

**REGULAR MEETING OF THE
WOOD VILLAGE CITY COUNCIL
March 14, 2019
AGENDA**

6:00 P.M. PLEDGE OF ALLEGIANCE

1. Citizen Comments (non-agenda items)
2. Presentation: 2017/18 Audit - Merina and Co.
3. Public Safety Report (MCSO)
4. Consent Calendar:
 - a. [Review of bills paid in February, 2019](#)
 - b. Contracts \$2,500 - \$50,000
 - Multnomah County – Quarters 1 &2 Road Maintenance: \$3,137.34
 - National Entertainment Group – 31,000 Easter Eggs: \$3,720.00
 - c. City Council Minutes
 - [December 11, 2018](#)
 - [January 10, 2019](#)
5. [Discussion: City Council Position 5 – Greg Dirks](#)
6. [Discussion: 238th Right of way – Bill Peterson](#)
7. [Discussion: Plastic Bag Ban Update – Greg Dirks](#)
8. [Discussion: Small Cell – Bill Peterson](#)

ADJOURN

The meeting location is wheelchair accessible. This information is available in large print upon request. To request large-print documents or for accommodations such as assistive listening device, sign language, and/or oral interpreter, please call 503-667-6211 at least two working days in advance of this meeting. (TDD 1-800-735-2900).

**NEXT MEETING:
Tuesday, March 26, 2019**



CITY OF WOOD VILLAGE

Check Report

By Check Number

Date Range: 02/01/2019 - 02/28/2019

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP River-AP Riverview Bank						
10178	ABBATE DESIGNS LLC	02/07/2019	Regular	0.00	4,200.00	22904
0970	ADVANCE AUTO PARTS	02/07/2019	Regular	0.00	77.26	22905
0087	ALLWOOD RECYCLERS	02/07/2019	Regular	0.00	25.00	22906
10033	CHR CREATIVE	02/07/2019	Regular	0.00	270.00	22907
0505	CITY OF FAIRVIEW	02/07/2019	Regular	0.00	73.90	22908
0530	CITY OF PORTLAND	02/07/2019	Regular	0.00	9,477.00	22909
10185	DAWN PETRICEVIC	02/07/2019	Regular	0.00	11.00	22910
1200	GLOBAL NETWORK SUPPORT INC.	02/07/2019	Regular	0.00	1,465.00	22911
1229	GRAYBEARD'S WOVEN WIRE FENCE CO	02/07/2019	Regular	0.00	1,100.00	22912
10164	JOHNSON ECONOMICS LLC	02/07/2019	Regular	0.00	4,956.57	22913
1448	KELLER ASSOCIATES, INC	02/07/2019	Regular	0.00	1,550.00	22914
0960	KIP EDGLEY	02/07/2019	Regular	0.00	2,340.00	22915
1571	LOWES COMPANIES, INC	02/07/2019	Regular	0.00	237.43	22916
	Void	02/07/2019	Regular	0.00	0.00	22917
10166	MIG, INC	02/07/2019	Regular	0.00	1,440.00	22918
1775	MULTNOMAH CO. TREASURY	02/07/2019	Regular	0.00	4,948.12	22919
10122	NET ASSETS	02/07/2019	Regular	0.00	123.00	22920
1056	PORTLAND WEB DESIGN	02/07/2019	Regular	0.00	110.00	22921
0520	CITY OF GRESHAM	02/14/2019	Regular	0.00	4,137.41	22922
1476	LORANG STUDIOS	02/14/2019	Regular	0.00	700.00	22923
10159	LRS ARCHITECTS, INC	02/14/2019	Regular	0.00	2,754.94	22924
1648	MERINA & COMPANY, LLP	02/14/2019	Regular	0.00	17,000.00	22925
2172	OTAK	02/14/2019	Regular	0.00	386.40	22926
2245	PITNEY BOWES/RESERVE ACCOUNT	02/14/2019	Regular	0.00	400.00	22927
2350	POSTMASTER	02/14/2019	Regular	0.00	730.00	22928
2530	REYNOLD'S SCHOOL DISTRICT #7	02/14/2019	Regular	0.00	208.38	22929
2586	ROSE CITY BLUEPRINT &	02/14/2019	Regular	0.00	22.50	22930
0287	BRENNTAG PACIFIC INC	02/21/2019	Regular	0.00	1,944.90	22932
0510	CITY OF GRESHAM	02/21/2019	Regular	0.00	32,820.66	22933
1610	MASTERTECH SECURITY SVC	02/21/2019	Regular	0.00	80.85	22934
1940	NORTHWEST ARBOR CULTURE INC.	02/21/2019	Regular	0.00	425.00	22935
1960	OFFICE DEPOT CREDIT PLAN	02/21/2019	Regular	0.00	253.41	22936
2020	ONE CALL CONCEPTS, INC	02/21/2019	Regular	0.00	67.20	22937
2164	OREGON MAYOR'S ASSOCIATION	02/21/2019	Regular	0.00	106.00	22938
10092	RITZ SAFETY, LLC	02/21/2019	Regular	0.00	96.99	22939
10165	SERVICE MASTER BUILDING SERVICES	02/21/2019	Regular	0.00	880.00	22940
1054	FIRWOOD DESIGN GROUP, LLC	02/21/2019	Regular	0.00	973.75	22941
0081	AFLAC	02/27/2019	Regular	0.00	245.42	22942
0637	CONST & GEN LABORERS' UNION LOCAL 737	02/27/2019	Regular	0.00	78.00	22943
0970	ADVANCE AUTO PARTS	02/28/2019	Regular	0.00	18.47	22945
0164	ASSOC OF CLEAN WATER AGENCIES	02/28/2019	Regular	0.00	210.00	22946
1049	FEI PORTLAND WATERWORKS #3011	02/28/2019	Regular	0.00	1,013.08	22947
1150	FURROW PUMP, INC	02/28/2019	Regular	0.00	231.49	22948
1762	KNIFE RIVER	02/28/2019	Regular	0.00	454.84	22949
1910	NOLAN'S TIRE FACTORY	02/28/2019	Regular	0.00	131.95	22950
10167	PLATINUM LANDSCAPE MAINT LLC	02/28/2019	Regular	0.00	175.00	22951
0170	AT & T MOBILITY	02/07/2019	Bank Draft	0.00	448.29	DFT0001292
1120	FRONTIER	02/07/2019	Bank Draft	0.00	93.98	DFT0001293
2270	PGE	02/07/2019	Bank Draft	0.00	1,791.02	DFT0001294
2270	PGE	02/07/2019	Bank Draft	0.00	23.22	DFT0001295
2270	PGE	02/07/2019	Bank Draft	0.00	1,127.24	DFT0001296
2270	PGE	02/07/2019	Bank Draft	0.00	20.91	DFT0001297
2270	PGE	02/07/2019	Bank Draft	0.00	34.01	DFT0001298
2270	PGE	02/07/2019	Bank Draft	0.00	568.47	DFT0001299

Check Report

Date Range: 02/01/2019 - 02/28/2019

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
2270	PGE	02/07/2019	Bank Draft	0.00	818.72	DFT0001300
2270	PGE	02/07/2019	Bank Draft	0.00	24.54	DFT0001301
2270	PGE	02/07/2019	Bank Draft	0.00	50.08	DFT0001302
2270	PGE	02/07/2019	Bank Draft	0.00	35.01	DFT0001303
2270	PGE	02/07/2019	Bank Draft	0.00	136.06	DFT0001304
2270	PGE	02/07/2019	Bank Draft	0.00	404.77	DFT0001305
2270	PGE	02/07/2019	Bank Draft	0.00	649.48	DFT0001306
2270	PGE	02/14/2019	Bank Draft	0.00	3,415.83	DFT0001307
1390	INTEGRA TELECOM	02/21/2019	Bank Draft	0.00	609.02	DFT0001311
2704	STERICYCLE COMMUNICATION SOLUTIONS	02/21/2019	Bank Draft	0.00	61.07	DFT0001312
2153	OREGON DEPT OF JUSTICE	02/28/2019	Bank Draft	0.00	600.00	DFT0001314
0920	CIS TRUST	02/26/2019	Bank Draft	0.00	15,861.89	DFT0001315
1358	ICMA	02/26/2019	Bank Draft	0.00	1,500.00	DFT0001316
1880	NATIONWIDE RETIREMENT SOL.	02/26/2019	Bank Draft	0.00	900.00	DFT0001317
2200	OREGON PERS	02/26/2019	Bank Draft	0.00	13,099.26	DFT0001318
1120	FRONTIER	02/28/2019	Bank Draft	0.00	272.96	DFT0001319
1920	NW NATURAL	02/28/2019	Bank Draft	0.00	341.34	DFT0001320
1920	NW NATURAL	02/28/2019	Bank Draft	0.00	173.26	DFT0001321
1920	NW NATURAL	02/28/2019	Bank Draft	0.00	225.92	DFT0001322
10107	RIVERVIEW CC - CA	02/28/2019	Bank Draft	0.00	2,212.50	DFT0001323
10108	RIVERVIEW CC - FD	02/28/2019	Bank Draft	0.00	896.85	DFT0001324
10109	RIVERVIEW CC - HR	02/28/2019	Bank Draft	0.00	1,347.92	DFT0001325
10176	RIVERVIEW CC - OPS	02/28/2019	Bank Draft	0.00	297.27	DFT0001326
10110	RIVERVIEW CC - PW	02/28/2019	Bank Draft	0.00	1,627.59	DFT0001327

Bank Code AP River Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	60	45	0.00	98,950.92
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	92	32	0.00	49,668.48
EFT's	0	0	0.00	0.00
	152	78	0.00	148,619.40

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	60	45	0.00	98,950.92
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	92	32	0.00	49,668.48
EFT's	0	0	0.00	0.00
	152	78	0.00	148,619.40

Fund Summary

Fund	Name	Period	Amount
01	POOLED CASH FUND	2/2019	148,619.40
			148,619.40

**MEETING OF THE
WOOD VILLAGE CITY COUNCIL
December 11, 2018
MINUTES**

PRESENT: Council President Scott Harden, Councilors Patricia Smith, Mark Clark, and Bruce Nissen. City Attorney Jeff Condit, City Manager Bill Peterson, Public Works Director John Niiyama, Finance Director Seth Reeser, and interested parties.

ABSENT: Mayor Timothy Clark.

COUNCIL PRESIDENT HARDEN CALLED THE MEETING TO ORDER AT 6:00 PM.

CITIZEN COMMENTS (NON-AGENDA ITEMS)

There were none.

PUBLIC SAFETY REPORT

Sheriff Reese and Chief Deputy Jason Gates presented the report. Gates stated that for the month of November, the call for service was fairly average. Gates stated that there were nine stolen vehicle reports, which is an increasing trend in the City and in all other areas as well. Gates stated that there were 174 dispatched calls and 259 self-initiated calls. There were 39 priority one and two calls with an average response time of just over three minutes and thirty seconds.

Gates stated that the toy drive at Walmart last year had 130, 55 gallon drums of toys, and this year was 151 drums of toys, \$1,400 in cash, and several bikes. Gates stated that the number of volunteers also increased with 31 MCSO volunteers, 10 citizen volunteers, and 11 students, and 8 people from Emilio Inc. for a total of 60 volunteers. Gates stated that the relationship with the Wood Village Walmart is very positive as well.

