaper, in a newspaper of general circulation in each county in which the district is located.

198.550 Publication of ordinance; emergency ordinance procedure. (1) Except as provided by subsection (3) of this section, before an ordinance is adopted it shall be read during regular meetings of the district board on two different days at least six days apart. The reading of an ordinance shall be full and distinct unless at the meeting:

(a) A copy of the ordinance is available for each person who desires a copy; and

(b) The board directs that the reading be by title only.

(2) Except as provided by subsection (3) of this section, the affirmative vote of a majority of the members of the district board is required to adopt an ordinance.

(3) An ordinance to meet an emergency may be introduced, read once and put on its final passage at a regular or special board meeting, without being described in a published agenda, if the reasons requiring immediate action are described in the ordinance. The unanimous approval of all members of the board at the meeting, a quorum being present, is required to adopt an emergency ordinance.

198.560 Filing of ordinance; notice of adoption of emergency ordinance. (1) Within seven days after adoption of an ordinance, the enrolled ordinance shall be:

(a) Signed by the presiding officer;

(b) Attested by the person who served as recording secretary of the district board at the session at which the board adopted the ordinance; and

(c) Filed in the records of the district.

(2) A certified copy of each ordinance shall be filed with the county clerk, available for public inspection.

(3) Within 15 days after adoption of an emergency ordinance, notice of the adoption of the ordinance shall be published as provided by ORS 198.540 (2) for notice of proposed ordinances. The notice shall:

6

- (a) Briefly describe the ordinance;
- (b) State the date when the ordinance was adopted and the effective date of the ordinance; and
- (c) State that a copy is on file at the district office and at the office of the county clerk of the county, available for public inspection.

198.570 When ordinances take effect. (1) Except as provided by subsection (2) of this section, an ordinance shall take effect on the 30th day after it is adopted, unless a later date is prescribed by the ordinance. If an ordinance is referred to the electors of the district, it shall not take effect until approved by a majority of those voting on the ordinance.

- (2) An emergency ordinance may take effect upon adoption.

With respect to the numbers required, as far as ORS chapter 190 is concerned, you only need two to create an intergovernmental entity. So the formation can go forward with any number of participants.

Only those who've gone through the formal participation steps are legally authorized to be part of the entity. Worst-case scenario, you may decide to go forward with a core group of participants, and add additional members later once they've completed the participation requirements. If there are latecomers, ORS chapter 190 isn't clear on the process. I think it's highly likely we would be able to amend the filing to add/delete members over time (it's allowed with private corporations), though obviously the most efficient approach would be to get all who are interested on board at the outset.

Let me know if you need help preparing "user-friendly" instructions.

**AGREEMENT FOR THE FORMATION OF AN INTERGOVERNMENTAL ENTITY FOR
THE OPERATION, MAINTENANCE, AND USE OF A COUNTY-WIDE INTEROPERABLE
COMMUNICATIONS SYSTEM**

(March 14, 2016)

This Intergovernmental Agreement (“Agreement”) is entered into by and between Klamath County, Oregon, and all of the entities signing below. This Agreement shall be effective July 1, 2016, and shall terminate according to its terms.

RECITALS

WHEREAS, Klamath County, Oregon, and each of the participants (“Participants”) to this intergovernmental agreement (“Agreement”) are local government entities formed under and authorized by Oregon law; and

WHEREAS, Klamath County has built, owns, and operates a county-wide interoperable radio communications system (“System”) which is used and operated collectively by the Participants and the County, pursuant to an Intergovernmental Agreement dated December 2008 (“2008 IGA”); and

WHEREAS, components of the System were purchased with grant funds, which were awarded with the express condition that they be used for developing interoperable public safety communications within the County; and

WHEREAS, Klamath County and the Participants mutually desire to convey ownership of the System to the Participants, and to establish a system of governance for the System by the Participants;

NOW, THEREFORE, pursuant to the authority granted in Oregon Revised Statutes (“ORS”) 190.010, Klamath County and the Participants hereby agree as follows:

AGREEMENT

1. **Creation of Intergovernmental Entity.** There shall herewith be created an intergovernmental entity, which shall be known as the Klamath Interoperability Radio Group (“KIRG”). The purpose of the KIRG shall be to own, maintain, finance, and operate the county-wide interoperable radio communications system (“System”) heretofore described, and to establish terms for participation therein. Upon its formation, the KIRG shall have all the powers and authorities granted to it under ORS chapter 190, including but not limited to those specific powers described in ORS 190.080.
2. **Definitions.** Unless the context indicates otherwise, the following definitions shall apply to this Agreement:
 - a. **“Board of Directors” or “Board”** shall mean the governing board established pursuant to Section 3 of this Agreement.

6
1 - INTERGOVERNMENTAL AGREEMENT: COUNTY-WIDE INTEROPERABLE
COMMUNICATIONS SYSTEM

- b. **“Initial Voting Members”** shall mean the entities who are signatories to this Agreement at the time of its adoption.
 - c. **“System” or “the System”** shall mean the county-wide interoperable radio system, as the system exists at the time of adoption of this Agreement, and as later modified.
 - d. **“Voting Members” or “Voting Membership”** shall mean the signatories to this Agreement, excluding any later-removed entities and including any later-added entities, who are signatories to this Agreement.
3. **Board of Directors.** The KIRG shall be governed by a board of directors (“Board”) of seven individuals representing the following:
- Klamath Falls Police Department
 - Klamath County Sheriff’s Office
 - Klamath 911 Emergency Communications District
 - Klamath County Fire District No. 1
 - Klamath County Public Works Department
 - Klamath County Fire Defense Board
 - Klamath County Ambulance Advisory Committee

Board positions shall be perpetual. Each represented entity shall appoint one individual to serve on the Board on its behalf, for such period of time as the represented entity determines.

4. **Terms of Participation; Voting.** Each signatory to this Agreement shall be a Voting Member. A quorum of the Voting Membership shall consist of fifty percent (50%) plus one (1). Each Voting Member shall have one vote. No Voting Members shall vote by proxy. Additional terms of participation may be established by the Board of Directors pursuant to adopted Bylaws.
5. **Initial Meeting; Bylaws.** The Voting Membership shall hold a meeting no later than thirty (30) days from the date of filing of the formation documents with the Oregon Secretary of State. At the initial meeting, the Members shall elect the initial Board by majority vote, a quorum being present. Terms of board members shall be as provided in Section 3 of this Agreement.

As its first order of business, the Board shall submit for approval by a majority of the Voting Members written Bylaws to address governance of the KIRG, including but not limited to establishment of Board offices, the duties thereof, and the process for election of such officers.

Following approval of the Bylaws, the Board shall then elect from among its membership someone to fill each office.

At its initial meeting, the Board also shall establish by resolution its regular meeting date and time. Regular board meetings shall be held at least once per calendar month.

6. **Membership Cost.** The cost of operation and maintenance of the System shall be apportioned among the Voting Members in the form of an annual fee. The amount of such fee shall be based on the actual cost of operations and administration of the KIRG according to the entity's adopted budget, plus a reasonable amount to establish a reserve fund for the organization, and apportioned among the members as provided in the Bylaws. The fees assessed are based on the actual cost of operation and maintenance, and do not constitute a "debt." Regardless, in no event may the County incur or be assessed a debt beyond the limits described in Article XI, Section 10 of the Oregon Constitution.

Increases in the annual fee must be approved by the Board, but in no event shall the annual fee increase by more than 10 percent (10%) from the previous year.

7. **Accounting; Budget.** Any income received by the KIRG, from membership fees or otherwise, shall be accounted for according to Oregon's Local Budget Law, ORS chapter 294, and shall be expended only as provided by law for the purposes herein described.
8. **Employees.** In its formation, KIRG shall acquire no employees of Klamath County nor of any other organization or company. In its discretion, the Board may establish policies for employment of personnel, and hire such personnel, at any time.
9. **Conveyance of Property.** The Participants acknowledge that the 2008 IGA was designed to address ownership and management of certain real and personal property ("Property") necessary to the operation of the System and for use by all Participants, and that such Property was obtained with grants obtained through cooperative efforts of the Participants. It is the intention of the Participants by this Agreement to convey all rights and obligations associated with such Property to KIRG.

