



City of Tigard  
**Tigard Business Meeting – Agenda**

---

**TIGARD CITY COUNCIL**

**MEETING DATE AND TIME:** September 8, 2015 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

**PUBLIC NOTICE:**

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated*; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

---

**VIEW LIVE VIDEO STREAMING ONLINE:**

<http://live.tigard-or.gov>

**CABLE VIEWERS:** The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

Thursday	6:00 p.m.	Sunday	11:00 a.m.
Friday	10:00 p.m.	Monday	6:00 a.m.



City of Tigard

## Tigard Business Meeting – Agenda

---

### TIGARD CITY COUNCIL

**MEETING DATE AND TIME:** September 8, 2015 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

6:30 PM

- STUDY SESSION

- A. COUNCIL LIAISON REPORTS
- B. RECEIVE LAND USE PROCESS BRIEFING
- C. UPDATE ON YOUTH SPORTS LEAGUE AGREEMENT - **6:45 p.m. estimated time**
- D. RECEIVE UPDATE ON TIGARD/BEAVERTON IGA FOR JOINT LAND PARTITION

- EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

- 1. BUSINESS MEETING
  - A. Call to Order
  - B. Roll Call
  - C. Pledge of Allegiance
  - D. Call to Council and Staff for Non-Agenda Items
- 2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)
  - A. Follow-up to Previous Citizen Communication

- B. Tigard High School Student Envoy
  - C. Tigard Area Chamber of Commerce
  - D. Citizen Communication – Sign Up Sheet
3. CONSENT AGENDA: (Tigard City Council) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to: **7:35 p.m. estimated time**

A. RECEIVE AND FILE:

- 1. Council Calendar
- 2. Council Tentative Agenda for Future Meeting Topics

B. APPROVE CITY COUNCIL MINUTES:

- July 14, 2015
- July 28, 2015

C. AUTHORIZE THE CITY MANAGER TO SIGN AN AGREEMENT WITH CLEAN WATER SERVICES AND BEAVERTON REGARDING BARROWS ROAD SANITARY SEWER PHASE 3.

• *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/ City Center Development Agency has voted on those items which do not need discussion.*

4. CONTINUATION OF QUASI-JUDICIAL PUBLIC HEARING: APPEAL OF HERITAGE CROSSING ZONE CHANGE AND SUBDIVISION(ZON2015-00002, SUB2015-00001, and VAR2015-00001) **7:40 p.m. estimated time**
5. LEGISLATIVE PUBLIC HEARING - CONSIDER ORDINANCE APPROVING CENTURYLINK FRANCHISE AGREEMENT **8:10 p.m. estimated time**
6. RECEIVE UPDATE FROM GREATER PORTLAND INC. ON REGIONAL ECONOMIC DEVELOPMENT **8:25 p.m. estimated time**
7. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
8. NON AGENDA ITEMS **8:40 p.m. estimated time**
9. ADJOURNMENT **8:45 p.m. estimated time**

**AIS-2071**

**A.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 15 Minutes

**Agenda Title:** Council Liaison Reports

**Submitted By:** Norma Alley, Central Services

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Council  
Business  
Mtg - Study  
Sess.

**Public Hearing:** No

**Publication Date:**

---

**Information**

**ISSUE**

Council will present liaison reports.

**STAFF RECOMMENDATION / ACTION REQUEST**

**KEY FACTS AND INFORMATION SUMMARY**

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

---

**Attachments**

*No file(s) attached.*

---

**AIS-2356**

**B.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 10 Minutes

**Agenda Title:** Receive Briefing on Council Procedures for Quasi Judicial Land Use proceedings

**Prepared For:** Marty Wine, City Management

**Submitted By:** Carol Krager, Central Services

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Council Business Mtg - Study Sess.

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Receive a briefing from the city attorney during study session for a discussion on the process for quasi-judicial land use hearings.

**STAFF RECOMMENDATION / ACTION REQUEST**

Receive the briefing and indicate whether additional discussion at a future meeting is desired.

**KEY FACTS AND INFORMATION SUMMARY**

As the economy recovers, the city is now seeing more land use hearings and appeals coming before the Council. The hearings may also be more contentious as they have been in the past, as residents react strongly to proposed changes in their neighborhoods. The Council has conducted quasi-judicial hearings with procedures that are fairly informal, and specific suggestions are made for improving the quasi-judicial hearings process at Council.

The City Attorney will provide a refresher and update on the processes used in for quasi-judicial land use hearings.