Nissen stated that the eastside of 238th up on the hill another encampment developing, and there has also been some issues behind the 76 gas station that may need the HOPE team to resolve. Nissen also thanked the MCSO for the support at the tree lighting event. Smith stated that the medians at I-84 need some attention and something worked out to reduce the impacts of the panhandlers.

Gates stated that he is in the process of retiring and will be retired as of late February or early March. Gates stated that a and new chief will be appointed to the City, and the new Chief Deputy will be Monte Reeser.

Sheriff Reese stated that there will be a legislative effort on the penalties and remedies for the unauthorized use of a motor vehicle Reese stated that the MCSO would appreciate support from the cities on the effort.

The Council thanked Reese and Gates for the report and service.

CONSENT CALENDAR:

- a. Review of bills paid in November, 2018
- b. Resolution 42-2018: IGA Extension with City of Gresham for Sewer Treatment
- c. 2019 Oregon Liquor License Application Renewals
- d. Contracts \$2,500 - \$50,000
 - FEI Portland – Meter Updates: \$4,317.44
- e. City Council Minutes
 - November 13, 2018
 - November 29, 2018

Harden stated that the November minutes were not included in the packet and will be removed from the Consent Calendar.

Upon motion by Nissen, seconded by Smith and passing 4-0, the November minutes were removed, and the Consent Calendar was approved.

ORDINANCE 2-2018: ZONING AND DEVELOPMENT CODE AMENDMENT - FLOODPLAIN STANDARDS

Peterson read the hearings disclosure statement. Harden asked if there were any conflicts of interest, personal bias, or ex parte contacts. There were none.

HR/Records Manager Greg Dirks presented the Ordinance. Dirks stated that this is a legislative hearing on a Comprehensive Plan amendment as well as a Zoning and Development Code amendment on floodplain hazard areas. Dirks stated that FEMA conducts regular updates and assessments to hazard areas, and this floodplain update was about 30 years in the making. Dirks explained that the floodplain area is the basis for flood mapping for insurance and risk purposes. Dirks stated that City regulations need to match the FEMA update in order for people to purchase and retain flood insurance, and for the City to obtain disaster relief funding and be in compliance with the state planning goals.

Dirks presented the updated flood map panel as well as an overlay on the impacted area. Dirks stated that the total area is about 2,600 square feet, and is entirely on the I-84 right of way. Dirks stated that there are no buildable or private lands impacted by the updated maps. Dirks stated that the amendment to the Comprehensive Plan updates language to reflect that there are now floodplain hazards in the City, and adds the map panels. Dirks stated that the amendment impacts goals 1, 2, and 7. Dirks presented each goal and the related finding of fact. Dirks stated that the full finding is in the staff report.

Dirks stated that the Zoning and Development Code amendment adds a new section to the code. Dirks stated that the section is 425 for Floodplain Hazard Areas. Dirks stated that the code provisions were provided by the state, and reviewed by FEMA. Dirks explained that even though there are no developable lands within the floodplain hazard area, the code amendment is still required. Dirks stated that he can present the details of the code provisions, but they will not be used in any land use matter as there are no buildable lands within the floodplain area. Dirks presented the findings of fact for the amendment, and stated that the full finding is included in the staff report.

There were no questions from the Council.

Harden opened the Public Hearing.

There were no comments.

The Public Hearing was closed.

Dirks stated that the Planning Commission recommended the adoption of the Comprehensive Plan and Zoning and Development Code amendments.

Upon motion by Mark Clark, seconded by Nissen and passing 4-0, the findings of fact contained in the staff report of December 4, 2018, and Ordinance 2-2018 amending the Comprehensive Plan, and revisions to the Wood Village Zoning and Development Code Section 400: Overlay Zones, Water Quality Zones and Land Divisions for the inclusion of subsection 425: Floodplain Hazard Areas was adopted.

ORDINANCE 3-2018: ZONING AND DEVELOPMENT CODE AMENDMENT - MULTI-FAMILY DEFINITION

Peterson presented the ordinance and stated that the request originated from the Design Review Board, and was authorized by the City Council. Peterson stated that the original issue was about a small development along Halsey Street, which wanted to develop as detached single family condos. Peterson stated that the code did not fully cover that use, and it was up to the Planning Commission to make a determination on the mixed use language. Peterson stated that the code does not define what is multi-family.

Peterson stated that the Planning Commission determined it was a multi-family because it was more than one unit on a single parcel, and the Planning Commission was concerned about that

action and how it could impact future development for multi-family development and the ability to obtain relative densities. Peterson stated that in addition to the concerns about the separate units, there were concerns about the commercial use not fronting the main street to get the desired neighborhood commercial development.

Peterson presented the current code and explained how it applies to development. Peterson stated that the revision defines multi-family developments, and that it dovetails into the current multi-dwelling code. Peterson stated that the code revision also includes not more than ten buildings on single lot that is not multi-family, and the commercial portion has to front the main collector road.

Peterson presented the findings of fact, and stated that the full details are included in the staff report. Peterson stated that the most important finding is in housing, where the code anticipates 14-16 units per acre, and that cannot be achieved with detached units. Peterson stated that housing is important, and this code better defines the relative densities that are desired in the zone.

Peterson presented the alternatives including not adopt the revisions, conduct additional workshops or meetings, or adopt the recommendation from the Planning Commission, which is to adopt the amended code as presented.

Harden opened the Public Hearing.

There were no comments.

The Public Hearing was closed.

Mark Clark stated that he did not see anything regarding the financial aspects of this type of development within the staff report. Peterson stated that this type of development has the land under common ownership, and the structures are individually owned. Condit stated that this type of development is becoming more common as it deals with the capitalization of condos. Peterson stated that this amendment will help reduce the questions around the code to help future development occur that is consistent with the planning goals.

Upon motion by Nissen, seconded by Smith, the findings of fact as contained in the staff report, and Ordinance 3-2018 amending the zoning and development code for the multi-family definition was adopted.

DISCUSSION: LEVY READY

Condit stated that he has a potential conflict of interest and stated that he represents the drainage district. Condit stated that while a waiver has been signed to continue to represent the district, he cannot represent the City in this matter.

Condit recused himself from the discussion.

Peterson presented the discussion and stated that there was a lot of background materials in the packet, and wants to keep the presentation at a high level. Peterson stated that this effort has been around for about three years. Peterson presented the overall drainage area, and stated that it goes from the Sandy river to past the Willamette river.

Peterson stated that the district goes back to 1919, and is a system of levies, pumps, and sloughs. Peterson stated that the land area is essentially north of Sandy Blvd., and about 30% of all industry in the region is in the area. Peterson explained that makes up nearly \$16 billion in economic activity within the boundaries of the area.

Peterson presented a listing of agencies involved in the Levy Ready process. Peterson stated that Wood Village is not listed, and has not been an active participant. Peterson stated that the end of the process is many years out, but the financing will need to be in 2020. The Levy Ready group is going to this legislative session to recognize the district. Peterson stated that the key issue will be spreading the costs of maintaining and certifying the levies.

Peterson stated that about 70% of non flood plain developments receive benefit from the flood plain properties. Peterson stated that the only people who pay in the levy system are those within the system, but others are benefiting from the maintenance and certification. Peterson stated that at cost is about \$100 million. Peterson explained that the property tax system does not enable effective collection, and the levy ready group is working to make a revised collection methodology and overall system.

Peterson stated that the big question for the group has been how to make the effort politically viable, and how to expand the basis for the needed revenue increase. Peterson stated that there are three options that will move forward and develop into a new form of governance.

Peterson presented each option with a summary of how it would work.

Peterson stated that the third option has been selected as the primary option from the group, and it includes a utility fee for all those within the watershed area, which includes the City. Peterson stated that the staff response to the effort has been to not participate as there are court cases which establish that it is the duty of the levy land owner to accept and convey the storm water

discharge. Peterson stated that there is a philosophical approach that there is a regional benefit to the levy system whether or not specific properties or jurisdictions are within the boundaries. Peterson stated that is where the process is now.

Harden stated that the levy area has a statewide impact, and the reach should be larger. Peterson stated that has been the main point of Levy Ready, which is why all of Multnomah County is being looked at in terms of financial contributions to the levy. Peterson stated that he recognizes that the City will probably have to participate in some kind of capital costs, but should not be responsible for the pumping and ongoing maintenance costs.

Smith stated that we are a very low income community, and we cannot ask the people to pay more when they cannot keep up with expenses now. Peterson stated that there may not be a way around it, and that is why it will be a county wide vote. Peterson stated that the large bond will require a public vote, and will not be until the mid-2020s.

Peterson stated that he does not necessarily need direction at this time, and the Levy Ready group will present to the Council this spring. Peterson stated that the flipside is the City needs to participate in the matter as this issue is too large not to participate. Peterson stated that median income thresholds could be factored into it, but the City needs to participate in order to help shape the payment options.

The Council thanked Peterson for the update.

RESOLUTION 43-2018: CANVAS OF VOTES CAST

Dirks presented the resolution, and the purpose is to recognize the official results of the November 6th election. Dirks stated that the election included Council positions one and four. Dirks explained that Councilor Bruce Nissen was reelected, and John Miner was elected to position four. Dirks stated that the swearing in ceremony will be at the first meeting in January.

Upon motion by Mark Clark, seconded by Smith and passing 4-0, Resolution 43-2018 for the canvas of votes case was approved.

DISCUSSION: TREE LIGHTING EVENT DEBRIEF

Dirks presented the discussion and stated that this was the ninth tree lighting event. The event took place at the Town Center, as City Hall is under construction and would not have made for a suitable event location. Dirks explained that the City worked with the owners of the Town Center to acquire the 26 foot tall tree, and the City arranged for the entertainment and refreshments. Dirks stated that the entertainment included the Walt Morey Middle School choir, and a visit from Santa. The refreshments were provided by the Chapel.

Dirks stated that attendance at the event was well over 400 people, and there is a lot of room to grow and expand the event at the Town Center. Dirks explained that additional pre-tree lighting entertainment is needed, and the PA system was operating at a sub-optimal level. Dirks stated that those items can be correct for next year, and the idea is to get more businesses involved as well. Dirks stated that the City spent about \$450 on the event, and AAA of Oregon had a \$250 donation. The out of pocket expenses were minimal for the City, and overall it was a good event.

The Council agreed that it was a good event, and stated that it would be good to have more businesses involved, and grow the event for next year.

PUBLIC WORKS DIRECTOR'S REPORT

Niiyama presented the report, and stated that the Cotton Wood water project has been completed, and the water pressure to that development is substantially better. Niiyama presented photos of the work as well as a summary notes regarding the project. Niiyama stated that there has been a very positive response from the residents of the Cotton Wood development regarding the project.

Niiyama stated that the City Hall utility relocation work is underway and is nearing completion. Niiyama stated that the project includes relocating a water line as well as a storm water line. Niiyama stated that the project will be completed by the 21st. Peterson stated that once the project is closed out, we can send out the request for an updated BOLI letter.

Niiyama presented highlights of the recent projects completed by the public works staff. Niiyama explained that the Riverwood South development is moving along, and is nearing completion. Niiyama stated that there was also a pre-application meeting for a multi-family development along Halsey.