Therefore:

A. Real Property. Once KIRG is duly formed, Klamath County shall convey to KIRG ownership of such real property currently owned by Klamath County and used for the operation of the System, including but not limited to the lease with Angel Mountain, LLC, to occupy physical space in buildings and on towers for mountaintop radios, antennas, and related equipment. Upon conveyance of such real property, KIRG shall be liable for all costs and obligations of ownership, including but not limited to any debt service remaining on such property. The assumption of such obligations shall constitute the sole consideration for such conveyance. Later acquisitions of real estate shall be within the discretion and authority of the Board.

B. Personal Property. Once KIRG is duly formed, Klamath County shall convey to KIRG ownership of such personal property and fixtures owned by Klamath County that make up the System, wherever situated. Upon conveyance of such personal property and fixtures, KIRG shall be liable for all costs and obligations of ownership, including but not limited to any debt service

3 - INTERGOVERNMENTAL AGREEMENT: COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM

6

remaining on such property. The assumption of such obligations shall constitute the sole consideration for such conveyance. Later acquisitions of personal property and fixtures shall be within the discretion and authority of the Board.

C. Financial Assets; Records. Once KIRG is duly formed, Klamath County shall transfer to KIRG any and all moneys on account for the ownership and operation of the System. Klamath County also shall transmit to the KIRG all necessary books, documents, and other records necessary for ownership and continued operation of the System.

10. **Obligation for Debts and Liabilities.** As provided in ORS 190.080(3), the debts, liabilities and obligations of the KIRG shall be, jointly and severally, the debts, liabilities and obligations of the participating members of the KIRG. In the event of dissolution of the KIRG, debts and liabilities shall be apportioned as provided in the Bylaws.
11. **Public Entity.** Upon its formation, the KIRG shall be a public entity subject to all applicable state and federal laws, including but not limited to Oregon's public contracting laws; public records laws; public meetings laws; Ethics Laws for Public Officials; and the Local Budget Law.
12. **Term of Agreement; Termination.** Except as provided herein, this Agreement shall be perpetual. Upon written request to the Board of five (5) or more Voting Members, the Board shall call a vote on whether the IGA shall be terminated and the KIRG dissolved. The IGA may be terminated by vote of at least two-thirds of the Voting Members, providing adequate arrangements have been made to convey the obligations of System operation to another qualified entity, or to otherwise ensure that termination shall not create undue risk or danger to the public. In the event of termination of this Agreement and dissolution of the KIRG, the value of any remaining assets, less the necessary costs of dissolution, shall be apportioned among the Voting Members in the same manner used to apportion costs of operation in paragraph 6.
13. **Amendment.** This Agreement may be amended by two-thirds vote of the Voting Membership.
14. **Time for Implementation.** Klamath County and the Participants to this Agreement agree to work cooperatively and in good faith to effect the purposes of this Agreement without unreasonable delay.
15. **Termination of Prior Agreement.** As soon as is feasible after KIRG commences operation of the System, the 2008 IGA shall be terminated by two-thirds vote of the Membership Committee, as provided in Section VII of that agreement.
16. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, each individual Participant shall save, defend, hold harmless and indemnify each other Participant, its divisions, officers, employees, and agents, from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or related to the acts or omissions of the same in the performance of this Agreement.

4 - INTERGOVERNMENTAL AGREEMENT: COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM

6

Keno Rural Fire Protection District

By: _____

Its: _____

Date: _____

Klamath County

By: _____

Its: _____

Date: _____

Klamath County Sheriff

By: _____

Its: _____

Date: _____

Klamath 911 Emergency Communications District

By: _____

Its: _____

Date: _____

Klamath County Fire District #1

By: _____

Its: _____

Date: _____

Klamath County Fire District #3

By: _____

Its: _____

Date: _____

Klamath County Fire District #4

By: _____

Its: _____

Date: _____

Klamath County Fire District #5

By: _____

Its: _____

Date: _____

Klamath Falls Police Department

By: _____

Its: _____

Date: _____

Malin Police Department

By: _____

Its: _____

Date: _____

SIGNATORIES CONTINUE ON NEXT PAGE

6 - INTERGOVERNMENTAL AGREEMENT: COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM

6

Malin Rural Fire Protection District

By: _____

Its: _____

Date: _____

Merrill Police Department

By: _____

Its: _____

Date: _____

Merrill Rural Fire Protection District

By: _____

Its: _____

Date: _____

Oregon Institute of Technology Campus Safety

By: _____

Its: _____

Date: _____

Oregon Outback Rural Fire Protection District

By: _____

Its: _____

Date: _____

Rocky Point Fire and Emergency Medical Services

By: _____

Its: _____

Date: _____

END OF SIGNATORIES.

**7 - INTERGOVERNMENTAL AGREEMENT: COUNTY-WIDE INTEROPERABLE
COMMUNICATIONS SYSTEM**

6

KLAMATH INTEROPERABILITY RADIO GROUP

BYLAWS

1. GENERAL

These Bylaws are established by the Board of Directors ("Board") of the Klamath Interoperability Radio Group ("KIRG") as authorized by Section 5 of the "Agreement for the Formation of an Intergovernmental Entity for the Operation, Maintenance, and Use of a County-Wide Interoperable Communications System," ("IGA") dated March 14, 2016. The Bylaws shall serve as policy for the KIRG's Board of Directors ("Board") and for all committees thereof.

2. BOARD OF DIRECTORS

2.1 Authority of Board.

All KIRG power and authority is vested in the Board, which shall govern and be the final authority in all matters related to the KIRG.

2.2 Powers of the Board.

The Board shall exercise all power as is necessary, proper or convenient to carry out the functions of the KIRG including, but not limited to, contracting with persons and entities for the provision of all services, property or equipment necessary to fulfill the purposes of the KIRG; entering into agreements for use of the KIRG's facilities, available bandwidth, or other services, and charging a reasonable fee therefor; adopting and implementing personnel policies and rules; employing personnel; adopting purchasing policies and rules; and applying for, receiving, and administering grants.

2.3 Election of Board Members.

There shall be seven (7) positions on the Board of Directors, representing the following entities:

- Klamath Falls Police Department
- Klamath County Sheriff's Office
- Klamath 911 Emergency Communications District
- Klamath County Fire District No. 1
- Klamath County Public Works Department
- Klamath County Fire Defense Board
- Klamath County Ambulance Advisory Committee

Board positions shall be perpetual. Each represented entity shall appoint one individual to serve on the Board on its behalf, for such period of time as the represented entity determines.

2.4 Voting.

2.4.1 Four members of the Board shall constitute a quorum for the purpose of conducting business.

2.4.2 Each Board Member shall have one vote. No Board Member may vote by proxy.

2.4.3 Except as otherwise provided herein, any action taken by the Board shall require a vote of at least four (4) members of the Board.

2.5 Apportionment of Costs and Liabilities.

2.5.1 The Board shall devise a fair and equitable methodology for apportioning the annual cost of System operation and maintenance among the Voting Membership. The methodology shall consist of determining the total projected annual cost of System operation and maintenance, including a reasonable amount for reserves, and apportioning costs among the Voting Members based on one or more of the following criteria:

- Total number of users
- Proportionate use of, or demand on, the System
- Creation of classes or categories of users based on frequency or type of use
- Contribution of capital or other resources to the System

Subject to the limits on increases in annual fee amounts as provided in the IGA, the Board may, by formal action, modify the method for apportioning costs, assets, and liabilities.

2.5.2 In the event of dissolution of the KIRG, any debts, obligations, and assets of the KIRG shall be equitably distributed in the same manner used to apportion costs in subsection 2.5.1 of these Bylaws, or in as close approximation as is possible under the circumstances.

2. BOARD OFFICERS

2.1 Elections; Term; Removal.

2.1.1 At its annual meeting, by majority vote the Board of Directors shall elect from among the Board an individual to fill each of three offices: Chair, Vice-Chair, and Secretary/Treasurer.

2.1.2 The term of each Board Officer shall commence immediately following the meeting. Each Board Officer shall serve a one-year term. There shall be no term limits for Board Officers.