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

n/a

---

## Attachments

*No file(s) attached.*

---

**AIS-2290**

**C.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 10 Minutes

**Agenda Title:** Update on Youth Sports League Agreements

**Prepared For:** Liz Newton, City Management

**Submitted By:** Norma Alley,  
Central Services

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Council Business Mtg - Study Sess.

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Update on the Cook Park Field Use Agreements between the city and Tigard Little League and the city and Southside Soccer.

**STAFF RECOMMENDATION / ACTION REQUEST**

Discuss the terms of the draft field use agreements between Tigard Little League and the city and Southside Soccer and the city and provide direction to staff to finalize the agreements.

**KEY FACTS AND INFORMATION SUMMARY**

Over the last year, staff has been working with representatives of Tigard Little League and Southside Soccer on field use agreements for Cook Park. We have reached agreement on language and present the attached draft agreements for council review. The agreements reflect some key assumptions summarized below:

- Tigard Little League and Southside Soccer retain priority treatment for reserving fields.
- The leagues will not be charged for regular season use of the fields recognizing that they provide recreational opportunities to Tigard youth, defined as residents of the city that also meet other requirements for participation.
- Fields, parking lots and pavement surfaces are city property; the city assumes responsibility for maintenance and liability for condition of property and structures.
- The city determines the date(s) the fields will open and close for the season, will be closed for maintenance and closed temporarily during the season if field conditions warrant.
- The leagues are responsible for the cost and operation of their programs.

While substantially in agreement with all of the provisions of the proposed language, Tigard Little League (TLL) offered some suggestions in their last review of the draft:

- TLL expressed concern that the wording in Section 17 - TERMINATION might allow the city to cancel the agreement with notice but without mutual agreement, leaving TLL without facilities. Staff explained that it is possible that due to unforeseen financial circumstances, the city would be unable to substantially meet its obligations under the agreement over the long term. Staff proposed the language in 17(d.) to reflect that occurrence. TLL is not opposed to that provision given the other termination provisions.
- TLL suggested that the term of the agreement be 15 years with two potential renewals rather than the ten years with three additional renewals proposed in Section 2 - TERM. In initial conversations, councilors expressed a preference for a ten year initial term which is more typical, but staff would have no objections should council choose a 15 year initial term.
- TLL had concerns with the time to cure a contract breach (Section 17 b.) Staff had originally proposed 14 days. TLL suggested 60 days given the nature of a volunteer organization that has an offseason, believing that would give more than enough time to cure a breach but also provide more time for communication among board members. The city attorney recommends 30 days, which is reflected in the attached. This allows the leagues more time to cure the breach and minimizes any exposure the city might have.

Southside Soccer has been provided draft agreements generally identical except for Section 5. SOUTHSIDE OBLIGATIONS. Staff has been in contact with Southside representatives several times. They have not offered suggestions for modifications to the agreement, nor have they provided specific comments on the most recent draft.

Based on council direction, staff will finalize the agreements for council consideration on September 22, 2015.

## **OTHER ALTERNATIVES**

Suggest other revisions to the proposed language.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

May 26, 2015 Study Session

---

### **Attachments**

Draft Tigard Little League Field Agreement

Draft Southside Field Use Agreement

---

Cooperative Agreement  
Regarding Cook Park Facility Use  
Between the City of Tigard  
and Tigard Little League

This Agreement is made and entered into by and between the City of Tigard ("City"), an Oregon municipal corporation and Tigard Little League ("TLL"), a non-profit corporation, all hereinafter collectively referred to as the "Parties."

RECITALS

The Parties agree upon the following recitals:

- A. WHEREAS, in 1998, the City entered into an agreement with Atfalati Recreation District, Inc. ("ARD"), an Oregon non-profit corporation, ("1998 Agreement") whereby ARD contributed \$150,000 towards the purchase of the Gray/Lamb Cook Park Addition ("Property") over a ten-year period and received priority scheduling at the Cook Park fields.
- B. WHEREAS, the 1998 Agreement was amended twice in April 2003 ("Second Amendment"). The Second Amendment extended the time period in which ARD had to repay the \$310,045.86 contribution to 2013, established credits against that amount for acquisition and development of the Property, allowed ARD to apply to the City for community event grants, and allowed ARD to operate a concession stand on the Property.
- C. WHEREAS, the 1998 Agreement was amended in May 2010 ("Third Amendment") to assign ARD's interest to TLL and Southside Soccer Club, modify the termination process, and add working together to develop operating parameters for the use of the Property facilities as a goal of the 1998 Agreement.
- D. WHEREAS, the obligation of TLL to repay to the City the original contribution towards the City's purchase of the Property, as well as all development costs, has been fulfilled as of 2013.
- E. WHEREAS, the City terminated the 1998 Agreement, as amended, and in accordance with the process established in the Third Amendment, in March 2013 and effective in October 2013.
- F. WHEREAS, the City recognizes the historical partnership it has with TLL regarding the use and maintenance of the sport fields at Cook Park as well as TLL's overall contribution to youth sports in the community. The Parties, through this Agreement, wish to continue this relationship.
- G. WHEREAS, the Parties wish to jointly and finally resolve all issues between them regarding the ownership of the Property by acknowledging that the City has full ownership of the Property.
- H. WHEREAS, in recognition of TLL's contributions to the City, the Parties now wish to develop a new Agreement which reflects the relationships of the Parties, preserves TLL's priority scheduling, and establishes the Parties' obligations regarding use of the Cook Park Sports Fields.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed by and between the Parties as follows:

1. COOK PARK SPORT FIELDS. This Agreement shall apply to the sport fields located at Cook Park ("Sport Fields"), as more particularly illustrated in the attached Exhibit A.
2. TERM. This Agreement shall be effective upon final execution of all Parties and shall remain in effect for a period of ten (10) years, ending September 1, 2025. This Agreement may be renewed for three (3) additional five-year periods if such an amendment is mutually agreed to, in writing, by the Parties. At the Annual Meeting prior to the expiration of this Agreement, TLL shall meet with the City Manager or the City Manager's designee and the Parties shall determine if they wish to renew the Agreement.
3. ANNUAL MEETING. The City will offer to TLL an optional annual meeting in November of each year for the Parties. The purpose of the annual meeting is to discuss:
  - a. The dates which TLL wishes to reserve the Sport Fields ("Playing Season"), as well as any proposed dates for tournaments. TLL may use the Sport Fields at no charge for practices and games during the Playing Season according to the schedule approved in advance by the City and for one tournament. Fees for additional tournaments shall be charged in accordance with Section 9 of this Agreement.
  - b. Any issues or concerns related to this Agreement.
  - c. Proposed improvements or operational capital projects, consistent with the City's Cook Park Master Plan.
  - d. The dates which the Sport Fields are available for use by TLL.
  - e. Other topics of mutual interest to the Parties.
4. CITY OBLIGATIONS. The City agrees to:
  - a. Provide garbage collection, including refuse cans and dumpsters, and electrical, water, and sewer service to Cook Park.
  - b. Maintain Cook Park, including the Sport Fields, facilities, and appurtenances located thereon at a base level. This includes, but is not limited to, mowing, watering, and fertilizing the fields and keeping structures in good repair. TLL acknowledges that the City's ability to provide base level maintenance is contingent upon sufficient funding, as determined in the City's annual budget process. The City will notify TLL if the budget process does not fund adequate maintenance for the upcoming year.
  - c. Consider facility improvement requests from TLL pursuant to Section 11 of this Agreement.
  - d. Provide two small equipment storage rooms to be shared by TLL and Southside Soccer Club.
  - e. Provide TLL with access to the existing outdoor electrical outlets for use during its Playing Season.
  - f. Maintain sports field irrigation systems.
  - g. Maintain basic infrastructure (including bleachers, irrigation, dugouts, fences, picnic shelters, etc.).
  - h. Maintain baseball fields, including:
    - i. Turf area maintenance:

1. Mowing, watering/irrigating, weeding, fertilizing, applying herbicides/pesticides.
    2. Annual reconditioning of the outfield, including fertilizing, seeding, applying a top dressing, and aerating as needed.
    3. Regular mowing of infield and infield turf to maintain a playable surface.
    4. Edging of warning track and infield dirt edge.
  - ii. Dirt infield areas:
    1. Pre-season and mid-season leveling using an eyeball-level standard.
    2. Laser leveling, at least every three years.
    3. Dragging fields once a week, typically on Thursday or Friday morning, during the TLL's Playing Season.
5. TLL OBLIGATIONS. TLL agrees to:
- a. Submit field reservation requests to the City prior to December 1 for Sport Field reservations for the upcoming year.
  - b. Chalk and apply base lines, as desired by TLL, and furnish the machinery/equipment required to perform this work.
  - c. Provide and apply Turface, as desired by TLL.
  - d. Install bases.
  - e. Furnish the machinery/equipment required to perform its responsibilities including chalking equipment, wheelbarrows, etc.
  - f. Collect and dispose of litter in designated trash receptacles after TLL's use of fields, especially after games.
  - g. Maintain the storage room and adjacent facilities in a neat and clean manner.
  - h. Rake/brush after games:
    - i. Fill holes at bases; and
    - ii. Replace soil and turf
  - i. Bring any requests, issues or feedback to the attention of the City Manager or the City Manager's designee so the items may be placed on the agenda for the Annual Meeting.
  - j. Comply with all current Park Rental and Use Regulations and the City's annual Park Calendar in effect at the time the reservation was made.
  - k. Ensure that the Sport Fields are in substantially the same condition after TLL use as it was before. TLL will be financially responsible to City for the costs of repairs necessitated by TLL's use of Cook Park, but not including normal maintenance resulting from everyday wear-and-tear.
6. SPORTS FIELD AND FACILITY CLOSURES. The City may, at its sole discretion, close Cook Park or any facilities therein, including Sport Fields, if the condition of the facilities is rendered unsuitable for its intended purpose, unsafe, or if the use of the facility will create conditions which will render the facility unsuitable for use in the future. TLL will not use the Sport Fields for practice or games before the City has opened the Sport Fields or after the City has closed the Sport Fields for the season or on dates the City has closed the Sport Fields due to field condition. Generally, the Sport Fields will not open prior to March 1 and will close October 31.
7. CONCESSION STAND. The City authorizes TLL to operate one concession stand during its Playing Season. The City shall approve the type and placement of any concession stand or temporary structure. The existing concession stand has been designated for use by TLL during its Playing

Season. TLL agrees that it will adhere to all applicable state and local laws and codes and will obtain all necessary permits. The City Manager, or the City Manager's designee may, at his or her sole discretion, revoke the authority of TLL operate a concession stand at Cook Park.

8. PRIORITY USE OF SPORT FIELDS.

- a. TLL shall have priority in scheduling the Sport Fields for requests submitted prior to December 1 of the previous year. Scheduling requests must be made to the City on the City's Field Use Application form.
- b. TLL shall only submit a scheduling request to the City for TLL's actual, planned field use for practices, games, and rain delays. TLL shall not request additional use of the Sport Field above TLL's projected actual usage.
- c. TLL's priority scheduling is subject to compliance with all current Park Rental and Use Regulations in effect at the time the reservation was made or at the time the rental takes place.
- d. Within the Park Rental Season, TLL acknowledges that the City is free to rent Cook Park sport fields and facilities to other park users when those fields and facilities have not been rented by TLL.
- e. TLL shall notify the City as soon as practicable of any days which TLL had reserved and which it will not need. Upon notice to the City, TLL releases its reservation for that scheduled time.
- f. At the Annual Meeting, TLL will provide the City with a schedule of preferred days and times for the City to conduct renovations of the Sport Fields. The City will make a good faith effort to accommodate the preferred dates, but has sole discretion over closures, including but not limited to Sport Field closures for renovations. In the event the City must close a field for emergency repairs on a day which has been reserved by TLL, the City shall provide notice to TLL as soon as practicable. The City is not liable for any damages as a result of the cancellation.
- g. Notwithstanding TLL's priority scheduling, City sponsored events shall have priority for the use of Cook Park, including all fields, parking lots, and covered structures. The City will attempt to avoid scheduling City events on the dates TLL has reserved the Sport Fields if doing so will exceed the capacity of Cook Park.

9. TOURNAMENTS.

- a. TLL may schedule one tournament each season at no cost. The date(s) for the tournament must be submitted with the reservation for the regular season. In the event the date of the tournament needs to change, TLL will notify the city as soon as practical and the city will accommodate the date change based on field and park availability.
- b. TLL will comply with the current Park Rental and Use Regulations for all tournaments, at the time the application is made
- c. Additional tournaments may be requested at any time during the season using the City's reservation forms. TLL will be charged a tournament fee and TLL's request will be approved based on field and park availability. TLL must have an account in good standing in order to make additional reservations for tournaments.
- d. All fees due, and other requirements such as insurance, must be paid 30 days in advance of the tournament or the tournament will be cancelled.

10. PROGRAM OPERATION. TLL is responsible for the cost and operation of its programs. TLL is not eligible for City grant funds or subsidies for program operating expenses or tournaments held as

part of a regular season. Notwithstanding, TLL may request special event funds for regional, state, or national tournaments held outside of TLL's regular season. Requests for special event funding must follow the City's application process.