FINANCE DIRECTOR'S REPORT

Reeser presented the report and stated that the fiscal year is nearly half way through, so a better picture of the financial condition can be developed. Reeser stated that the property tax distributions are a bit behind, but revenues are expected to be on pace with the budget. Reeser stated that economic forecasts will start to come out, and the business income tax and hotel tax are expected to be at or below last year's amount. Reeser explained that was anticipated, and there will not be any budgetary issues.

CITY MANAGER'S REPORT

Peterson presented the report and stated that there are a handful of issues that need to be reviewed. Peterson stated that the City has secured Mike Abbate to facilitate the Council retreat on February 2nd. Peterson stated that Mike will be contacting Council members to help put together the agenda and to sort out the relative priorities.

Peterson stated that the APP is in progress, and the new members of the management are making great sides in completing the plan. Peterson stated that there are a few issues outside of the City's control to such as Arata Road. Peterson explained that there are some issues regarding Urban Renewal that will be reviewed in January. Peterson stated that there are hold ups on the plastic bag item which will probably move forward in January.

ADJOURN

With no further business coming before the Council, the Council adjourned at 8:00pm.

T. Scott Harden
Mayor

Date

ATTEST:

Greg Dirks: City Recorder

**MEETING OF THE
WOOD VILLAGE CITY COUNCIL
January 10, 2019
MINUTES**

PRESENT: Mayor Scott Harden, Council President Patricia Smith, and Councilors Bruce Nissen and John Miner. City Attorney Jeff Condit, City Manager Bill Peterson, Public Works Director John Niiyama, Finance Director Seth Reeser, and interested parties.

ABSENT: None.

COUNCIL PRESIDENT HARDEN CALLED THE MEETING TO ORDER AT 6:00 PM.

SWEARING IN OF NEWLY ELECTED COUNCILORS

- City Council Position 1: Bruce Nissen
- City Council Position 4: John Miner

HR/Records Manager Greg Dirks swore in Councilors Bruce Nissen and John Miner.

ELECTION OF MAYOR AND COUNCIL PRESIDENT

Peterson stated that a letter from Mayor Clark is in front of the Council, and it has been labeled as Council memo one, which outlines the status of Mayor Clark. Peterson stated that Mayor Clark will be resigning and asked for a nomination to replace him as Mayor. Peterson read the letter from Clark.

Peterson stated that the Council President will call for nominations. Peterson explained that the letter from Mayor Clark cannot be used to nominate, and the nomination must be from a Councilor present this evening. Peterson stated that the formal resignation letter is effective tomorrow. Peterson stated that a replacement can be done via appointment since there is less than two years remaining in the term. Peterson stated that the opening would be advertised, and interviews would be at the February 12th Council meeting.

Peterson stated that he wanted to express his gratitude for Mayor's Clark's service. Peterson stated that Mayor Clark also requested to purchase the surface pro that is provided to each Councilor. Peterson stated that there is a personnel policy for service recognition, and the suggestion is to gift the surface pro to Mayor Clark as part of his service to the community.

Upon motion by Harden seconded by Smith and passing 4-0, the Council gifted for gifting the surface pro to Clark

Upon motion by Nissen, seconded by Smith and passing 4-0, T. Scott Harden was elected as Mayor.

Upon motion by Harden, seconded by Nissen and passing 4-0, Smith was elected as Council President.

CITIZEN COMMENTS (NON-AGENDA ITEMS)

There were none.

PUBLIC SAFETY REPORT

Chief Deputy Jason Gates of the Multnomah County Sheriff's Office gave the report. Gates stated that the next month's report will include the yearly recap for 2018. Gates stated that December was an average month, and there is not any upticks in crime rates in the City. Gates explained that there are some specific crimes that are up throughout the region such as auto theft. Gates stated that the average auto theft is about seven thefts per month, and has been as high as twelve.

Gates stated that for December there were 184 calls for service, 26 priority one and two call calls, and the average response time for emergency calls was four minutes and forty-two seconds. Gates stated that the response time for non-emergency calls was just over seven minutes. Gates stated that there was a total of 182 hours of service in the City. Gates stated that the quarterly traffic accident report is included in the packet, and Sunday evenings between five and six pm has the highest rate of accidents.

Gates stated that there was a reference to a potential homeless camp behind the gas station, and that issue has been resolved. The property owner has also signed a letter of responsible charge to enable the MCSO to take action against any future camps. Gates stated that there was also a call regarding a potential homeless camp by GrovTec today. Gates stated that the MCSO investigated, and stated that the camp had been abandoned for quite some time. Gates explained that the property was provided with some suggestions on clearing the overgrowth to limit camps in the future.

Gates stated that a pedestrian was fatally hit on 233rd. Gates stated that there is not a lot of details that can be provided, and it was a person crossing the road at night. Smith asked about the suicide in the park and if there was anything that could be discussed. Gates stated that he can get that information, and would rather not discuss it at the meeting out of respect of the family.

Peterson stated that Chief Gates will be working with us in the next few weeks to name a new Chief for the City. Peterson stated that the hope is that can be accomplished by the first meeting in February. Gates stated that there will continue to be quality service to the City.

Harden asked if the MCSO had a handout that can be published regarding preventing auto theft and break-ins. Gates stated that he does not know if something is already put together, but he will make sure that something gets to the City.

The Council thanked Gates for the report and service to the City.

CONSENT CALENDAR:

- a. Review of bills paid in December, 2018

- b. Contracts \$2,500 - \$50,000
 - Power Systems West – Generator Maintenance: \$3,356.55
 - Abbate Designs LLC – City Council Facilitation: \$5,600

- d. Council Minutes:
 - November 13, 2018
 - November 29, 2013

Upon motion by Smith, seconded by Nissen and passing 4-0, the Consent Calendar was approved.

ORDINANCE 1-2019: ACCEPTING FOR THE CITY OF WOOD VILLAGE REVENUE SHARING PROGRAM OF THE STATE OF OREGON

Dirks presented the ordinance and stated that it is an annual ordinance for state shared revenue. Dirks stated that it is the first step in the budget process, which will take place this spring. Dirks asked if there were any questions. There were none.

Upon motion by Smith, seconded by Nissen and passing 4-0, Ordinance 1-2019 accepting state shared revenues was adopted.

RESOLUTION 1-2019: 2018 SYSTEM DEVELOPMENT CHARGES REPORT

Reeser presented the resolution, and stated that this is an annual report required by the state for system development charges. Reeser stated that the city has SDC's for water, sewer, and parks. Reeser stated that there was a lot of new development this past year with the Riverwood project, and this is also the first year that the parks SDC was collected. Reeser asked if there were any questions. There were no questions.

Upon motion by Smith, seconded by Miner and passing 4-0, Resolution 1-2019 accepting the System Development Charge report was approved.

RESOLUTION 2-2019: BID AWARD – CEDAR LANE RECONSTRUCTION

Niiyama presented the resolution and stated that there is an updated resolution to this item. Niiyama stated that this project supports the City's water master plan, storm water master plan, and the streets and pavement management plan. Niiyama stated that this project has been in the works for about 18 months including the design and engineering work. Niiyama explained that the project design was awarded in October of 2017, construction bids were advertised this past December. Niiyama stated that the engineers estimate was over \$900,000, but this bid came in under that amount.

Niiyama presented the preliminary project budget numbers, and stated that there is \$680,000 allocated to the project for this current year. Niiyama explained that the staff report evaluated alternative funding options and methods, and if the project should be funded at a higher level. Niiyama stated that a number of the bids came in under the engineer's estimate. Niiyama stated that there were eight bids which ranged from the low bid of \$741,000 to over \$1.2 million. Niiyama stated that the low bid was \$741,713, and with contingency and engineering the total project cost is about \$850,000. Niiyama stated that the project can be funded with the appropriations this year that were allocated for crack sealing, the county service allocation.. Niiyama stated that the Street Fund can fund the full project, and there is also General Fund capacity as well.

Niiyama outlined the pros and cons to supplementing additional funds to pay for the project. Niiyama explained that funds taken from other allocations cannot be used for those projects. Niiyama stated that the project is to rebuild Cedar Lane in its entirety. Niiyama explained that the project includes a new storm line in the roadway to replace the current smaller line that is in the backlot of homes. The plastic water line would be replaced in full with ductal iron, sewer repairs made, and a full rebuild of the roadway. Niiyama stated that it will be like a brand new roadway from the utilities up.

Niiyama stated that the staff recommendation is to approve the modified resolution, and asked if there were any questions. Smith asked about the differences between the high and low bidders. Niiyama stated that there were no specific differences, but rather it was a combinations of materials and labor. Peterson stated that the bidding was all done by units, and the units costs varied dramatically. Miner stated that he can get nervous with the lower bidder, and sees that there is not a lot of difference between the lowest couple of bidders, which gives him comfort. Peterson stated that it is a known company that is bonded, and it meets the requirements.

Harden stated that when the storm plan was adopted, this project seemed almost impossible to complete, and here it is. Harden asked what has been done on 236th and 237th since those roads will pushed back. Peterson stated that those roads have been cracked and sealed four years ago, but it needs done again. Peterson stated that those roads can be crack and surface sealed next year.

Nissen asked about the Multnomah County enhancement funds and how that works. Peterson stated that it is part of the transportation utility fee, which designates an amount to go into a fund to get a higher level of service from the County if needed. Peterson explained that at the time the fee was adopted the County had indicated that the maintenance of County owned roads would be diminished. Peterson stated that the county never reduced the level of service, and the allocation has been accumulating. Peterson stated that the allocation could have been used for ADA ramps on Glisan to help get an overlay completed, or it could have been used to help pay for concrete sidewalks on the 238th project instead of asphalt. Peterson stated that those items can still be funded, just at a lower level.

Upon motion by Nissen, seconded by Smith and passing 4-0, Resolution 2-2019 awarding the Cedar Lane reconstruction project to Catworks was approved.

RESOLUTION 3-2019: UTILITY RATE ADJUSTMENT

Reeser presented the resolution and stated that the resolution indexes the water and sewer rates, and street fees based on the cost of living index. Reeser explained that this action enables the current level of service and investment into the City's utility systems. Reeser stated that keeping pace with inflation also avoids larger increases over time. Reeser stated that this is an annual resolution, and simply increases the rates by the cost of living. The effective date is February 1st.

Smith asked what the average increase will be. Reeser stated that it will be about a \$1 more per month for the average household.

Upon motion by Smith, seconded by Nissen and passing 4-0, Resolution 3-2019 adjusting the City's utility rates was approved.

DISCUSSION: SEWER LATERALS

Dirks presented the discussion and stated that staff is bringing this item forward after a resident asked if there were any assistance programs for sewer lateral repairs. Dirks stated that the City does not have an assistance program for sewer lateral repairs, and community grant programs for the repairs is rare. Dirks explained that a sewer lateral is the sewer line that goes from the home or business to the City's main sewer line in the street. Dirks stated that the street section of the lateral is the City's responsibility, and the other portion is the property owners responsibility to maintain.