2.1.3 By a majority vote of those present and voting, a quorum being present, the Board may remove any Board Officer for cause. "Cause" shall be defined as one or more of the following:

- Three or more unexcused absences from Board meetings in a calendar year;
- Persistent refusal to participate in Board discussions or activities, or persistent disruption to the regular proceedings of the Board;
- Taking, or attempting to take, any binding action without the approval of the Board, or otherwise misrepresenting the interests of the Board;
- Egregious or continuing neglect of the duties of the office;
- Otherwise engaging in conduct that is adverse to the interests of the KIRG, its membership, and/or the public it serves.

2.2 Board Chair.

2.2.1 The Chair will establish the agenda for each public meeting of the Board; call meetings of the Board; and preside over Board meetings.

2.2.2 The Chair, or his or her designee, shall cause the delivery of all necessary materials to Board members at least seven (7) days prior to any regular Board meeting.

2.2.3 The Chair, or his or her designee, shall be responsible for maintaining all Board and KIRG records.

2.2.4 The Chair may establish, charge, and appoint members of Committees as needed. Committee members may be Board members, other representatives of voting members, or any other person deemed suitable or qualified by the Chair.

2.2.5 The Chair may dissolve Committees with the concurrence of a majority of the Board.

2.2.6 With Board authorization, as expressed by Board rule, by motion, or by resolution, the Chair may sign on behalf of KIRG any agreement or other document necessary to implement the KIRG's mission.

2.2.7 The Chair may assume such other responsibilities as are deemed necessary for the proper functioning of the KIRG with the prior concurrence of the Board.

However, if the Chair deems there to be an emergency affecting the integrity of the KIRG, its property or personnel, the Chair may act unilaterally but must inform the Board, as soon as practicable after the emergency, of the rationale for his/her actions, and obtain the Board's ratification of the action(s) taken.

2.3 Vice-Chair.

The Vice-Chair shall act as Chair in the absence of the Chair. The Chair may assign other duties to the Vice-Chair as the Chair or Board deem necessary.

2.4 Secretary/Treasurer

2.4.1 The Secretary/Treasurer shall be responsible for providing notice of all KIRG public meetings, and for recording and maintaining the minutes thereof consistent with Oregon law. The Chair may assign other duties to the Secretary/Treasurer as the Chair or Board deem necessary.

2.4.2 The Secretary/Treasurer shall be responsible for overseeing the financial operations of the KIRG; for making regular updates to the Board on the KIRG's financial status; and for ensuring compliance with Oregon's Local Budget Law. The Secretary/Treasurer shall serve as the KIRG's Budget Officer, except as otherwise approved by a majority of the Board.

3. BOARD MEETINGS

4 - BYLAWS, KLAMATH INTEROPERABILITY RADIO GROUP (March 2016)

6

3.1 Agenda.

3.1.1 The regular Board meeting agenda shall be as follows, unless modified by the Chair:

- Call meeting to order
- Roll call
- Action on minutes
- Public comment
- Communications
- Secretary/Treasurer's report - Financial Report
- Committee reports
- Old business
- New business
- Executive session (if needed and authorized)
- Open agenda
- Adjournment

3.1.2 Any Voting Member may submit a written request to the Chair to place a specific agenda item on the next meeting agenda. The request must be made a minimum of ten (10) days prior to the scheduled meeting. The item shall then be placed on the Agenda for discussion by the Board.

3.2 Meeting Dates and Location; Special Meetings.

3.2.1 The Board shall meet not less than once each month, at a regular day, time, and location established by Resolution of the Board.

3.2.2 Special meetings and emergency meetings of the Board may be used to consider any topic not otherwise prohibited by law, and shall be called consistent with Oregon's Public Meetings Law. The Chair may, in the exercise of his/her discretion, call for special meetings or emergency meetings as necessary or, if the Chair is unwilling to call such a meeting on his/her own, the meeting may be called by agreement of at least two members of the Board.

4. EMPLOYMENT OF PROFESSIONALS

4.1 The Board may retain the services of professionals by contract or by employment to provide advice and counsel or services to the KIRG.

4.1.1 A Certified Public Accountant will conduct annual audits.

4.1.2 A licensed attorney will provide legal services and counsel.

4.1.3 Such other professionals as determined by the Board.

5. ADDITION OR REMOVAL OF VOTING MEMBERS

5.1. Upon application, the Board may vote to add any public entity to the System, and to assess equitable fees for participation as provided in the Agreement. Once approved, the entity shall become a Voting Member.

5.2 Upon application from a Voting Member, the Board may approve the removal of that Member from the System, and may reapportion that member's share of the costs among the other members. However, the Board shall not approve the removal of the member entity from the System if doing so would jeopardize the health and safety of the public or negatively affect the interoperability of the System.

6. AMENDMENTS TO BY-LAWS.

6.1 A majority vote of the Voting Membership is required to amend these Bylaws.

6.2 Any Board member may propose amendments to the Bylaws. Board members shall be provided a written copy of the proposed amendment(s) to the Voting Membership at least 30 days prior to the Board meeting that the amendment(s) are to be voted on.

6.3 Amendment(s) may be voted on at regular scheduled Board meeting or a special Board meeting called for that purpose.

ORDINANCE NO. 16- _____

ORDINANCE RATIFYING THE CREATION OF AN INTERGOVERNMENTAL ENTITY FOR THE OPERATION, MAINTENANCE, AND USE OF A COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM, AND AUTHORIZING PARTICIPATION THEREIN

WHEREAS, City of Klamath Falls (“Participant”) is a unit of local government or governmental agency formed and authorized under Oregon law to promote public safety and provide emergency services, including engaging in emergency radio communications in the course of its operations; and

WHEREAS, Participant and certain other emergency services providers in Klamath County have engaged in collaborative and cooperative discussions for the purpose of creating an intergovernmental entity under ORS 190.010(5) to own and operate an interoperable radio communications system within the County; and

WHEREAS, by and through an *“Agreement for the Formation of an Intergovernmental Entity for the Operation, Maintenance, and Use of a County-Wide Interoperable Communications System”* (“Agreement”), Participant and other participating providers (listed in Exhibit A, which is attached to this Ordinance and incorporated herein by this reference) formed the Klamath Interoperability Radio Group (“KIRG”), an intergovernmental entity; and

WHEREAS, pursuant to ORS 190.085, prior to the effective date of the Agreement, each party to such Agreement must enact an Ordinance ratifying the creation of KIRG; and NOW THEREFORE,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1.

1. Pursuant to ORS 190.085, Participant hereby ratifies the creation of the KIRG and authorizes Participant’s participation therein.
2. The Agreement shall become effective July 1, 2016.
3. The public purpose of the Agreement is to provide for regional decision-making and ownership of regional system assets to increase overall system reliability, reduce duplication, increase the ability to obtain state and federal grants, and support the highest level of interoperability of regional and state emergency communications.
4. To carry out its public purposes, the KIRG shall have the following powers, duties and functions in addition to those specified in ORS 190.003 through 190.265:
 - A. To provide operation, maintenance, construction, repair, replacement and management of the radio system as described in the Agreement.
 - B. To otherwise manage the business and affairs of the radio system as set forth in the Agreement.

6

- C. To retain such officers and employees as it deems necessary to carry out its objectives, and to contract for the purchase of property and services in accordance with the Agreement.
- D. To administer, and account for, all payments and receipts related to operation of the radio system on behalf of a party, parties, or the intergovernmental entity as a whole.
- E. To adopt such bylaws, rules, regulations and policies as the parties deem necessary to further the purposes of the Agreement.
- F. To exercise all powers provided in the applicable acts, charters, or laws of the individual parties which are necessary or desirable to develop and operate the KIRG.

THIS ORDINANCE SHALL TAKE EFFECT no sooner than 30 days from the date of adoption.

Passed by the Council of the City of Klamath Falls this ___ day of ____, 2016.

Presented to the Mayor, approved and signed this ___ day of ____, 2016.