11. FACILITY IMPROVEMENTS. TLL may request facility improvements by the City at any time. The City will consider the requested improvements on a case-by-case basis and will consider such factors as whether the improvement is consistent with the Cook Park Master Plan, whether funds are available, and whether the improvement will be included in the Parks Division budget request for the upcoming year.
12. TIGARD MEMBERSHIP. TLL agrees that the majority of its participants are residents of the City of Tigard. Upon request by the City, TLL shall provide evidence of such to the City. Failure to provide such documentation to the City or failure to maintain a majority of Tigard residents as participants is a breach of this Agreement and grounds for termination pursuant to Section 17 of this Agreement.
13. MUTUAL RELEASE OF CLAIMS. TLL acknowledges that the City is the sole owner of the Property. The Parties forever waive, release, and covenant not to sue another Party, heirs, executors, assigns, agents, and employees with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of the ownership interest in the Property or Sport Fields, or which could have been filed in any action or suit arising from said subject matter.
14. INSURANCE. TLL agrees to comply with all City insurance requirements in effect at the time the reservation was made or at the time the rental takes place. TLL will maintain, in full force and effect during its Playing Season, insurance that meets the City's requirements for sport field rentals. Failure to maintain adequate insurance shall be grounds for the City to deny reservations to TLL, or cancel existing reservations, and may be grounds for termination of this Agreement.
15. INDEMNIFICATION. TLL agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, and volunteers against all liability, loss, and costs arising from actions, suits, claims or demands attributable in whole or in part to the acts or omissions of TLL and TLL's officers', agents', and employees' use of Cook Park.
16. DISPUTE RESOLUTION.
  - a. If a dispute arises between the City and TLL regarding this Agreement, the Parties shall attempt to resolve the dispute first through an in-person meeting between the City Manager or the City Manager's designee and an official representative of TLL. The Parties may have legal assistance at any of the meetings in this process.
  - b. The Parties may agree to mediate at any stage of the dispute resolution process.
  - c. The informal dispute resolution steps in subsection a. above are required prior to either Party pursuing arbitration or a court action.
17. TERMINATION OF AGREEMENT.
  - a. Any Party may terminate this Agreement by giving notice to the other Party at the Annual Meeting, held pursuant to Section 3 of this Agreement. Termination shall be effective six (6) months from the date of notice..

- b. Notwithstanding subsection a. above, if TLL breaches this Agreement and fails to cure the breach within fourteen (14) calendar days' notice from the City, the City may terminate the Agreement immediately following the time to cure.
  - c. Notwithstanding subsection a. above, if at any time TLL ceases to be a Tigard-based non-profit, primarily benefiting Tigard youth, this Agreement shall immediately terminate.
  - d. Any reservations on the books after the date of termination of this Agreement shall be void. In the event TLL wish to use any Sport Field or facility following termination of this Agreement, they may do so pursuant to the City's Park Rental and Use Regulations.
18. AMENDMENTS. Amendments to this Agreement must be made in writing and approved by all Parties.
19. NO PARTNERSHIP. The City and TLL are not partners or joint venturers. None of the parties is responsible for the actions of the others in the use of City property or facilities.
20. NON-ASSIGNMENT. This Agreement may not be assigned by any of the Parties without written consent of the other Parties.
21. NO SUBLETTING. TLL shall not sublet use of the Sport Fields without the prior written consent of the City.
22. NON-DISCRIMINATION. The Parties agree to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Parties also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
23. AUTHORITY TO EXECUTE. The City and TLL respectively represent that the person signing this Agreement has authority to do so, that the Parties had the opportunity to seek legal counsel regarding this Agreement, and that the Parties understand their responsibilities and obligations under the Agreement.
24. ENTIRE AGREEMENT. This Agreement incorporates by reference Exhibit A attached hereto as part of this Agreement and constitutes the entire agreement between the Parties.
25. SEVERABILITY. The Parties agree that, if any term of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms will not be affected.
26. NOTICES. The Parties must send any notices, invoices, or other written communications required by this Agreement through the United States Mail, first-class postage paid, electronic mail ("e-mail"), or personally delivered to the addresses below. TLL is responsible for notifying the City of any changes to the addresses below within seven (7) calendar days of the change. The City is not responsible for any communications not received by TLL as a result of failure to maintain to current addresses.