Dirks explained that sewer laterals can fail for a number of reasons, and the most common failures include root intrusion, dips, offsets, and a collapse of all or a portion of the pipe. Dirks stated that lateral repairs are often not covered by insurance, and third party coverage can be expensive. Dirks stated that the average replacement cost is \$3,000 - \$5,000, and repairs cost about \$200 per lineal foot. Dirks explained that there are about three to five repairs or replacements a year, and typically no one has asked for any assistance.

Dirks stated that the main question is if the City would like to develop a program or fund to help with sewer lateral replacements. Dirks stated that a loan or grant program is outside the current scope of services, the City is not a bank and the funds would have to come from user fees. Dirks stated that while the long term impact would be net-zero, a program would take away from the year to year funding that is available for capital projects.

Dirks stated that a loan program could be put together in a variety of ways, and staff included a couple of examples of how a program could work. Dirks presented potential loan program options, and explained that program targeted at just low-income residents becomes difficult. Dirks stated that there will always be those who would not qualify for a low-income program, but may not have the capacity to pay for repairs.

Dirks asked for feedback and direction from the Council. Dirks stated that not taking any new action is also an appropriate action, as there has not been any formal request for a program. The Council stated that the City is not a bank, and asked if other partnerships between either a bank or a construction company could be formed to help people pay for lateral repairs. Dirks stated that staff can look into the formation of partnerships, and report back to the Council at a future meeting.

2019 CITY COUNCIL MEETING DATES

Dirks presented the list of 2019 City Council dates. Dirks explained that the dates are based on known Councilor availability, and approving the list does not alter the ability to add or remove dates. Harden stated that he would like to advocate for a meeting in August.

The Council approved the 2019 meeting schedule as presented.

EXECUTIVE SESSION: 192.660(2) (e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

The City Council entered into Executive session at 7:30pm.

The Council convened back into regular session at 7:52pm.

ADJOURN

With no further business coming before the Council, the Council adjourned at 7:53pm.

T. Scott Harden
Mayor

Date

ATTEST:

Greg Dirks: City Recorder



City Council Agenda Item Staff Report

Meeting Date: March 14, 2019

TO: Mayor and Councilors
FROM: Bill Peterson: City Manager
Authored by: Greg Dirks: HR/Records Manager
DATE: March 6, 2019
SUBJECT: City Council Position 5

Requested Council Action

Provide next steps and direction on Council position 5, which was vacated by Mayor Timothy Clark on January 11, 2019.

Background

City Council positions can be vacated during the term for several reasons. When a vacancy occurs, Wood Village City Charter provision section 29 prescribes the process to fill the vacant position.

Section 29. FILLING VACANCIES. A vacancy in an elective office will be filled by appointment by a majority of the remaining council members. The appointee's term of office runs from appointment until expiration of the term of office of the last person elected to that office, unless the vacancy occurs during the first two years of the predecessor's term and 90 days prior to the regular general election. In the latter case, the appointee's term expires on the first day of January following the general election, and the remaining two years of the unexpired term will be filled by nomination and election at the general election. If a disability prevents a council member from attending council meetings or a member is absent from the city a majority of the council may appoint a councilor pro tem.

City Council position 5 was vacated by Mayor Clark on January 11th. At that time, staff advertised the vacant position through a press release, and was highlighted on the City's website. The original application deadline was January 31, 2019, with a Council appointment set for February 12, 2019. At the close of the original January 31st deadline, one application had been filed. Staff has been unable to confirm the local residency of the applicant per section 13 of the Wood Village City Charter (provided below). The deadline was extended with no established close date. As of the date of the report, no additional applications have been submitted.

Section 13. QUALIFICATIONS OF OFFICERS. No person shall be eligible for an elective office of the city unless at the time of election the person is a qualified voter within the meaning of the state constitution and has resided in the city ring the twelve months immediately preceding the election. No person currently employed by the city shall be eligible for an elective office of the city. The council shall be final judge of the qualifications and election of its own members,

subject, however, to review by a court of competent jurisdiction. The voter and residence qualifications provided in this section shall not have application to appointive officers.

While the City Charter outlines the process to appoint a Councilor, there is no mandate requiring a mid-term appointment. The vacancy can remain open until the next general election. Staff is seeking direction from the Council on how to proceed with the vacancy, and if the Council wants to continue to advertise the vacancy.

Next Steps

Staff will proceed as directed by the City Council.

Alternatives

There are several alternatives that the Council may take.

- Continue to advertise the vacant Council position, and hold interviews once there is a bona fide applicant pool.
- Continue to advertise the vacant Council position to a date certain, and interview the candidates that have filed, or close the process if no applications are received.
- Stop advertising the vacancy, and leave the position open until the next General Election in 2020.
- Hold an event to encourage and recruit potential applicants for not just the City Council position, but other volunteer opportunities with the City as well.

Fiscal Impact

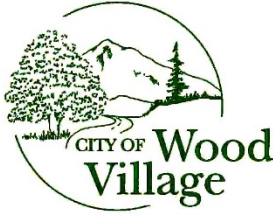
There is no direct fiscal impact with this item, unless specific advertising or outreach measures are requested.

City Goal

The City Council is responsible for, and impacts all seven City goals.

Suggested Motions

No specific motion is suggested. Staff is seeking direction on how to move forward.



City Council Agenda Item Staff Report

Meeting Date: March 14, 2019

TO: Mayor and City Council
FROM: Bill Peterson, City Manager
DATE: March 6, 2019
SUBJECT: Public Right of Way on 238th Street

Requested Council Action

City Council discussion and direction is sought, providing policy direction to the Staff on how to proceed with Right of Way transactions and utility conflicts.

Background

The City of Wood Village owns three separate parcels on 238th that will be required to be taken for right of way as a part of the project development. We discussed the properties with County representatives, and came to an initial position that we would ask City Council to allow the County simply to have the property, waiving appraisal and payment for the land.

Subsequent to the initial discussions, the County provided the City with a “utility conflict” letter. Under the terms of the federal and state law, the general law requires any utility in a public right of way by permit to relocate at their own expense when and if a conflict arises. We have currently identified up to 10 separate conflicts on the proposed plans for 238. We are still too early to determine if all of these are in fact conflicts, and what the potential remedy may be for each identified conflict.

While the law requires relocation of certain facilities, there are provisions in the law for making payment to municipal governments for relocation of facilities (ORS 366.321) and for reimbursement of utility relocation expenses under specific terms. We may be able to claim a reimbursement from the project if we have a separate agreement for the placement of our utilities, or if our utilities are on properties owned by the City. In this instance, at least 6 of the potential conflicts occur at locations that appear to be on municipally owned lands.

Oregon state statute, [ORS 366.321](#), defines when a utility owner is eligible for reimbursement by ODOT for the relocation of their facilities due to a state highway project. ODOT is responsible for the cost of the work affecting the utilities facilities located when the utility has a documented ownership of and/or interest in real property, such as an easement, fee title, or a judgment of prescriptive rights issued by a court of competent jurisdiction, which is impacted by ODOT's project. For reimbursable relocations, the state agency that is requesting the relocation is responsible for the cost.

366.321 Expense of relocating municipal facilities payable by department; exceptions. (1) When location, construction, relocation, reconstruction, maintenance or repair of a state highway requires relocation of any facilities placed or maintained in or on a public right of way by any municipal corporation, or a district or authority established under ORS chapter 264, 450, 451, 523 or 545, the Department of Transportation shall pay the municipal corporation, district or authority whose facilities are so required to be relocated the reasonable expenses of relocation, less any benefits and salvage of the relocation.

(2) Subsection (1) of this section shall not apply to:

(a) Facilities located in or on the right of way of a state highway under permits issued by the department upon the condition that the permittee would bear the cost of any relocation; or

(b) Facilities located in or on the right of way of a state highway where the municipal corporation, district or authority established under ORS chapter 264, 450, 451 or 545, has placed such facilities in or on the right of way of the state highway without a permit from the Oregon Transportation Commission or has refused to execute a permit as required by law or commission regulations. However, this paragraph shall not apply where such municipal corporation, district or authority has located facilities in or on the right of way of a city street or county road with the permission of the governing body of such city or county before such city street or county road was selected and designated a state highway by the Department of Transportation pursuant to ORS 366.290 or 373.010. [1967 c.272 §1; 1975 c.587 §1; 1975 c.782 §51a]

Since we are unable to determine the extent of conflict, the eligibility of our facilities for reimbursement from the construction project, and the specific extent and character of "relocation" that will be required, we cannot recommend to the City Council allowing all properties needed on the right of way be provided without cost to the project.

It is our hope that we can minimize the overall costs to all public agencies, County, ODOT, FHWA and City, through minimizing the conflicts in the design and evaluating a method to minimize the extent and character of "relocation" that is required (sleeve technologies, arch or other structural wall alternatives, etc.).

Fiscal Impact

The conflicts identified on 238 involve water lines that include 6", 12" and 8" lines. If the issues are relative short project to deepen the lines below impact areas the costs would be less than if the 12" line were required to be relocated for a lateral significant distance. We still do not have all the details necessary to provide an estimate of these costs, however, significant costs are at issue.

City Goal

This issue could impact City Council GOAL 6: Effective local, state and regional partnerships, and Goal 4: Long-term financial stability, economic vitality and growth.

Alternatives

The City Council members could direct the City Manager to:

1. Negotiate to provide the County the City related properties without cost, or
2. Make the County pay for the land to offset any costs incurred for utility relocations or other project related municipal costs, or
3. Take no action at this time until further information is available.

Recommendation and Suggested Motions

None



City Council Agenda Item Staff Report

Meeting Date: March 14, 2019

TO: Mayor and Councilors

FROM: Bill Peterson: City Manager

Authored by: Greg Dirks: HR/Records Manager

DATE: Originally drafted October 2, 2018. Updated March 5, 2019

SUBJECT: Plastic Bag Discussion

Requested Council Action

No specific action is requested. The intent is to provide the Council with an update on actions and activities related to the prohibition on single-use plastic bags, and to provide an opportunity to provide direction to staff.

Background

The City Council placed the exploration and consideration of action to ban single use plastic bags in the 2018/19 Annual Performance Plan. A three-cities meeting on the issue was held in August, and the City Council further discussed the topic at the September 11, 2018 City Council meeting. The Council directed staff to continue to evaluate single-use plastic bag ban options, and did not appoint any members to the three-city ad-hoc committee proposed by the City of Fairview.

Staff met with larger retail establishments to discuss single-use plastic bag ban options, and to receive feedback on the topic. Stakeholder meetings were conducted with the management of Walmart and Kohl's. An open house on the topic was scheduled for Thursday, October 11th with restaurants, fast food outlets, and convenience stores, but no one attended.

Feedback from the first stakeholder meeting includes:

- Large retailers are able to package and sell plastic film and bags as a commodity that has a real value to the business.
- These two retail establishments report that between 30-100 gallon bins are being filled every two days with consumer bags, plastic packaging material, and plastic film for recycling/sale.
- Local retailers are open and willing to expand the in-store plastic bag and film recycling with larger capacity bins and increased advertising.
- About 5% of customers currently bring their own bags.
- Single-use plastic bag use is over 92,000 bags per week in the City.
- A fee per bag is heavily opposed. Without a regional fee, these two retailers felt that local retailers would be at a disadvantage.
- Plastic bags are preferred by the store and consumer as they are easy to load and carry. Paper bags with sturdy handles are often unavailable, and consumers do not like bags without handles.
- The retail establishments recycle 90-96% of all items that come into their facility.