Mayor

ATTEST:

City Recorder

STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the ___ day of ____, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

City Recorder

6

EXHIBIT A
**KLAMATH INTEROPERABILITY RADIO GROUP
FOUNDING PARTICIPANTS**

- Bly Rural Fire Protection District
- Bonanza Rural Fire Protection District
- Central Cascade Fire and Emergency Medical Services
- Chemult Rural Fire Protection District
- Chiloquin/Agency Lake Rural Fire Protection District
- Crescent Rural Fire Protection District
- Keno Rural Fire Protection District
- Klamath County
- Klamath 911 Emergency Communications District
- Klamath County Fire District #1
- Klamath County Fire District #3
- Klamath County Fire District #4
- Klamath County Fire District #5
- Klamath County Sheriff
- Klamath Falls Police Department
- Malin Police Department
- Malin Rural Fire Protection District
- Merrill Police Department
- Merrill Rural Fire Protection District
- Oregon Institute of Technology Campus Safety
- Oregon Outback Rural Fire Protection District
- Rocky Point Fire and Emergency Medical Services

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 7

Date: July 18, 2016

Department: Legal	Contact/Title: Joanna Lyons-Antley, City Attorney
Staff Presenter: Joanna Lyons-Antley	Telephone No.: 541-883-5323
City Manager Review: 	Email: jlyons@klamathfalls.city

TOPIC: A Special Ordinance Adopting a Franchise with Falcon Cable Systems Company II, L.P., doing business as Charter Communications – First Reading

SUMMARY AND BACKGROUND:

The City's franchise with Charter Communications expired on June 2013. The City was part of a consortium of cities represented by an attorney specializing in telecommunications franchises, to negotiate a fair franchise agreement with Charter. This agreement represents several years of negotiations and contains the following relevant provisions:

- 5% franchise fee. The maximum under Federal Communications Commission regulations for cable services is 5%.
- One Public, Education and Government (PEG) access channel. The City is required to provide at least one hour of local programming in any six month period.
- \$25,000 lump sum payment for capital fees and equipment for the PEG channel. This amount will be used to purchase cameras and other equipment to use for broadcasting of the PEG channel.
- Term shall be 10 years.

FINANCIAL IMPACT:

This continues the current franchise of 5%, but includes the \$25,000 payment for PEG equipment purchases.

COUNCIL OPTIONS:

1. Approve the proposed agreement.
2. Reject the proposed agreement and direct staff to renegotiate the agreement.

DOCUMENTS ATTACHED:

- Proposed Ordinance (included Franchise Agreement)

7

RECOMMENDED MOTION/ACTION:

- Take public comment
- Move to introduce the Ordinance by title for first reading

NOTICE SENT TO:

- Falcon Cable Systems Company II, L.P., dba Charter Communications

7

ORDINANCE NO. 16-_____

A SPECIAL ORDINANCE GRANTING TO FALCON CABLE SYSTEMS COMPANY II, L.P., DBA CHARTER COMMUNICATIONS A FRANCHISE FOR A PERIOD OF TEN YEARS

WHEREAS, the current franchise with Charter Communications expired June 2013;

WHEREAS, a consortium of cities negotiated a proposed franchise form, and the City negotiated the terms relating to the Public Education Government channel; and **NOW**, **THEREFORE**,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1.

The franchise agreement with Falcon Cable Systems Company II, L.P., DBA Charter Communications is attached as Exhibit A to this Ordinance.

Passed by the Council of the City of Klamath Falls this ___ day of _____, 2016.

Presented to the Mayor, approved and signed this ___ day of _____, 2016.

Mayor

ATTEST:

City Recorder

STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the ___ day of _____, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

City Recorder

7

EXHIBIT A

7

**FRANCHISE AGREEMENT
CITY OF KLAMATH FALLS, OREGON
TABLE OF CONTENTS**

Article I. Title and Purpose 2

Article II. Definitions 2

Article III. Grant of Franchise 3

 Section 3.1 Grant of Franchise 3

 Section 3.2 Equal Protection 4

 Section 3.3 Police Powers 4

 Section 3.4 Transfer/Assignments 4

 Section 3.5 Violations of Franchise; Procedures, Notice & Cure 5

 Section 3.6 Revocation of Franchise 6

 Section 3.7 Minor Violations 6

 Section 3.8 Retention & Inspection of Records 7

Article IV. Street Occupancy 7

 Section 4.1 Occupancy 7

 Section 4.2 Work by Grantor; Cable System Relocation 8

 Section 4.3 Construction & Technical Standards 9

Article V. Franchise Fees 9

 Section 5.1 Franchise Fees 9

 Section 5.2 Audit of Franchise Fees 10

Article VI. Service 10

 Section 6.1 Nondiscrimination; Privacy 10

 Section 6.2 Extension of Cable Service 10

 Section 6.3 Customer Service 11

 Section 6.4 Subscriber Bills and Notices 11

 Section 6.5 Rate Regulation 11

 Section 6.6 Annexation by Grantor 11

 Section 6.7 Emergency Alert System 11

Article VII. Service to Public Buildings; Community Programming 11

 Section 7.1 Service to Public Buildings 11

 Section 7.2 Public Education & Government (PEG) Channel 12

 Section 7.3 Access and Community Support Not Franchise Fees 14

Article VIII. Insurance & Indemnification 14

 Section 8.1 Insurance Requirement 14

 Section 8.2 Indemnification 15

Article IX. Notices 15

 Section 9.1 Notice to Grantor 15

 Section 9.2 Notice to Grantee 15

Article X. Miscellaneous Provisions 16

 Section 10.1 Compliance with Local, State & Federal Law 16

 Section 10.2 Severability 16

 Section 10.3 Force Majeure 16

 Section 10.4 Descriptive Headings 16

 Section 10.5 Legal Action 16

 Section 10.6 Entire Agreement 16

 Section 10.7 Public Notice 16

Article XI. Term & Renewal 17

 Section 11.1 Effective Date & Term 17

FRANCHISE AGREEMENT
City of Klamath Falls, Oregon

This Franchise Agreement ("**Franchise**") is between the CITY OF KLAMATH FALLS, OREGON, a municipal corporation, hereinafter referred to as "**Grantor**" and FALCON CABLE SYSTEMS COMPANY II, L.P., d/b/a Charter Communications, hereinafter referred to as "**Grantee**."

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

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

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

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

Article I. Title & Purpose

Section 1.1 The purpose of this Franchise is to create and renew a binding, enforceable Franchise contract between Grantor and Grantee that establishes the terms and conditions under which Grantee may construct, operate and maintain a Cable System within Klamath Falls, Oregon (hereinafter referred to as "CITY" and/or "GRANTOR").

Article II. Definitions

Section 2.1 For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning defined herein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. Words used in this Franchise which are not defined hereunder but defined in the Cable Act shall have the meaning specified in the Cable Act definition.

- a. **Affiliate.** As set forth in the Cable Act.
- b. **Cable Act.** The Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521, *et seq.*, as it may be amended, or superseded.
- c. **Cable System, Cable Service and Basic Cable Service.** As set forth in the Cable Act.
- d. **FCC.** The Federal Communications Commission and any successor governmental entity thereto.
- e. **Franchise.** The non-exclusive authorization granted hereunder of a franchise, privilege, permit, license or to otherwise construct, operate and maintain a Cable System within the Service Area.
- f. **Grantee.** Falcon Cable Systems Company II, L.P., d/b/a Charter Communications.

7

- g. **Grantor.** The City of Klamath Falls, Oregon.
- h. **Gross Revenues.** All amounts derived by the Grantee or any Affiliate, in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Services within the Service Area including but not limited to amounts for all Cable Services, premium services, advertising, Franchise Fees, home shopping channels and other such revenue-sharing arrangements, installations, and all leased access payments. Grantor acknowledges and agrees that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP").

Gross Revenues shall not include, to the extent consistent with GAAP: (1) any taxes, fees or assessments imposed on Subscribers but collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee; (2) bad debt, provided, however, that bad debt recoveries shall be included in Gross Revenues during the period collected or as soon as practicable; (3) credits, refunds and deposits paid to Subscribers; and (4) any Public, Education and Government (PEG) Capital Fee (as described in Section 7.2). Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.

If Cable Services and non-Cable Services are bundled together and offered to Subscribers for one price, then in accordance with GAAP, Grantee shall account for the revenue from such packages using the retail rate methodology, which allocates the bundled discount by the proportion of the total retail rate each billing component represents. Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose of evading or reducing its Franchise Fee obligations.