CITY  
Mailing Address:  
City Manager  
13125 SW Hall Boulevard  
Tigard, OR 97223

TLL

E-mail:

APPROVED BY:

CITY

TLL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Cooperative Agreement  
Regarding Cook Park Facility Use  
Between the City of Tigard  
and Southside Soccer Club

This Agreement is made and entered into by and between the City of Tigard ("City"), an Oregon municipal corporation and Southside Soccer Club ("SSC"), a non-profit corporation, all hereinafter collectively referred to as the "Parties."

RECITALS

The Parties agree upon the following recitals:

- A. WHEREAS, in 1998, the City entered into an agreement with Atfalati Recreation District, Inc. ("ARD"), an Oregon non-profit corporation, ("1998 Agreement") whereby ARD contributed \$150,000 towards the purchase of the Gray/Lamb Cook Park Addition ("Property") over a ten-year period and received priority scheduling at the Cook Park fields.
- B. WHEREAS, the 1998 Agreement was amended twice in April 2003 ("Second Amendment"). The Second Amendment extended the time period in which ARD had to repay the financial contribution to 2013, established credits against that amount for acquisition and development of the Property, allowed ARD to apply to the City for community event grants, and allowed ARD to operate a concession stand on the Property.
- C. WHEREAS, the 1998 Agreement was amended in May 2010 ("Third Amendment") to assign ARD's interest to SSC and Tigard Little League, modify the termination process, and add working together to develop operating parameters for the use of the Property facilities as a goal of the 1998 Agreement.
- D. WHEREAS, in 2013, SSC and Tigard Little League each fulfilled their obligation to repay the City their original \$150,000 contribution, for a total of \$310,045.86 collectively paid to the City.
- E. WHEREAS, the City terminated the 1998 Agreement, as amended, and in accordance with the process established in the Third Amendment, in March 2013 and effective in October 2013.
- F. WHEREAS, the City recognizes the historical partnership it has with SSC regarding the use and maintenance of the sport fields at Cook Park as well as SSC's overall contribution to youth sports in the community. The Parties, through this Agreement, wish to continue this relationship.
- G. WHEREAS, the Parties wish to jointly and finally resolve all issues between them regarding the ownership of the Property by acknowledging that the City has full ownership of the Property.
- H. WHEREAS, in recognition of SSC's contributions to the City, the Parties now wish to develop a new Agreement which reflects the relationships of the Parties, preserves SSC's priority scheduling, and establishes the Parties' obligations regarding use of the Cook Park Sports Fields.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed by and between the Parties as follows:

1. COOK PARK SPORT FIELDS. This Agreement shall apply to the sport fields located at Cook Park ("Sport Fields"), as more particularly illustrated in the attached Exhibit A.
2. TERM. This Agreement shall be effective upon final execution of all Parties and shall remain in effect for a period of ten (10) years, ending September 1, 2025. This Agreement may be renewed for three (3) additional five-year periods if such an amendment is mutually agreed to, in writing, by the Parties. At the Annual Meeting prior to the expiration of this Agreement, SSC shall meet with the City Manager or the City Manager's designee and the Parties shall determine if they wish to renew the Agreement.
3. ANNUAL MEETING. The City will offer to SSC an optional annual meeting in November of each year for the Parties. The purpose of the annual meeting is to discuss:
  - a. The dates which SSC wishes to reserve the Sport Fields ("Playing Season"), as well as any proposed dates for tournaments. SSC may use the Sport Fields at no charge for practices and games during the Playing Season according to the schedule approved in advance by the City and for one tournament. Fees for additional tournaments shall be charged in accordance with Section 9 of this Agreement.
  - b. Any issues or concerns related to this Agreement.
  - c. Proposed improvements or operational capital projects, consistent with the City's Cook Park Master Plan.
  - d. The dates which the Sport Fields are available for use by SSC.
  - e. Other topics of mutual interest to the Parties.
4. CITY OBLIGATIONS. The City agrees to:
  - a. Provide garbage collection, including refuse cans and dumpsters, and electrical, water, and sewer service to Cook Park.
  - b. Maintain Cook Park, including the Sport Fields, facilities, and appurtenances located thereon at a base level. This includes, but is not limited to, mowing, watering, and fertilizing the fields and keeping structures in good repair. SSC acknowledges that the City's ability to provide base level maintenance is contingent upon sufficient funding, as determined in the City's annual budget process. The City will notify SSC if the budget process does not fund adequate maintenance for the upcoming year.
  - c. Consider facility improvement requests from SSC pursuant to Section 11 of this Agreement.
  - d. Provide two small equipment storage rooms to be shared by SSC and Tigard Little League.
  - e. Provide SSC with access to the existing outdoor electrical outlets for use during its Playing Season.
  - f. Maintain sports field irrigation systems.
  - g. Maintain basic infrastructure (including bleachers, irrigation, dugouts, fences, etc.).
  - h. Maintain soccer fields, including
    - i. Mowing, watering/irrigating, weeding, fertilizing, applying herbicides/pesticides.