- If a ban is enacted, retailers requested a six-month lead period to change out equipment, ensure an adequate stock of alternative bags, and to adjust in-store budgets.

The cities of Fairview and Troutdale have not taken any action to move forward with a city-wide ban. However, Mayor Ryan of Troutdale, and former Mayor Tosterud of Fairview both wrote letters of support for HB 2509, which prohibits single-use plastic bags. Mayor Harden also wrote a letter, and it is attached as exhibit B. These letters of support were included in the February 19th hearing on the proposed measure.

HB 2509 was introduced by Chief Sponsors Piluso, Sollman, Gorsek, and Rayfield. The bill would prohibit the use of single-use checkout bags except in certain cases. The bill allows the Department of Environmental Quality to impose a civil penalty of not more than \$250 per day to establishments that do not comply. The bill repeals a statute requiring retail establishments that offer plastic bags to customers to also offer paper bags. The full text of the Bill is attached as exhibit A. While the bill has received a public hearing, no other action has been scheduled or is pending.

Metro Council President Lynn Peterson has indicated that Metro would be taking up the single-use plastic bag issue if the state fails to act during this session. There are no specifics on what the policy may include or what the implementation timeline may be. By the end of 2018 there were 13 cities in Oregon that have banned single-use plastic bags. Many more cities have discussed a potential ban, and appear to be waiting to see if the state acted during this session. Of the 13 cities that have enacted a ban, there are few similarities between the codes.

Next Steps

Staff is seeking the direction on how to continue to pursue this topic. Options include:

- Increase consumer education around proper recycling and locations to recycle plastic bags and film. Track and follow HB 2509 as well as the work proposed by Metro and the area cities on a potential bag ban.
- Move forward with developing a code to ban on single-use plastic bags. The ban can be applied to all locations in the City, or by specific user business type.
- Move forward with developing a code and approach to mandate a fee for a bag. The fee can be applied to all locations in the City, or by specific user type or business group. The fee could be collected and retained by the business.
- Move forward with developing a code and approach to mandate a ban on single-use plastic bags and have a fee for any other type of bag. The fee can be applied to all locations in the City, or by specific user type or business group. The fee could be collected and retained by the business.

Any number of combinations can be selected. For example, staff can work to further educate residents on proper recycling, while pursuing another alternative.

Alternatives

Any number of alternatives and options to move forward are available. Staff is seeking direction on which process or methodology to pursue further.

Fiscal Impact

The impacts of choices in this ban will be determined when the character of the ban is established. If a complicated ban is established, education and enforcement will have a significant initial cost. If fees are enacted, specifically fees that are utilized to clean refuse

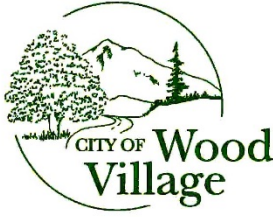
disposal areas, a mechanism for collection and the costs of actions will be included in the actions.

City Goal

The work on this item helps achieve City Goal 7: Environmental Responsibility

Suggested Motions

No specific motion is suggested. Staff is seeking direction on how to continue to move forward on this item.



City Council Agenda Item Staff Report

Meeting Date: March 14, 2019

TO: Mayor and City Council
FROM: Bill Peterson, City Manager
DATE: March 6, 2019
SUBJECT: Small Cell Attachments

Requested Council Action

Mid County Lighting District has concluded negotiations with ATT for dealing with attachments to their light standards throughout the eastern part of Multnomah County. We are requesting the Council set parameters for our approach to ATT on terms.

Background

We approached the City Council a number of months ago with the potential for small cell attachment requests for poles throughout Wood Village. ATT at the time had contacted the City seeking an agreement that would allow them to place about half a dozen antenna on light standards in Wood Village. To attach to our poles, they will need attachment agreements, and to utilize the right of ways, we may be able to assure the equivalent to an attachment agreement and the payment of an annual fee.

We had also originally hoped to do some significant design standards or similar kinds of controls on how attachments might be made, and what they could look like. Since our initial discussions, the Council and administration have sought to get a standard agreement that the multiple cities in East County could utilize as a model, and determine how to handle the many changes that have occurred at the Federal Communications Commission level. Where we at one time believed we could make this a significant revenue stream, the FCC has entered the regulatory world with significant limitations, and the threat of eliminating any ability to control these attachments. Resultantly, we are attempting to work with the remaining authority, and to use an agreement pounded out by Multnomah County Mid-County Lighting district.

We are attaching the agreement from the County. During our review, we will talk about facilities that are owned by the City versus facilities that are owned by PGE, and whether or not a fee or attachment permit can be required of these facilities, the standards and design work remaining available through the updated FCC guidelines,

and how the Council would like to proceed on the issue of 5 year or 10 year agreement terms.

Fiscal Impact

The drafted agreement appear to limit the annual return per attachment to \$270 annually and a onetime \$350 fee. For six attachments, this is an annual revenue stream of \$1,500 and a onetime revenue of \$2,100.

City Goal

This issue could impact City Council Goal 4: Long-term financial stability, economic vitality and growth.

Alternatives

The City Council members could direct the City Manager to:

1. Complete an updated agreement along the lines of the attached mid-county agreement, or
2. Negotiate for other terms identified by the Council, or complete research to allow the Council to seek alternate terms.

Recommendation and Suggested Motions

None

FACILITIES ATTACHMENT AGREEMENT

This Facilities Attachment Agreement (Agreement) is between Mid-County Lighting District (District), having a principal place of business address 1620 SE 190th Ave., Portland, OR 97233, and New Cingular Wireless PCS, LLC, a Delaware limited liability company (Licensee), having a principal business address of 575 Morosgo Drive NE, Atlanta, GA 30324. The effective date of this Agreement is _____, 2019 (Effective Date) and expires five (5) years after the Effective Date.

Prior to installing any Communications Facility on any District Facilities, Licensee shall enter into this Agreement with District expressly authorizing use of District Facilities. The terms and conditions of this Agreement apply to all Licensee installations of Communications Facilities, Poles, or Towers authorized by this Agreement.

District hereby grants Licensee this Agreement, under the following terms and conditions:

1. DEFINITIONS

For the purpose of this Agreement and attached exhibits, the following capitalized terms, in the Agreement have the meaning ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number.

- a. **“Agreement”** means this non-exclusive Facilities Attachment Agreement.
- b. **“Antenna”** means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- c. **“Application”** means a District Pole Attachment Permit Application filed with District for use of District Facilities in accordance with this Agreement.
- d. **“Attachment”** means attaching to or connection of Licensee’s Equipment to District Facilities under this Agreement.
- e. **“Communications Facility”** means, collectively, the equipment at a fixed location or locations within the Public ROW that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Small Wireless Facility is a type of Communications Facility. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.

- f. **“Communications Service”** means information service, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53); or any other Wireless Services Licensee may lawfully provide.
- g. **“District”** means the Mid-County Lighting District.
- h. **“District Facilities”** means District Poles, Support Structures, facilities or property of any kind.
- i. **“Electronic Notice”** means electronic notice via electronic mail or other electronic means mutually agreed upon by District and Licensee.
- j. **“Equipment”** means Licensee’s Communications Facilities authorized by this Agreement to utilize District Facilities.
- k. **“Licensee”** means New Cingular Wireless PCS, LLC.
- l. **“Network Node”** means an active electronic device that is attached to a network, and is capable of creating, receiving, or transmitting information over a communications channel.
- m. **“Permit”** means a permit signed by District granting Attachment of Licensee’s Equipment to District Facilities in response to Licensee’s Application request pursuant to and in accordance with this Agreement.
- n. **“Permit Fee”** means the fee paid by Licensee to District upon District’s determination to grant Licensee a Permit.
- o. **“Permitted Use”** means Licensee’s authorized Attachment of Small Wireless Facilities to District Facilities under the terms and conditions of this Agreement.
- p. **“Pole”** means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way. A Pole does not include a Tower or Support Structure and does not include a pole or structure that supports electric transmission lines.
- q. **“Public Right of Way” or “Public ROW”** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Agreement shall include public utility easements granted to District, but only to the extent District has the authority to permit use of the area or Public Utility Easement for Communications Facilities or Poles, Towers and Support Structures that support Communications Facilities. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of District.
- r. **“Small Wireless Facility”** means a Wireless Facility that meets both of the following qualifications: (i) each Antenna could fit within an enclosure of no more than 6 cubic feet in volume; and (ii) all other wireless equipment associated with the Antenna, including the Provider’s preexisting equipment, is cumulatively no more than 28 cubic feet in volume.
- s. **“Specifications”** means the specifications, terms, and engineering and construction practices that Licensee is required to comply with when making Attachments to District Facilities pursuant to Exhibit A of this Agreement.
- t. **“Streetlight Luminaire”** means a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the power supply; sometimes includes ballast and photocells.
- u. **“Support Structure”** means a structure in the Public ROW other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.
- v. **“Tower”** means any structure in the Public ROW built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.
- w. **“Wireless Facility”** means the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on,

under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.

- x. **“Wireless Services”** means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.
- y. **“Written Notice”** means as referenced elsewhere in this Agreement, District and Licensee written communication to the other party regarding terms and actions under this Agreement.

2. USE

Licensee may use District Facilities only for the Permitted Use subject to the terms and conditions of this Agreement. The Equipment shall be placed on District Facilities in the position(s) indicated on Exhibit B (District Pole Attachment Permit Application) and in accordance with Exhibit A (District Pole Attachment Specifications), which are hereby incorporated into and made a part of this Agreement. District retains sole discretion to modify Exhibits A and B and such modifications shall apply to Pole Attachment Permit Applications made on or after the date the District provides Licensee with Written Notice of the modification as District standards are updated. Licensee shall comply with Exhibits A and B as modified. The Permitted Use shall be lawful and in compliance with all federal, state and local laws, rules and regulations applicable thereto. Licensee shall, at its sole expense, comply with all laws, orders, ordinances and regulations of federal, state, county and municipal authorities, and any lawful directive of any public officer(s) with respect to its use of the Facilities.

3. PERMITS

Whenever the Licensee desires to utilize District Facilities, it shall submit an application to District specifying the location of the District Facilities in question and the number and configuration of Equipment contemplated for each District Facility as indicated in Exhibit B (hereafter, Application). A separate Application is required for Attachments to each District Facility. For example, use of three District Facilities would require three Applications. At a minimum, Applications shall include the information specified in Exhibit B.

Licensee shall request a right of way permit from Multnomah County for use of Multnomah County right of way. District approval of any Attachments to District Facilities is conditioned upon Licensee successfully obtaining a Multnomah County right of way permit. Licensee is responsible for providing District with proof of any and all obtained County right of way permits prior to the date the District approves the related Pole Attachment Permit Application.

District may deny any Application for the following reasons: (i) insufficient capacity (when all potential accommodations have been reviewed by District and communicated to Licensee); (ii) District Facilities are necessary for District’s sole business use; (iii) Licensee’s proposed Attachment violates any applicable federal, state, or local code, law, rule or regulation, or unduly compromises safety; (iv)

Licensee's proposed Attachment threatens the reliability or would likely negatively impact District's system; (v) Licensee's proposed Attachment does not comply with general applicable engineering standards, for the existing Pole or the proposed replacement Pole, if any; (vi) Licensee's proposed Attachment is not in accordance with Exhibit A, District Pole Attachment Specifications; or (vii) Licensee's failure to obtain a Multnomah County Right of Way permit.