- i. **Person.** An individual, partnership, association, organization, corporation, trust or governmental entity.
- j. **Public School.** Any accredited public school operated within the Service Area and limited to elementary, junior high and high school.
- k. **Service Area.** The geographic boundaries of the Grantor as they now exist and any changes thereto, by annexation or other legal means.
- l. **Standard Installation.** Installations of Cable Service to a location within one hundred fifty feet (150') from the existing Cable System.
- m. **State.** The State of Oregon.
- n. **Streets.** The area across, in, over, along, upon and below the surface of public streets, roadways, highways, bridges, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, utility strips or rights-of-way dedicated for compatible uses, now or hereafter held by Grantor within the Service Area, which are under the jurisdiction or control of Grantor, and only to the extent Grantor has the right, title, interest and/or authority to grant a franchise to occupy and use such areas for a Cable System and Cable Service.
- o. **Subscriber.** Any Person lawfully receiving any Cable Service from Grantee.

Article III. Grant of Franchise

Section 3.1 Grant of Franchise.

- a. Subject to the terms and conditions of this Franchise, Grantor hereby grants to Grantee a non-exclusive authorization to erect, construct, operate and maintain a Cable System within the Streets for a ten (10) year term for the purpose of providing Cable Service within the Service Area.

7

- b. Nothing in this Franchise shall be construed to authorize, prohibit or condition Grantee from offering any service over its Cable System that is not prohibited by Federal or State Law.
- c. Nothing in this Franchise shall be construed to prohibit Grantor from granting to other Persons rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets by franchise, permit or otherwise, subject to Section 3.2.

Section 3.2 Equal Protection.

The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Service Area. If any other provider of Cable Services or video services (without regard to the technology used to deliver such services) is lawfully and expressly authorized by the Grantor to use the Streets to provide such services, and if the material obligations applicable to Grantee are more burdensome or less favorable than those imposed on any such competing provider, then upon thirty (30) days prior written notice to the Grantor, the Grantee shall have the right and may choose, to the extent consistent with applicable State and Federal laws and orders and rules adopted pursuant thereto:

- A) to modify this Franchise to the mutual satisfaction of Grantor and Grantee; or
- B) to deem this Franchise expired thirty-six (36) months from the date of the above written notice; or
- C) to terminate this Franchise and take in its place the same franchise agreement of a competing provider of Cable Services or video services authorized by the Grantor

The Grantor and the Grantee agree that any undertakings that relate to the renewal of the Grantee's Franchise with the Grantor shall be subject to the provisions of Section 626 of the Cable Act (47 U.S.C. § 546) or any such successor statute. Nothing in this Franchise shall impair the right of the Grantor or Grantee to seek other remedies available under law.

Section 3.3 Police Powers.

Notwithstanding any other provision of this Franchise, Grantee's rights are subject to the police powers of Grantor to adopt and enforce ordinances necessary for the safety, health and welfare of the public ("Police Powers"). Grantee agrees to comply with all applicable laws, ordinances and regulations adopted under the Police Powers of Grantor. This Franchise is a contract and except as to those changes that are the result of the Grantor's lawful exercise of its Police Powers, the Grantor may not take unilateral action that materially changes the explicit mutual promises in this contract. All changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between an explicit mutual promise of this Franchise and an explicit provision of any Grantor ordinance or regulation, this Franchise shall control. Grantee specifically reserves the right to challenge any terms, conditions or provisions of local law if Grantee believes such are in conflict with its contractual rights under this Franchise, or are not a lawful exercise of the Grantor's Police Power. For purposes of this paragraph, a "conflict" shall exist only to the extent the Grantor ordinance or regulation has the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise.

Section 3.4 Transfer/Assignment.

Subject to Section 617 of the Cable Act (47 U.S.C. § 537), the Franchise granted hereunder shall not be assigned, other than to an Affiliate of the Grantee, without the prior written consent of the Grantor, and such consent shall not be unreasonably withheld

7

or delayed. Grantor may condition its consent upon terms and conditions relating to the legal, financial and technical qualifications of the proposed transferee. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer as required in the Cable Act and related FCC rules and regulations, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request and all information required by the Grantor pursuant to this Section 3.4, and the Cable Act, consent by the Grantor shall be deemed granted.

Section 3.5 Violations of Franchise; Procedures, Notice & Cure.

- a. If Grantor believes that Grantee has failed to perform any obligation under this Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, Grantor shall follow the procedures set forth herein:
 1. Grantor shall notify Grantee in writing of any alleged violation ("Violation Notice") which notice shall include the exact nature of any alleged violation (the "Violation Notice") and a request for cure of such violation.
 2. Grantee shall have thirty (30) days from the date of receipt of the Violation Notice to respond in writing, indicating that Grantee:
 - a. Has cured the alleged violation, providing reasonable documentation or detailed explanation demonstrating that the alleged violation has been cured;
 - b. Has commenced, or will commence actions to cure the alleged violation, but that the alleged violation cannot reasonably be cured immediately, describing the steps taken or to be taken to cure the alleged violation; or
 - c. Contests the Violation Notice, stating the reasons therefore, and requesting a public hearing in accordance with this Franchise.
 3. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, determine whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor. Grantor may, in its sole discretion, extend Grantee's cure period upon request by Grantee.
 4. In the event that the Grantor contends that the Grantee has failed to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to this Franchise, the Grantor shall set a public hearing to determine whether the Grantee has committed a violation. The public hearing shall be within sixty (60) days of the end of the cure period.
 - a. In the case of any public hearing pursuant to this Section, Grantor shall provide the Grantee at least twenty (20) days prior written notice of such public hearing, which specifies the time, place and purpose of such public hearing. Grantor shall provide general notice of the public hearing in the same manner as it publishes other notices of the Grantor.
 - b. At the public hearing, Grantee shall be provided an opportunity for full participation, including the right to be represented by legal counsel and to state its position on the matter. The public hearing shall be on the record. If Grantee provides the Grantor written notice at least fifteen (15) business days prior to the public hearing, Grantor shall make a written transcript available to the Grantee within ten (10) business days after the public hearing and the cost of the transcript shall be the sole responsibility of the Grantee.

7

5. Within fifteen (15) days following a public hearing on an alleged violation, Grantor shall issue a written report to Grantee on Grantor's decision and any showing that the Grantee has committed a violation and Grantor shall make written findings of fact relative to its determination, which Notice shall be sent to the Grantee according to this Franchise. If a violation is found, the Grantee may petition for reconsideration before any competent court having jurisdiction over such matters.
6. If, after the public hearing and any subsequent reconsideration, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
 - a. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor determines; and/or
 - b. Commence an action at law or other equitable remedy available under this Franchise or any applicable law; and/or
 - c. To the extent provided in Section 3.6, Grantor may begin the process of revocation of Franchise in accordance with the provisions contained within this Franchise.

Section 3.6 Revocation of Franchise

- a. Prior to revocation or termination of the Franchise, Grantor shall give written notice to Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, Grantor shall give Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and, if Grantee provides the Grantor written notice at least fifteen (15) business days prior to the hearing, Grantor will make a written transcript available to the Grantee within ten (10) business days after the hearing, and the cost of the transcript shall be the sole responsibility of the Grantee. The decision of the Grantor shall be made in writing and shall be delivered to Grantee. Grantee may appeal such determination to an appropriate court. Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- c. Notwithstanding the above provisions, Grantee does not waive any of its rights under Federal law or regulation.
- d. In the event of a revocation of this Franchise, Grantee shall remove its Cable System from the Streets of Grantor, or abandon the Cable System in place if permitted in writing by the Grantor.

Section 3.7 Minor Violations.

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

7

derived by the Grantor and/or Subscribers. It is in the Grantor's sole discretion to determine when a violation is a good faith error and/or to determine the hardship versus benefit.

Section 3.8 Retention & Inspection of Records.