- ii. Annual field reconditioning including fertilizing, seeding, applying a top dressing, and aerating.
  - iii. Repairing, maintaining, and replacing the metal structures for goals.
- 5. SSC OBLIGATIONS. SSC agrees to:
  - a. Submit field reservation requests to the City prior to December 1 for Sport Field reservations for the upcoming year.
  - b. Line the fields weekly during the Playing Season.
  - c. Supply nets for goals during the Playing Season.
  - d. Collect and dispose of litter in designated trash receptacles after SSC's use of fields, especially after games.
  - e. Bring any requests, issues or feedback to the attention of the City Manager or the City Manager's designee so the items may be placed on the agenda for the Annual Meeting.
  - f. Comply with all current Park Rental and Use Regulations and the City's annual Park Calendar in effect at the time the reservation was made.
  - g. Maintain its account in good standing. SSC agrees that failure to keep its account with the City in good standing may result in cancellation of reservations and inability to make future reservations.
  - h. Ensure that the Sport Fields are in substantially the same condition after SSC's use as it was before. SSC will be financially responsible to City for the costs of repairs necessitated by SSC's use of Cook Park, but not including normal maintenance resulting from everyday wear-and-tear.
- 6. SPORTS FIELD AND FACILITY CLOSURES. The City may, at its sole discretion, close Cook Park or any facilities therein, including Sport Fields, if the condition of the facilities is rendered unsuitable for its intended purpose, unsafe, or if the use of the facility will create conditions which will render the facility unsuitable for use in the future. SSC will not use the Sport Fields for practice or games before the City has opened the Sport Fields or after the City has closed the Sport Fields for the season or on dates the City has closed the Sport Fields due to field condition. Generally, the Sport Fields will not open prior to March 1 and will close October 31.
- 7. CONCESSION STAND. The City authorizes SSC to operate one concession stand during its Playing Season. The City shall approve the type and placement of any concession stand or temporary structure. The existing concession stand has been designated for use by SSC during its Playing Season. SSC agrees that it will adhere to all applicable state and local laws and codes and will obtain all necessary permits. The City Manager, or the City Manager's designee may, at his or her sole discretion, revoke the authority of SSC operate a concession stand at Cook Park.
- 8. PRIORITY USE OF SPORT FIELDS.
  - a. SSC shall have priority in scheduling the Sport Fields for requests submitted prior to December 1 of the previous year. Scheduling requests must be made to the City on the City's Field Use Application form.
  - b. SSC shall only submit a scheduling request to the City for SSC's actual, planned field use for practices, games, and rain delays. SSC shall not request additional use of the Sport Field above SSC's projected actual usage.
  - c. SSC's priority scheduling is subject to compliance with all current Park Rental and Use Regulations in effect at the time the reservation was made or at the time the rental takes place. This includes having an account in good standing.

- d. Within the Park Rental Season, SSC acknowledges that the City is free to rent Cook Park sport fields and facilities to other park users when those fields and facilities have not been rented by SSC.
- e. SSC shall notify the City as soon as practicable of any days which SSC had reserved and which it will not need. Upon notice to the City, SSC releases its reservation for that scheduled time.
- f. At the Annual Meeting, SSC will provide the City with a schedule of preferred days and times for the City to conduct renovations of the Sport Fields. The City will make a good faith effort to accommodate the preferred dates, but has sole discretion over closures, including but not limited to Sport Field closures for renovations. In the event the City must close a field for emergency repairs on a day which has been reserved by SSC, the City shall provide notice to SSC as soon as practicable. The City is not liable for any damages as a result of the cancellation.
- g. Notwithstanding SSC's priority scheduling, City sponsored events shall have priority for the use of Cook Park, including all fields, parking lots, and covered structures. The City will attempt to avoid scheduling City events on the dates SSC has reserved the Sport Fields if doing so will exceed the capacity of Cook Park.