All requested Attachments are subject to field inspection to determine availability, suitability or capacity, as stated above, and all Attachments are subject to field inspection to ensure that the Equipment has been attached in accordance with this Agreement. District shall notify the applicant of the denial of any complete Application within forty-five (45) calendar days after receipt of such complete Application. If the Application is approved, District shall produce a signed permit (Permit) and return one copy of Permit to Licensee, or provide Written Notice or Electronic Notice to applicant. Licensee shall have the right to make Attachments to District Facilities in accordance with the terms of the Permit and this Agreement. No Application shall be deemed an approved Permit without Written Notice or Electronic Notice indicating approval from District.

No later than four (4) years after the Effective Date, the parties agree to negotiate in good faith whether the term of this Agreement should be extended for an additional five (5) years under the same terms and conditions herein.

4. IDENTIFICATION OF EQUIPMENT

Licensee must clearly mark and identify all Equipment attached to District Facilities, using a method pre-approved by District as described in Exhibit A. Failure to properly identify Equipment may constitute an Event of Default of this Agreement, as listed in Section 10 of this Agreement, and result in termination of this Agreement and revocation of any Permits. In the event Licensee acquires another entity's Equipment, Licensee shall properly identify the newly acquired Equipment in a manner consistent with Licensee's approved identification method within 14 business days of acquisition. Failure to identify new or existing Equipment within the agreed-upon timeframe may result in sanctions for Unauthorized Attachments, as defined in Section 6.

5. FEES

- a. Application Fee. Licensee shall pay an Attachment Application fee of \$350.00 for each Application. The fee shall be paid upon submission of Application.
- b. Permit Fee. Upon review of Application and District determination to grant Licensee a Permit, Licensee shall pay a Permit Fee of \$270.00. The initial Permit Fee shall constitute the first annual rental fee.

- c. Annual Rental Fee. The Licensee shall pay District annual rental fees of \$270.00 for each Attachment.
- i. Payment from Licensee for annual rental fees for each calendar year (January 1 through December 31) and all other District invoices is due within thirty (30) days of receipt of annual rental invoice from District.
 - ii. Annual rental fees for Attachments put in place during each calendar year from January 1 through December 31 are due when the permits are approved by District. There shall be no abatement or reduction in such fees for Attachments in place for less than the full calendar year, for Attachments permitted but not yet actually made or Attachments that are acquired, assigned, or purchased by Licensee during the year from another entity.
 - iii. Annual rental fees may be adjusted by District from time to time, in accordance with applicable local, state and federal laws. Any changes in annual rental fees will become effective January 1 of the next year. District shall provide to Licensee at least sixty (60) days prior Written Notice before the effective date of changes to annual rental fees. Unless Licensee otherwise notifies District within thirty (30) days of protest to changes in annual rental fees, Licensee shall be deemed to have accepted the change in annual rental fees.
 - iv. District shall have the right to terminate this Agreement within thirty (30) calendar days from the date of Written Notice from Licensee objecting to changes in annual rental fees, subject to the additional thirty (30) day negotiation period required by Section 20 of this Agreement. If District exercises such right to terminate the Agreement, Licensee must remove the Equipment from District Facilities within ninety (90) days from Written Notice of termination. In the event Licensee fails to remove the Equipment from District Facilities, Licensee will be charged annual rental fee and District may remove the Equipment without additional notice to Licensee. Licensee shall be responsible for all costs incurred by District for the removal of Licensee's Equipment. District is not responsible for any damage to Licensee's Equipment.
 - v. Licensee may overlap its Equipment onto existing Equipment so long as overlapping does not require modifications or alterations to District Facilities, which shall not be considered a separate Attachment for purposes of assessing an annual rental fee. Licensee must modify an existing Permit or submit a new Application prior to overlapping. Overlapping Equipment shall be subject to terms and conditions of this Agreement, including inspection by District prior to Licensee overlapping. District shall recover its administrative and inspection costs associated with approving Licensee's overlapping to the extent set forth in this Agreement. Under no circumstances shall Licensee overlap its Equipment onto existing Equipment that is not owned by Licensee, nor shall Licensee allow third parties to overlap its existing Equipment.
- d. Inspection Fees. In the event that District needs to inspect Equipment and/or Attachments pursuant to this Agreement, charges for field inspections shall be paid by Licensee to District at the following rate:
- i. District trip to field shall be charged a flat rate of \$50.00 for each visit.
 - ii. Time spent in the field pursuant to this Section of Agreement shall be charged in 15-minute increments at a rate of \$80.00 per hour.

- e. The Unauthorized Attachment Fee is referenced in Section 6.
- f. Other Fees. Licensee shall be subject to any other generally applicable fees under the authority of District or other government body, such as those required for electrical permits, building permits, right of way permits, etc.

6. LICENSEE'S ATTACHMENTS

- a. Licensee shall install all Equipment at Licensee's expense and in accordance with District Attachment Specifications, as listed in Exhibit A.
- b. District reserves the right, at its sole discretion, to require Licensee to rearrange Licensee's Equipment to better utilize District's Facilities so long as rearrangement is necessary to serve a public purpose. Licensee shall perform such work at Licensee's expense and in compliance with Ex. A, District Pole Attachment Specifications, including authorized Permit. District will provide Written Notice to Licensee whenever such work is to be performed. In accordance with Agreement, District is not responsible for any damage to Licensee's Facilities.
- c. If Attachment is made inconsistent with the conditions of the Permit or this Agreement, such Attachment will be referred to as an "Unauthorized Attachment".

A fee will be assessed by District for all Unauthorized Attachments. The Unauthorized Attachment Fee is \$485.00 per Unauthorized Attachment.

Upon discovery of an Unauthorized Attachment, District may, at its sole discretion, remedy the situation using either of the following procedures:

- i. District may immediately rearrange Licensee's Equipment to bring the Attachment into compliance. Such work shall be at Licensee's sole expense, and Licensee agrees to pay the costs of all such work. In accordance with Agreement, District is not responsible for any damage to Licensee's Facilities.
- ii. District may provide Licensee with written notice of the Unauthorized Attachment, in which case Licensee shall rearrange the Equipment at Licensee's sole expense, per direction and approval of District, within fourteen (14) calendar days from the date of District's written notice. If Licensee fails to rearrange the Equipment within fourteen (14) calendar days, District may, at its sole discretion, rearrange the Equipment to remedy the Unauthorized Attachment, at Licensee's sole expense. In accordance with Agreement, District is not responsible for any damage to Licensee's Facilities.

If Licensee fails to rearrange the Unauthorized Attachment within fourteen (14) calendar days from the date of District's written notice, the Unauthorized Attachment fee shall increase by \$125.00 per every fourteen (14) calendar days in which Licensee fails to rearrange the Unauthorized Attachment.

- d. Licensee shall have the right to contest any field data (resulting from a District inspection) for a period of fourteen (14) days from date of receipt. After such period of time, Licensee is deemed to have accepted the accuracy of the field data, and is responsible for all costs resulting from and associated with field data.

7. CHANGES IN DISTRICT FACILITIES

- a. District Facilities: Licensee understands and agrees that District Facilities are essentially for District's exclusive use. District reserves the right at any time, without Licensee's knowledge or consent, to change or modify District Facilities, or to remove, replace, or relocate District Facilities that do not have Licensee Equipment on them, and to change, modify, remove, replace or relocate District Facilities that have Licensee Equipment on them by giving Licensee as much advance Written Notice as is feasible under the circumstances but not less than ninety (90) days prior notice (except in the case of emergencies when no prior notice is required). In the event District modifies, removes, replaces or relocates any District Facilities and such change requires Licensee to remove or relocate Licensee's Equipment, District shall provide Licensee with Written Notice as described in the preceding sentence. Licensee shall relocate or remove its Equipment, at Licensee's sole expense, within ninety (90) calendar days from District's Written Notice requesting the relocation or removal of Licensee's Equipment (this does not include Unauthorized Attachments; Unauthorized Attachments are addressed above). At District's discretion, District may relocate the Equipment and bill Licensee for the cost of such relocation. If Licensee performs the relocation work, Licensee shall be responsible for any liability or additional costs associated with removing the old Facilities and relocating them. In accordance with Agreement, District is not responsible for damage to Licensee's Equipment.
- b. Make Ready Charges: If additional Poles, Poles of greater height or strength, or rearrangement of District's Facilities or the equipment of any other party licensed by District to use the Facilities are required in order for District to provide Licensee with access to the Facilities, the costs for such additional Facilities and make ready work, including, but not limited to, special inspections, preconstruction, engineering, make ready, change out, and rearrangement work, shall be at the sole expense of the Licensee, and Licensee agrees to pay all invoices within thirty (30) days after receipt.

8. UTILITIES

Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with Wireless Facility.

9. OPERATION AND MAINTENANCE

- a. The District reserves the right to shut off power to Equipment for critical maintenance needs without advance notice, but will make good faith efforts to provide Licensee with at least twenty-four (24) hours advanced notice. Licensee is responsible for keeping the District informed as to the best person to contact for such notifications.
- b. In the event that District Facilities need to be repaired or replaced:
 - i. If the need for repair or replacement is due to an accident, District will notify Licensee that damage has occurred, and will make good faith efforts to coordinate Equipment

restoration with Licensee. However, District reserves the right to repair or replace its Facilities on its own schedule based on its needs and resources. If District Facilities are so damaged so that they must be replaced, the District reserves the right to replace and modify their Facilities as needed, even if it does not accommodate Licensee's Equipment.

- ii. District will not be responsible for the cost of replacing Licensee's Equipment, either as a result of the original incident that caused the damage, or as the result of the District's handling of the Equipment during the process of restoring District's Facilities.
- c. In the event that District Facilities need to be repaired or replaced due to being at the end of its useful life, the District will provide a minimum of thirty (30) days advance Written or Electronic Notice to Licensee. Licensee understands that the District's actions may require removal of District Facilities or Equipment, however, District will make good faith effort to leave Licensee's Equipment in its existing state. If the District's actions require removal or relocation of Equipment, the District assumes no responsibility for performing this removal or relocation.