- a. Subject to the requirements of Section 631 of the Cable Act (47 U.S.C. § 551), all records that are legally permissible for release and that are reasonably necessary to ensure Grantee's compliance with the Franchise shall be made available by Grantee to Grantor or Grantor's representative, who has signed Grantee's Non-Disclosure Agreement, upon advance written notice to examine during normal business hours and on a nondisruptive basis. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. To the extent permitted by law, the Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality by marking each page as "confidential". If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason including compliance with the Oregon Public Records laws, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, including the district attorney, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. Grantor shall have no obligation to pursue or defend an appeal of a decision by a court or agency of competent jurisdiction, including the district attorney, ordering the disclosure of any books and records.
- b. Financial Records. Grantee shall maintain financial records of its Gross Revenues and Grantee fee payments for audit purposes for a period no less than four (4) years.
- c. Service Calls/Complaints. Grantee shall maintain a record of all service calls and/or complaints for a minimum period of one (1) year.
- d. Other Records. Grantee shall maintain a full set of its plans, records and maps detailing the location of its Cable System within the Franchise Service Area.

Article IV. Street Occupancy

Section 4.1 Occupancy.

- a. Nothing in this Franchise shall be construed to prevent any public work of the Grantor or other utility occupying the Streets of the Grantor.
- b. Safety. Grantee shall at all times employ the standard of care attendant to the risks involved and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.
- c. Damage or Disturbance. Grantee shall, at its own expense and promptly after discovery or notice from Grantor or other Person, restore any damage or disturbance caused to the Streets as a result of its operation, construction or maintenance of its Cable System to a condition at least as good as the condition of the Street immediately prior to such damage or disturbance.
- d. Existing Poles & Conduits. Grantee shall utilize existing poles, manholes, conduits and other like facilities whenever possible. Grantee may not construct or install new, different, or additional conduits or other underground or underground-related facilities within the Street without obtaining all legally required permits of the Grantor. Grantee may install in the Streets new or additional poles necessary for its Cable System in areas where there are no existing underground cable, telephone or electric facilities upon separate written permission from the Grantor.

7

- e. Underground Construction. The facilities of the Grantee shall be installed underground in those areas of the Service Area where existing telephone and electric services (other than high voltage electric lines) are both underground at the time of system construction, or where there is insufficient space on existing poles for Grantee's facilities. Grantee shall, in cases of new Street construction where all other utilities (except high voltage electric lines) are required by Grantor to be placed underground, place its facilities underground. Grantee shall install its facilities prior to the completion of any new or to be reconstructed or resurfaced Streets to avoid damage to the newly constructed/reconstructed Streets when Grantor has afforded reasonable advance notice.
- f. Minimum Interference. All transmission lines, equipment and structures of Grantee's Cable System shall be installed and located so as to cause reasonably minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin any Street and at all times shall be kept and maintained in a safe condition and in good order and repair.
- g. Vegetation Removal. Grantee may trim or remove any vegetation within the Streets, at its expense, as may be necessary to protect its wires and facilities, subject to any permit required by Grantor and local codes and ordinances.

Section 4.2 Work by Grantor; Cable System Relocation

- a. Relocation for Grantor. Grantee shall, at its own expense, temporarily or permanently disconnect, relocate or remove any portion of its Cable System, including relocation from aerial to underground locations, when required by Grantor by reason of Street construction, widening or repair, including sidewalks; traffic conditions; public safety; Street vacations; installation or repair of public facilities or utilities, or any other public purpose as determined by the Grantor pursuant to its police power. In the event of a request for a permanent relocation, disconnection or removal, Grantor shall advise Grantee in writing as soon as reasonably possible, but not less than forty-five (45) days prior to the date for relocation, disconnection or removal. In the event of a request for a temporary relocation, disconnection or removal, Grantor shall give Grantee no less than ten (10) business days advance written notice.
- b. Failure to Remove or Relocate. Should Grantee fail to remove or relocate any facilities as required in this Section 4.2, the Grantor may cause such work to be done by a qualified contractor and the costs thereof, including reasonable costs and expenses incurred due to Grantee's delay, shall be paid by Grantee, subject to any reimbursement required in Section 4.2d.
- c. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by the permit holder and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.
- d. Reimbursement of Costs. If Grantor reimburses any Person that owns facilities in the Streets used to provide services in competition with Grantee's services provided pursuant to this Franchise for the cost of any of the foregoing, to the extent Grantee is required by the Grantor to relocate for the same project, the Grantor shall reimburse the Grantee in the same manner. If any Federal, State, and/or other funds become available for relocating purposes concerning a qualifying public project, and if such funds are available to Cable Operators, the Grantor will assist the Grantee with the application for such funds to the extent Grantor assists other utilities that own facilities in the Streets used to provide services in competition with Grantee's services provided pursuant to this Franchise with the application for such funds.

7

Notwithstanding the immediately preceding sentence, the Grantor has no obligation to seek or locate Federal, State, and/or other funds for relocating purposes.

Section 4.3 Construction & Technical Standards

- a. Grantee shall obtain all legally required permits and pay all required permit fees before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area.
- b. Grantee shall adhere to the terms of the permits and all Grantor codes, ordinances, rules and regulations currently or hereafter applicable to Grantor Streets and/or construction, operation or maintenance of the Cable System within the Service Area, provided that such codes are of general applicability pursuant to Grantor's Police Powers.
- c. Grantee shall be responsible for ensuring that its Cable System is designed, installed and operated in accordance with good engineering practices and to meet the technical standards adopted by the FCC relating to Cable Systems contained in Part 76 of the FCC's rules and regulations as same may be amended. Grantee shall be at all times prepared to show, on advanced request by an authorized representative of the Grantor, that its Cable System complies with those applicable rules.
- d. Grantee shall conduct complete performance tests of the Cable System required by the FCC, and shall maintain the resulting test data on file for the duration of time required by the FCC. The test data shall be made available for inspection by the Grantor, upon advance notice.

Article V. Franchise Fees

Section 5.1 Franchise Fees

- a. Grantee shall pay to Grantor an annual Franchise Fee in an amount equal to five percent (5%) of Grantee's annual Gross Revenues. Payment of the Franchise Fee shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. If agreed to in writing by the Grantor, which agreement may be revoked upon thirty (30) days notice by the Grantor, payment shall be transmitted by electronic funds transfer to a bank account designated by Grantor. Each franchise fee payment shall be followed, within forty five (45) days, by a report from Grantee showing the basis for the computation of the Franchise Fees paid during that period.
- b. The payment of the Franchise Fee shall be in addition to taxes or fees of general applicability owed to Grantor by Grantee that is not included as a Franchise Fee under Federal law.
- c. No acceptance of any payment by Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as Franchise Fees under this Franchise, or of any tax or other fee owed to Grantor by Grantee.
- d. The payment period and the collection of Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the effective date of the Franchise. Grantee shall continue to pay Franchise Fees under the former agreement (Grantor Ordinance No. 03-12) in the interim period.
- e. In the event the Cable Act is amended to modify the current cap on Franchise Fees to an amount other than five percent (5%) of Gross Revenues required here, Grantee agrees to and shall pay the new maximum amount consistent with federal law. Such increased fee shall take effect on the next available billing cycle in which the higher fee may be placed on Subscribers' bills.
- f. In the event that a Franchise Fee payment or recomputation amount is not made by the Grantee to the Grantor on or before the due date, or is underpaid, Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the lesser of (i) the commercial prime interest rate of the Grantor's primary depository

7

bank during the period such unpaid amount is owed or (ii) nine percent (9%) per annum, but in no event less than five percent (5%).

Section 5.2 Audit of Franchise Fees

- a. Grantor may review and/or audit Grantee's records to ensure the correct calculation of Gross Revenues and application of Franchise Fees payable under this Franchise. Grantee shall provide such records to Grantor or its designee in the Service Area, subject to Grantor and/or designee signing an agreed upon Non-Disclosure Agreement, upon thirty (30) days prior written request at no charge to the Grantor.
- b. In the event that any Franchise Fee is underpaid, Grantee shall pay interest as required in this Franchise. The period of limitation for recovery of any Franchise Fee payable hereunder shall be four (4) years from the date on which payment was due. Subject to applicable law, if the audit discloses an underpayment by an amount in excess of five thousand dollars (\$5,000), Grantee will reimburse Grantor for reasonable audit costs.

Article VI. Service

Section 6.1 Nondiscrimination; Privacy

- a. Grantee shall not deny service, deny access or otherwise discriminate against Subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or any other basis precluded by law.
- b. Grantee shall fully comply with the privacy rights of Subscribers as contained in Section 631 of the Cable Act.