10. DEFAULT AND REMEDIES

- a. District expects the Licensee to respond to District notices, including timely payment of invoices, and to remove abandoned Equipment, identify Equipment, and provide prior Written Notice of any proposed assignment of Equipment or entity. District will provide Written Notice in the event Licensee fails to meet the above conditions. Continued failure by the Licensee to meet those conditions shall result in Default by the Licensee. The occurrence of any one or more of the following events constitutes an "Event of Default" by Licensee:
 - i. Licensee fails to provide Written Notice to District regarding any invoice amount in dispute under this Agreement within ten (10) calendar days after Written Notice of such failure from District. Such Written Notice from Licensee regarding invoice dispute shall contain the invoice number, invoice date, amount in dispute and grounds for dispute, accompanied by payment of amount not in dispute.
 - ii. Licensee fails to complete all construction associated with attaching Licensee's Equipment to District Facilities within six (6) months from the approval date of Permit.
 - iii. Licensee deserts or abandons Equipment attached to District Facilities. Equipment shall be considered deserted or abandoned if it fails to transmit a signal during a 12-month time period.
 - iv. Licensee fails to properly identify Equipment attached to District Facilities according to the method described in Exhibit A.
 - v. Licensee fails to provide prior Written Notice to District of intent to assign this Agreement or the Equipment attached to District Facilities.
 - vi. Licensee assigns this Agreement, in violation of the terms and conditions of this Agreement, without prior written consent from District.
 - vii. A petition is filed by or against Licensee under the Federal Bankruptcy Code or any similar law or statute of the United States or any state (and with respect to any petition filed against Licensee, such petition is not dismissed within sixty (60) days after the filing thereof) or Licensee is adjudged a bankrupt or insolvent, or receiver, custodian or trustee is appointed for Licensee or for any of the assets of Licensee which appointment is not vacated within thirty (30) days of the date of appointment, or Licensee becomes

insolvent, is unable to pay its debts and they become due, or makes a transfer in fraud of creditors.

- viii. Licensee fails to perform or observe any other term or condition of this Agreement and such failure continues for thirty (30) days after Written Notice from District; provided, however that if such failure is capable of being cured, but not within such 30-day period, District may extend such period as approved in writing by District, so long as Licensee commences appropriate curative action and diligently prosecutes such cure to completion.
- b. Default under any one or more of the above clauses i through viii of Paragraph a. of this Section 10 shall be a Default under this Agreement for the individual Network Node that is affected by the Event of Default. So long as an Event of Default applicable to this Agreement continues beyond the specified period or, if no period is specified, beyond sixty (60) [to match Section 23 below] days, District may terminate the affected Permit issued under this Agreement without notice or demand except as expressly required above, or may revoke all Permits issued to Licensee if the nature of the Event of Default affects all Permits issued to Licensee, and pursue any other remedy it may have under applicable law. In the event District terminates this Agreement pursuant to Paragraph b. of this Section 10, Licensee shall disconnect Licensee's Equipment from District Facilities as required by this Agreement.
- c. In the event of a billing dispute between District and Licensee, Licensee may continue to make Attachments to District Facilities as permitted under this Agreement as long as Licensee continues to: i) make all payments not in dispute; and ii) pay into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Licensee fails to meet these two requirements, then District may provide Written Notice to Licensee of its intention to disconnect Licensee and terminate this Agreement within thirty (30) days of such notice.

11. NOTICE

- a. Written Notice. As referenced elsewhere in this Agreement, District and Licensee shall at times provide Written Notice to the other party. The following notices, requests, demands and other communications hereunder may be in writing, and shall be deemed given when delivered or refused, and may be delivered personally, deposited in certified US Mail, return receipt requested, with appropriate postage, or sent via overnight delivery by a nationally recognized courier that provides written evidence of delivery:
 - i. Notice of changes in fees charged by District under this Agreement.
 - ii. Notice of code violation: Licensee's Equipment fails to comply any federal, state or local laws.
 - iii. Notice of Permit violation: Licensee's Equipment fails to comply with the requirements of Permit.
 - iv. Notice of termination of Agreement by either party.
 - v. Notice of failure to respond to an invoice.
 - vi. Notice in lieu of payment of an invoice.
 - vii. Notice of consent of assignment of Agreement to another party.
 - viii. Notice of rearrangement of Licensee's Equipment by District.

- ix. Notice of Licensee failure to perform or observe any other term or condition of this Agreement.

- b. Electronic Notice. As referenced in this Agreement, District and Licensee may provide notice to each other electronically (Electronic Notice). The following notices, requests, demands and other communications hereunder shall be in via electronic mail or other electronic means mutually agreed upon by District and Licensee:
 - i. Pole Attachment Permit Applications.
 - ii. Notice of denial or approval of Pole Attachment Permit Applications.
 - iii. Notice of pole transfers or other work on District Facilities.
 - iv. Other notifications and communications as approved by District.

Written or Electronic Notice shall be made to the following addresses:

If to District, to:

Mid-County Lighting District

Manager: Chet Hagen

1620 SE 190th Ave.

Portland, OR 97233

503.988.9288

Email: chet.hagen@multco.us

If to Licensee, to:

New Cingular Wireless PCS, LLC

Attn: Network Real Estate Administration

Re: Cell Site Mid-County Lighting District MAA (OR)

Fixed Asset #: _____

575 Morosgo Drive NE

Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
AT&T Legal Dept. – Network Operations
Attn: Network Counsel
Re: Cell Site Mid-County Lighting District MAA (OR)
Fixed Asset #: _____
208 S. Akard Street
Dallas, TX 75202-4206

12. LICENSEE'S RISK

Licensee's use of District Facilities under this Agreement is entirely at Licensee's own risk. District does not warrant or represent that law authorizes the Licensee's use of Public ROW in which District Facilities may be located. Any permits, licenses, or easements required by public or private authority to make Licensee's use of Public ROW lawful are the full responsibility of the Licensee, and Licensee is required to provide evidence to District of compliance with this requirement. Licensee warrants that it has the necessary authority, including permits, licenses, franchises, or any other applicable regulatory requirement, to operate its business where District Facilities are located.

13. COMPLIANCE WITH LAWS

The parties hereto shall conduct its business and perform its obligations under this Agreement in compliance with all federal, state and local laws, rules and regulations, including, but not limited to, any applicable Workers Compensation law, employment insurance act, or old age insurance act. Licensee shall continuously carry a Workers Compensation insurance policy covering all employees as required and with such additional terms as may be provided by any applicable Oregon statutes and any other applicable state law.

14. LIMITATION OF LICENSEE'S RIGHTS

No use of District Facilities under this Agreement or otherwise shall create any right in the Licensee except as herein provided. District shall remain the sole owner of its Facilities. District shall have the sole right to operate and maintain its Facilities without the consent of Licensee.

15. SAFETY, HEALTH AND ENVIRONMENT

Licensee shall be solely responsible for on-the-job compliance with government regulations pertaining to safety, health, and environment. Licensee shall pay any and all losses or fines resulting from noncompliance by Licensee or Licensee's contractors or subcontractors, whether or not District is named singly or jointly in such actions. Notwithstanding compliance with such regulations, Licensee is solely responsible for assuring a safe workplace for its employees, agents, and subcontractors against any and all hazards and perils that may exist on District's property or around District Facilities, whether

such hazards or perils are known or unknown by District. Licensee shall make an inspection of the work area before commencing work and regularly thereafter, and shall make corrections whenever hazards or perils are found. District, at its sole discretion and convenience, reserves the right to immediately suspend Licensee's activities hereunder if unsafe work practices are found, but such right does not negate Licensee's sole responsibility for the safety of its employees, agents and subcontractors in the administration and performance of this Agreement or Licensee's business activities.

16. INDEMNIFICATION

Licensee agrees to defend and indemnify and hold harmless District, its officers, directors, agents and employees, and its affiliates, their respective officers, directors, agents, and employees ("Indemnitees"), from and against any and all losses, damages to persons, Equipment or property, injuries or deaths of persons, liability, claims, liens, demands, and causes of action of every kind and character, including environmental liability, and including the amounts of judgments, penalties, interest, court costs, and attorney fees at trial and on appeal incurred by Indemnitees in defense of same made by or arising in favor of any third person, corporation or other entity, in connection with or arising out of the acts or omissions of Licensee or Licensee's agents under this Agreement. The parties hereto agree, and Licensee affirmatively states and warrants to District, that its indemnity obligation will be supported by liability insurance as required in Section 17 herein, provided that recovery under or in respect of this indemnity shall not be limited to the proceeds of any such insurance. Licensee may self-insure such obligations with the prior written permission of District.

17. LIABILITY INSURANCE

- a. Licensee will provide commercial general liability insurance in an aggregate amount of \$2,000,000 and \$1,000,000 per occurrence and list District as an additional insured on the policy or policies. Licensee may satisfy this requirement by obtaining appropriate endorsements to any master policy of liability insurance maintained by Licensee.
- b. Prior to starting any work or Attaching any Equipment on District Facilities pursuant to this Agreement, Licensee shall qualify, and shall cause its contractors and subcontractors of any tier to qualify as an employer under any applicable workers' compensation act, employment insurance act, or old age insurance act and any other applicable state or federal law, including the payment or deduction and remittance of any and all contributions, taxes, fees or charges under such laws and in each case to accept exclusive liability as an employer thereunder. Licensee, its contractors and subcontractors of any tier shall secure and continuously carry workers' compensation insurance policies covering all employees as required and with such additional terms as may be provided by Oregon statutes and any other applicable state law.
- c. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any other risks enumerated in a standard "All Risk" or Fire and Special Perils property insurance policy, and in the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. Each party hereto shall obtain from its insurers under all policies of fire, theft

and other casualty insurance maintained by it at any time during the term of this Agreement insuring or covering the Facilities or any portion thereof a waiver of all rights of subrogation which the insurer might have against the other party, and each party shall indemnify the other party against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

18. CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT, OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM INDEMNIFYING PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

19. ASSIGNMENT

- a. The Licensee shall not assign this Agreement to any third party without the prior written consent of District, such consent not to be unreasonably withheld. Licensee may assign this Agreement and its rights hereunder and thereunder to any entity that is a parent or subsidiary of a parent of Licensee or pursuant to a merger, provided that such entity shall, in writing satisfactory to District, assume without limitation this Agreement. District shall provide Written Notice to Licensee within 90 days of receiving Licensee's Written Notice of request for consent of assignment. Licensee may be in default of this Agreement, in the event Licensee fails to provide District with Written Notice of request for consent of assignment and an opportunity to evaluate the proposed assignment. If Licensee fails to provide such notice, District may void this Agreement without Written Notice to Licensee. Notwithstanding any other provision in this Agreement, District acknowledges and agrees that Licensee may subcontract to others all, or any portion of, the installation, repair and maintenance duties to be performed by Licensee under this Agreement, with the further understanding that any such subcontract will not absolve Licensee from any duty or liability it may have under this Agreement.

- b. District may assign this Agreement any permits or any of its rights with respect thereto without the approval or consent of Licensee.

20. ATTORNEY'S FEES

In the event of a dispute between the parties that results in any litigation, each party is solely responsible for their legal costs and attorney fees including at trial and on appeal. With respect to this Section 17, providing for payment of attorney fees, such fees shall include fees attributable to legal services provided by any in-house counsel and staff.

21. SUCCESSORS

This Agreement shall inure to the benefit of and be binding on the parties' successors, and insofar as assignable, on the parties' assigns.

22. WAIVER

No waiver by either party of any breach of this Agreement shall be construed as a waiver of any other breach of the same or any other terms or covenants of this Agreement.

23. DISPUTE RESOLUTION

Licensee and District agree to negotiate in good faith, for a period of thirty (30) days from the date of Written Notice of any dispute arising under this Agreement, prior to filing any complaint with any governmental authority or court of law.

24. MISCELLANEOUS

- a. This Agreement shall be construed in accordance with the laws of the State of Oregon. Any dispute arising under this Agreement will be heard exclusively by a federal or state court located in Multnomah County, Oregon.
- b. Any amounts not paid when due under this Agreement shall bear interest at the rate of 10% per annum until paid.
- c. This Agreement and any and each Permit to attach shall constitute the entire agreement and understanding of the parties. There are no representations or understandings of any kind not set forth in this Agreement or Permit. Any amendment or modification to this Agreement or Permit must be in writing and executed by both parties.
- d. If any term of this Agreement or Permit is found to be void or invalid, such provision will be severed and inoperative, but such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- e. This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.

25. FORCE MAJEURE

If a party is delayed or hindered in, or prevented from the performance required under this Agreement by reason of strikes, lockouts, labor trouble, failure of power, riots, insurrection, war, acts of God or other reason of like nature not the fault of the party delayed in performing work or doing acts, such party is excused from such performance for the period of such delay. Notwithstanding the above, this Section 25 shall not apply to the payment of money.

26. VOLUNTARY EARLY TERMINATION

Licensee shall have the right to terminate this Agreement or any Attachments made pursuant hereto, for any reason and at any time, upon providing District with sixty (60) calendar days prior Written Notice. District shall have the right to terminate this Agreement or any Attachments made pursuant hereto with sixty (60) calendar days prior Written Notice upon the occurrence of an Event of Default by Licensee, as specified in Section 10(a)(i) through (viii), and the Licensee's failure to cure the Event of

Default within the specified period, or, if no period is specified, beyond sixty (60) days. Where Licensee or District exercises such right, Licensee will remove the impacted Attachments and Equipment from District Facilities at Licensee's expense, within four (4) months from the date of termination as specified in the notice of termination. Licensee will return District's Facilities utilized by Licensee to their original condition, with the exception of normal wear and tear.

27. RENEWAL

Upon Written Notice of request by Licensee to renew this Agreement, District may, in its sole discretion, grant renewals of this Agreement in one-year increments.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date specified.

**NEW CINGULAR WIRELESS PCS, LLC
(LICENSEE)**

By: AT&T Mobility
Its: Manager

Signature

Printed Name: _____

Title: _____

Date: _____

MID-COUNTY LIGHTING DISTRICT (DISTRICT)

Signature

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

DISTRICT POLE ATTACHMENT SPECIFICATIONS

Licensee, when making Attachments to District Facilities and/or Poles pursuant to a District Agreement or Permit will adhere to the following Specifications provided herein.

General Requirements:

1. All capitalized or defined words and terms have the meaning given to them in accompanying Agreement and Permit, unless otherwise defined herein.
2. The primary purpose of any District Pole shall remain as a Pole structure supporting a Streetlight Luminaire and related streetlight fixtures used to provide lighting to the Public ROW. Any proposed Attachment that impedes this primary purpose will not be approved.
3. Unless Licensee can demonstrate its ability to use an already existing Pole in compliance with these Specifications, Licensee will be required to replace the Pole with a District approved Pole that is capable of supporting Licensee's Equipment pursuant to these Specifications.
4. To the extent feasible, there shall be no surface mounted conduit or exposed wiring on any exterior surface of District Facilities.
5. There shall be no more than one (1) Network Node on any one (1) Pole.
6. Aerial cable spans and/or aerial span power connections are not permitted.
7. Licensee will design and construct the Pole and Attached Wireless Facility to be fully compliant with the National Electric Code.
8. After Licensee installs its Equipment, the Pole and any electrical service related to the function of streetlights within or upon the Pole will be owned by the District. The Attached Wireless Facility and all Equipment associated with its specific electrical service will be owned by Licensee.
9. SWF must not obstruct, impede or hinder the usual travel or public safety on the Public Right-of-Way or obstruct the legal use of the Public Right-of-Way by other providers.
10. If an Attachment requires replacement of a Pole, complete construction plans for the proposed Equipment must be submitted with an Application and bundled into a single PDF file, formatted to 11"x 17" sheets, sealed by a Professional Engineer licensed in the State of Oregon, and including:
 - a. The plans shall be organized so that if any single Pole is removed from the application, the remaining plan set remains valid. Overall sheets including details & notes are encouraged.
 - b. Structural analysis for each identified Pole sealed by a Professional Engineer in the State of Oregon indicating that the Pole and foundation can handle the load of the proposed Attachment of Equipment, and where an existing Pole is utilized, any existing loading.
 - c. Each plan set shall include the following:
 - i. A cover sheet containing a scaled map including all Pole locations included in the Application, a list of each Pole location including GPS coordinate and a legend of all sheets.
 - ii. A page for each specific Pole location referenced with Pole title, name, location information, and photograph of the proposed location of the Pole.
 - iii. "Required Notes for Each set of Pole Plans" only if unique to the location and as such cannot be part of Overall sheet notes.

- iv. Labeled and dimensioned site plan and elevation plan, including the following as applicable:
 - 1. Key symbols, ROW lines, property lines, etc.
 - 2. Street information including names, curb-lines, sidewalk, street amenities, vegetation, existing and proposed utilities.
 - 3. If outside of Public ROW, identification of immediately adjacent property owner(s) and/ or easements.
 - 4. Structural Plans for Pole and associated foundations that reference structural calculations and include depth, diameter, grounding, reinforcing, and foundation information as necessary.
 - 5. Labeled construction materials, color, finish, etc.
 - 6. Pole dimensions and total max height from adjacent grade.
 - 7. Size and dimension of any projection(s) from Pole.
 - 8. Proposed voltage, maximum transmission wattage and radio frequency for all Equipment associated with each Network Node, as allowed under FCC regulations.
 - 9. Detail of proposed communication conduit and electrical connection location.
 - 10. Typical conduit/duct bank installation section detail.
 - 11. All existing utilities, including but not limited to:
 - a. Storm & Sanitary Sewer pipes and appurtenances
 - b. Any utilities 24" and greater depicted as double-lines
 - c. Gas line (indicate size, High Pressure, services, etc).
 - d. Electric lines (indicate power pole number, anchor pole, overhead line, and duct bank in actual dimensions)
 - e. Water infrastructure including valves, fire hydrants, etc.
 - f. adjacent private service line locations where known
- 11. A replacement Pole shall match the District's standard streetlight Pole, as closely as possible, subject to these Specifications and Agreement, and shall be located in the exact location as the previous Pole, or in a modified location as approved in writing by District.
- 12. Complete digital data of construction plans will be submitted to gisdata@multco.us to the following District standards:
 - a. All electronic geospatial data, whether vector or raster, must have spatial reference information and be projection defined (have its coordinate system identified and embedded in or associated with the data file), and in the case of CAD data must NOT be in page space or a custom site-specific projection. All CAD data should be in known real world coordinate space, ideally in NAD 83 HARN Oregon State Plane or Oregon Coordinate Reference System (OCRS).
 - i. Accepted GIS file types are:
 - 1. Shape File (.shp, .shx, .dbf, .prj, .sbx, .sbn)
 - 2. File Geodatabase (.gdb)
 - 3. XML Workspace Document with dependencies clearly documented (.xml)
 - ii. Accepted CAD files types are:

1. DWG
2. DXF layer separates (.dxf)

Design Standards

Structural Requirements

1. Pole design must meet the loading requirements necessary for proposed Pole attachment, including all District-owned and Licensee-owned equipment as certified by a professional engineer.

Separation

1. The separation between Licensee's Small Wireless Facilities in Public ROW shall be a minimum of two-hundred fifty (250) feet to minimize impacts to Public ROW, aesthetics and interaction between Network Provider equipment, unless a shorter distance is otherwise approved by the District administrator

Aesthetic Requirements

1. Small Wireless Facilities (SWF) must be designed to blend in with the surrounding streetscape with minimal visual impact.
2. The color of the Pole and all attached Equipment will, to the extent possible when considering differences in materials, match those of adjacent streetlight Poles.
 - a. Decorative poles are specified as black in color with a polyurethane finish. Fade resistance and weathering of paint is in accordance with ASTM B-117-64 and ANSI/ASTM G53-77 specifications.
 - b. Direct bury composite poles are specified as Gray, smooth finish with a polyurethane coating.
 - c. Aluminum Davit poles are specified color as a satin brushed finished aluminum.
3. Pole-mounted Antennas and Equipment shall be mounted as close to the Pole as technically feasible; provided that the inside edge of the Antenna or Equipment may be no more than twelve (12) inches from the outer circumference of the Pole.
4. When a replacement Pole is required:
 - a. The replacement Pole's height will not exceed the height of the original Pole by no more than 15 ft.
 - b. The replacement Pole's outer diameter will be no more than 24 inches.
 - c. The height and length of the streetlight mast arm (an attachment to a lamp post or Pole, to which a Streetlight Luminaire is attached) and the type and position of the Streetlight Luminaire must be functionally identical to that which was on the original Pole, unless otherwise agreed to by District in writing.
 - d. Any significant deviations in aesthetics or material composition from Poles included in the District's Specifications must be approved in writing by the District administrator.
5. If an Antenna external to the pole is used:
 - a. Antennas shall not exceed five (5) feet in height or 10 percent of the Pole height, whichever is less.
 - b. The volume of each antenna must be 3 cubic feet or less.

6. The Wireless Facility may, to the extent feasible, have no more than two (2) equipment boxes or cabinets per Pole per Attachment. All other Equipment must be located either within the Pole itself, on the ground adjacent to the Pole, or in a below ground vault.
7. If an equipment cabinet is used:
 - a. Any equipment box or cabinet attached to the exterior of a Pole must not exceed Seventeen (17) cubic feet, unless otherwise approved by the District Administrator.
 - b. Any ground-mounted equipment box or cabinet must not exceed eight (8) cubic feet.
 - c. The base of all cabinets and Equipment Attached to Poles shall be installed at least seven (7) feet above the ground.
 - d. If the cabinet is Pole-mounted and projects toward the street and/or bicycle facilities, the base of the Attachment shall be installed no less than seventeen (17) feet above the bicycle facility and/or street.

Electric Service Requirements

1. The Wireless Facility must obtain its power from an underground circuit via a remote service pedestal. If possible, un-metered power is encouraged and preferred. A metered power source may be approved by the District administrator in cases where un-metered power is not available or feasible.
2. If securing a power source requires relocation of part or all of the existing underground circuit that is used to feed adjacent District Facilities, Licensee will be responsible for full costs of replacement of the circuit section and such replacement must be consistent with the construction standards for each applicable local jurisdiction (i.e. city and county) and the National Electric Code.

Conduit and Cabling

1. Electrical systems for Small Wireless Facilities shall be contained in a dedicated conduit labeled to identify its dedicated use for Wireless Facilities.
2. All conduit runs must be marked with an underground marking tape per 00960.42(e) of the Oregon Standard Specifications for Construction and contain locate wires.
3. All conduits shall be Schedule 40 PVC and all elbows shall be fiberglass.
4. Install bushings on all conduit ends and seal the ends with an approved conduit plug.

Logo, Decals, Flashing Lights and RF Warning Sticker

1. The Network Provider shall post its name, identifying information, permit number and 24 -hour emergency telephone number in an area of the Wireless Facility that is visible to the public.
2. All equipment manufacturer decals shall be removed. Except as required by Law or by District, Licensee shall not post any signage or advertising on the Wireless Facilities.
3. Equipment shall not have static or flashing lights that are visible when the enclosures are closed.
4. Equipment related features (e.g. cooling system fans) shall not exceed 50 decibels during the day and 40 decibels at night.