Section 6.2 Extension of Cable Service

- a. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Grantee's closest trunk line or distribution cable that is capable of delivering Cable Service as of the date of such request for service. If such residence is located within one hundred fifty (150) feet of Grantee's trunk line or distribution cable, the Cable Service will be provided at Grantee's published rate for Standard Installations. 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 and into any annexed area which is not contiguous to the present Service Area of the Grantee as long as said circumstance does not constitute a violation under the Cable Act to assure that access to Cable Services is not denied to any group of potential residential cable Subscribers because of the income of those residents.
- b. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.2 above, the Grantee shall only be required to extend the Cable System to Subscriber/Customer(s) in that area if the Subscribers are willing to pay the capital costs of extending the Cable System. 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 installation charges to extend the Cable System from the tap to the residence. However, the connection charge shall not exceed Grantee's actual costs for the distance exceeding one hundred fifty (150) feet for each potential Subscriber, and each potential Subscriber shall only be required to pay their proportionate share of construction costs related to the provision of Cable Services to their property.

7

Section 6.3 Customer Service

a. Customer Service Standards. Grantee shall comply with customer service standards required by the FCC as set forth in Part 76 of Title 47 of the Code of Federal Regulations.

b. Continuous Service.

It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to Grantee are honored, subject to the terms and conditions of this Franchise.

Section 6.4 Subscriber Bills and Notices

Grantee shall comply with the notice requirements in Subpart T of Part 76 of the FCC's rules and regulations, as such may be amended from time to time.

Section 6.5 Rate Regulation

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

Section 6.6 Annexation by Grantor

The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee, which notice shall include each site address to be annexed as recorded on county assessment and tax rolls. Such annexed area will be subject to the provisions of this Franchise upon written notice from the Grantor. Any identified Subscriber addresses shall be included in Grantee franchise fee calculations within thirty (30) days after Grantee's receipt of the annexation notice. All notices due under this Section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 9. Upon request and if reasonably available, Grantor will also provide addresses and maps of annexed areas in a digital format. In any audit of Franchise Fees due under this Agreement, Grantee shall not be liable for Franchise Fees on annexed areas unless and until Grantor has provided the notice by certified mail that meets the standards set forth in this Section.

Section 6.7 Emergency Alert System

Grantee agrees at all times to comply with Federal and State EAS rules as required in 47 C.F.R. Part 11 or as amended.

Article VII. Service to Public Buildings; Community Programming

Section 7.1 Service to Public Buildings

Grantee shall provide, without charge, one (1) outlet and equipment for Basic and Expanded Cable Service to all elementary and secondary Public School instructional buildings and public library buildings within the Service Area and located within one hundred twenty-five (125) feet of Grantee's distribution plant. Additionally, upon written request from Grantor, Grantee shall provide, without charge, one (1) activated outlet and equipment of Basic Cable Service to up to five (5) publicly owned or publicly operated buildings, provided that the buildings are located within one hundred twenty-five aerial feet (125') of the existing distribution Cable System that is actively delivering Cable Service, or if the Grantor agrees to pay the additional cost for non-Standard Installation. Nothing in the preceding sentence shall require Grantor to make any request to Grantee to continue to receive, without charge, any Basic Cable Service provided to publicly owned or operated buildings as of the effective date of this Franchise. The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Grantor shall take

7

reasonable precautions to prevent any inappropriate use of or loss or damage to the Grantee's Cable System.

Section 7.2 Public Education & Government (PEG) Channel

- a. Grantee shall continue to provide one (1) channel[s] on the Cable System for use by Grantor for non-commercial, video programming for Public, Education and Government access ("PEG").
- b. The PEG channel(s) shall, to the extent required by law, be placed on Franchisee's lowest cost level of Cable Service available to Subscribers. Throughout the term of the Franchise, all Subscribers shall be able to view the PEG channel(s) without additional equipment, fees or charges, other than equipment, including converters, required of all Subscribers at additional cost to view the non-PEG programming on the Subscriber's selected level of service.
- c. Programming shall be produced in the Service Area, by those who reside in the Service Area or be of interest to Subscribers in the Service Area as reasonably determined by the Grantor.
- d. For a period of two (2) years from the effective date (as provided in Section 11.1), the Grantor shall not be required to maintain any minimum programming on the PEG Channel. Thereafter, the Grantor shall provide at least one (1) hour of local programming on the PEG Channel in any six (6) month period. For the purposes of the above calculation: a) a program may not be repeated more than three (3) times in any consecutive six (6) month period; and b) time allocated to character-generated or similar programming shall not be included. In the event the programming levels set forth herein are not maintained, the Grantee may have the underutilized PEG Channel returned to the Grantee for the Grantee's use. The Grantee may utilize the PEG Channel only after giving the Grantor not less than ninety (90) days notice and the Grantor fails to maintain the minimum programming levels set forth herein during those ninety (90) days. The Grantor may request return of the PEG Channel used by the Grantee at any time, which request for return shall be accompanied by a showing that the Grantor's intended use for the PEG Channel will, or is reasonably likely to, meet the programming requirements set forth in this Section. The Grantee shall, within ninety (90) days of the date of the written request, cease use of and return the PEG Channel to the Grantor.
- e. When the PEG channel(s) required pursuant to this Section is utilized seventy percent (70%) of the time, five (5) days per week, Monday through Friday, for a consecutive twelve (12) hour block during the hours from 11:00 AM to 11:00 PM, during ten (10) consecutive weeks, Grantee shall make available an additional PEG channel upon the same conditions as the original PEG channel within ninety (90) days of a written notice from Grantor. For the purposes of the above percentage calculation: a) a program may not be repeated more than three (3) times in any consecutive ten (10) week period; and b) time allocated to character-generated or similar programming shall be excluded.
- f. Grantee shall not be responsible for operating and managing the PEG channel(s) including approving any or all PEG programming and/or for obtaining any necessary releases from programmers or another Person to show such content on the PEG channel(s). Grantee shall not exercise any editorial control over the PEG channel(s), except as permitted in Section 611(e) of the Cable Act (47 U.S.C. § 531(e)).
- g. Grantor reserves the right to permit a third party to operate and/or manage the PEG channel(s) on Grantor's behalf. The PEG channel(s) shall not be used for commercial purposes, including but not limited to leasing capacity or advertising.
- h. Grantee shall continue to provide all existing connection(s) of the PEG access channel(s) from Grantee's headend to the location designated by Grantor, in

7

place as of the effective date of this Franchise at no cost to Grantor. After the effective date, any connections to the Grantee's headend to enable transmission of PEG access programming shall be requested in writing by the Grantor and shall be provided by Grantee as soon as reasonably possible. The cost for such connections shall be paid by the Grantor and may be paid for with the PEG fee set forth below. Grantee shall, at no cost to the Grantor, provide and maintain the equipment necessary for transmission of PEG programming to Subscribers on the PEG channel(s). Grantee may recover from Subscribers such equipment costs in accordance with Section 7.2.(i). For the purposes of this subsection, "connections" means the physical connection between the PEG access origination point and the Grantee's headend, including cable, fiber (if used) and conduits. For purposes of this subsection, "equipment" means any equipment necessary to transport the PEG signal from outside the Grantor's building demarcation point to the Grantee's headend, as well as any equipment in the Grantee's headend necessary to transmit the programming to Subscribers, and the maintenance of all the foregoing.

- i. Grantee shall provide a one-time PEG Access grant in the amount of twenty five thousand dollars (\$25,000), payable to the Grantor within sixty (60) days of the Effective Date. The Grantee shall be permitted to recover such capital costs from Subscribers as allowed by federal law. Grantor and Grantee acknowledge that pursuant to current federal law (47 U.S.C. § 542(g)(2)(C)) PEG funds are only to be used for capital equipment costs and not for operational costs.
- j. Grantor shall account for all PEG capital fees and equipment separately from other funds and consistent with Oregon Local Budget Law and other applicable State and Federal laws. PEG capital support shall be for the exclusive use of the Grantor or any designated access provider and shall not be used for purposes other than as described in this Franchise. Except as otherwise set forth in this Section 7, the Grantor shall be responsible for installing, operating, maintaining and replacing the equipment purchased as necessary.
- k. Upon thirty (30) days notice from Grantee, but not more than once annually, Grantor shall provide Grantee with a report detailing how the capital PEG support funds were used.
- l. Grantor shall permit any duly authorized representative of the Grantee, upon receipt of thirty (30) days advance written notice, to examine during normal business hours and on a non-disruptive basis, any and all records and equipment to ensure the Grantor's compliance with this Section.

Section 7.3 Access and Community Support Not Franchise Fees

Subject to applicable law, the Grantee agrees that any PEG capital support provided pursuant to this Section shall in no way modify or otherwise affect the Grantee's obligations to pay Franchise Fees to the Grantor. The Grantee agrees that although the sum of Franchise Fees and PEG capital support as set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, PEG capital support shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise, subject to applicable law. In the event Grantee deducts from any Franchise Fee payment any amounts or costs required in this Section, Grantee shall make best efforts to provide the Grantor written notice at least 30 days prior to implementing the deduction.

Article VIII. Insurance & Indemnification

Section 8.1 Insurance Requirement

7

- a. Grantee shall maintain, throughout the Term of this Franchise, insurance in amounts no less than the following:

Workers Compensation – Statutory Limits

Commercial General Liability: \$2,000,000 per occurrence, Combined Single Liability (CSL); \$2,000,000 General Aggregate

Auto Liability including coverage on all owned, non-owned hired autos: \$1,000,000 per occurrence, CSL

Umbrella Liability: \$2,000,000 per occurrence, CSL

- b. Grantor shall be added as an additional insured arising out of work performed by Charter to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. Grantee's insurance carrier will endeavor to provide advance written notice of cancellation to the Grantor for any reason other than non-payment of premium. Notice of cancellation to the Grantor may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the Grantor. Upon policy expiration or change of insurance carrier, Certificates of Insurance will be provided within thirty (30) days after policy renewal or replacement.
- d. The limits of the insurance as provided herein shall be subject to any changes as to the maximum limits of tort liability imposed on municipalities of the State of Oregon during the term of this Franchise. Upon notice from Grantor of such changes, which must be made in writing and signed by the Grantor and Grantee, the Grantee shall increase the limits required in this Section 8.1 to at least the maximum limits within thirty (30) days.
- e. Grantee shall furnish Grantor with current certificates of insurance within ninety (90) days of the effective date of this Franchise.

Section 8.2 Indemnification

Grantee shall, by acceptance of the Franchise granted herein, defend, indemnify and hold harmless Grantor, its officers, agents and employees, from and against all claims, liabilities, damages and penalties, including but not limited to attorney fees, arising as a result of construction, operation and maintenance of the Cable System within the Service Area, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise. Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the Grantor for claims, damages and penalties caused by the negligence, gross negligence or willful misconduct of Grantor, its officers, agents and employees, including any use of any Public, Education and Government (PEG) channels, funding and facilities. Grantor shall give Grantee written notice within ten (10) days of receipt of any claim or lawsuit subject to this Franchise, and Grantor may retain its own separate counsel at its sole cost and expense.

Article IX. Notices

Section 9.1 Notice to Grantor

Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. Changes in names and addresses may be made at any time with proper notice.

7

City of Klamath Falls
222 S. 6th Street
Klamath Falls, OR 97601

Section 9.2 Notice to Grantee

Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to Persons at the addresses set forth below, or by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. Changes in names and addresses may be made at any time with proper notice. Grantee shall provide thirty (30) days written notice to Grantor of any changes in rates, programming services or channel positions using any reasonable written means.

Attn: Director, Government Relations
Charter Communications
222 NE Park Plaza Drive, Suite #231
Vancouver, WA 98684

With a copy to:

Attn: Vice President, Government Relations
Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131

Article X. Miscellaneous Provisions

Section 10.1 Compliance with Local, State & Federal Law.

Grantee shall at all times comply with all applicable State and Federal laws, and local laws pursuant to Section 3.3, Section 4.3.b, or as otherwise expressly provided herein, and the applicable rules and regulations of administrative agencies. Grantor and Grantee reserve all rights they each may possess under law, unless expressly waived herein.

Section 10.2 Severability.

If any Section, term, word, phrase or part of this Franchise, or any other portion thereof, is held invalid by a court of competent jurisdiction, all remaining Sections, terms, words, phrases or other parts shall remain in full force and effect.

Section 10.3 Force Majeure.

In the event either party is prevented or delayed in its performance of any of its obligations under this Franchise by reason of fires, hurricanes, tornadoes, earthquakes or other acts of God, unavoidable casualty, insurrections, war, riot, sabotage, unavailability of materials or supplies, vandalism, strikes, boycotts, lockouts, labor disputes, act or omission or delays by utility companies upon whom that party is dependent for pole attachments or easement use, that party shall not be held in default or noncompliance with the provisions of this Franchise nor shall it suffer any penalty relating thereto. This provision includes, but is not limited to, work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Grantee to foresee or control.

7

Section 10.4 Descriptive Headings:

The captions to Articles and Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

Section 10.5 Legal Action.

The venue of any legal action brought against one party by the other arising out of this Franchise shall be within Klamath County, Oregon or the United States District Court for the District of Oregon. This Franchise shall be governed by the laws of the State of Oregon and by federal law.

Section 10.6. Entire Agreement.

This Franchise sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

Section 10.7 Public Notice.

The Grantor shall provide public notice of any public meeting relating to this Franchise or any such grant of additional franchises by the Grantor to any other Person(s) to provide Cable Services consistent with Oregon law relating to public meetings.

Article XI. Term & Renewal

Section 11.1 Effective Date & Term

- a. This Franchise shall take effect and be in full force on _____, 2016, provided that Grantee returns an executed original version of this Franchise to the Grantor not more than sixty (60) days from the date the Grantor executes this Franchise. If Grantee does not accept this Franchise as required in this Section, the Franchise shall be null and void.
- b. This Franchise shall expire ten (10) years from the effective date, unless extended by the mutual written consent of both parties.
- c. Grantee may seek renewal of this Franchise in accordance with the provisions of Section 626 of the Cable Act, or any such successor statute. In the event of a denial of renewal of this Franchise, Grantee shall remove its Cable System from the Streets of Grantor, or abandon the Cable System in place if permitted in writing by the Grantor.

7

GRANTOR:

Considered and approved on this _____ day of _____, 2016 (Ordinance No. _____),

On Behalf of the City of _____, Oregon

By: _____
Signature

Printed Name: _____

Title: _____

Date: _____

GRANTEE:

Accepted this _____ day of _____, 2016, subject to applicable Federal, State and local law:

FALCON CABLE SYSTEMS COMPANY II, L.P.

By: Charter Communications VII, LLC its General Manager

By: Charter Communications Inc., its Manager

By: _____

Printed Name: Mark E. Brown
Title: Vice-President, Government Affairs
Charter Communications

7

ORDINANCE NO. 16- _____

ORDINANCE ADDING SECTION 5.700 TO AUTHORIZE CITY TO PETITION COURT FOR RECEIVERS TO ADDRESS RESIDENTIAL BLIGHT

WHEREAS, the City wishes to adopt a receivership program pursuant to ORS 105.425 -.455 to combat residential blight; and **NOW THEREFORE**;

THE CITY OF KLAMATH FALLS HEREBY ORDAINS AS FOLLOWS:

Section 1

Section 5.700 of the City Code is added as follows:

5.700 Receiverships

In addition to, and not in lieu of any other provisions, when residential property is found to violate the City Code, Community Development Ordinance, Building Codes or Fire Codes and the violation is a threat to the public health and safety, the City may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement pursuant to the Oregon Housing Receivership Act (ORS 105.420 to 105.455).

Section 2

This Ordinance shall become effective 30 days after passage.

Passed by the Council of the City of Klamath Falls this _____ day of July, 2016.

Presented to the Mayor, approved and signed this _____ day of July, 2016.

Mayor

ATTEST:

City Recorder

STATE OF OREGON }
COUNTY OF KLAMATH }ss.
CITY OF KLAMATH FALLS }

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby verify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon at the meeting on the _____ day of July, 2016 and therefore approved and signed by the Mayor and attested by the City Recorder.

City Recorder

8