9. TOURNAMENTS.

- a. SSC may schedule one tournament each season at no cost. The date(s) for the tournament must be submitted with the reservation for the regular season. In the event the date of the tournament needs to change, SSC will notify the city as soon as practical and the city will accommodate the date change based on field and park availability.
- b. SSC will comply with the current Park Rental and Use Regulations for all tournaments, at the time the application is made
- c. Additional tournaments may be requested at any time during the season using the City's reservation forms. SSC will be charged a tournament fee and SSC's request will be approved based on field and park availability.
- d. All fees due, and other requirements such as insurance, must be paid 30 days in advance of the tournament or the tournament will be cancelled.

10. PROGRAM OPERATION. SSC is responsible for the cost and operation of its programs. SSC is not eligible for City grant funds or subsidies for program operating expenses or tournaments held as part of a regular season. Notwithstanding, SSC may request special event funds for regional, state, or national tournaments held outside of SSC's regular season. Requests for special event funding must follow the City's application process.

11. FACILITY IMPROVEMENTS. SSC may request facility improvements by the City at any time. The City will consider the requested improvements on a case-by-case basis and will consider such factors as whether the improvement is consistent with the Cook Park Master Plan, whether funds are available, and whether the improvement will be included in the Parks Division budget request for the upcoming year.

12. TIGARD MEMBERSHIP. SSC agrees that the majority of its participants are residents of the City of Tigard. Upon request by the City, SSC shall provide evidence of such to the City. Failure to provide such documentation to the City or failure to maintain a majority of Tigard residents as participants is a breach of this Agreement and grounds for termination pursuant to Section 17 of this Agreement.

13. MUTUAL RELEASE OF CLAIMS. SSC acknowledges that the City is the sole owner of the Property. The Parties forever waive, release, and covenant not to sue another Party, heirs, executors, assigns, agents, and employees with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of the ownership interest in the Property or Sport Fields, or which could have been filed in any action or suit arising from said subject matter.
14. INSURANCE. SSC agrees to comply with all City insurance requirements in effect at the time the reservation was made or at the time the rental takes place. SSC will maintain, in full force and effect during its Playing Season, insurance that meets the City's requirements for sport field rentals. Failure to maintain adequate insurance shall be grounds for the City to deny reservations to SSC, or cancel existing reservations, and may be grounds for termination of this Agreement.
15. INDEMNIFICATION. SSC agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, and volunteers against all liability, loss, and costs arising from actions, suits, claims or demands attributable in whole or in part to the acts or omissions of SSC and SSC's officers', agents', and employees' use of Cook Park.
16. DISPUTE RESOLUTION.
  - a. If a dispute arises between the City and SSC regarding this Agreement, the Parties shall attempt to resolve the dispute first through an in-person meeting between the City Manager or the City Manager's designee and an official representative of SSC. The Parties may have legal assistance at any of the meetings in this process.
  - b. The Parties may agree to mediate at any stage of the dispute resolution process.
  - c. The informal dispute resolution steps in subsection a. above are required prior to either Party pursuing arbitration or a court action.
17. TERMINATION OF AGREEMENT.
  - a. At any time, the Parties may mutually agree to terminate this Agreement.
  - b. If SSC breaches this Agreement and fails to cure the breach within thirty (30) calendar days' notice from the City, the City may terminate the Agreement immediately following the time to cure.
  - c. If at any time SSC ceases to be a Tigard-based non-profit, primarily benefiting Tigard youth, this Agreement shall immediately terminate.
  - d. In the event the City's adopted budget does not allow the City to substantially meet its obligations pursuant to this Agreement, the City shall give thirty (30) calendar days' notice to SSC, at which time the Agreement shall terminate.
  - e. Any reservations on the books after the date of termination of this Agreement shall be void. In the event TLL wish to use any Sport Field or facility following termination of this Agreement, they may do so pursuant to the City's Park Rental and Use Regulations.
18. AMENDMENTS. Amendments to this Agreement must be made in writing and approved by all Parties.
19. NO PARTNERSHIP. The City and SSC are not partners or joint venturers. None of the parties is responsible for the actions of the others in the use of City property or facilities.

20. NON-ASSIGNMENT. This Agreement may not be assigned by any of the Parties without written consent of the other Parties.
21. NO SUBLETTING. SSC shall not sublet use of the Sport Fields without the prior written consent of the City.
22. NON-DISCRIMINATION. The Parties agree to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Parties also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
23. AUTHORITY TO EXECUTE. The City and SSC respectively represent that the person signing this Agreement has authority to do so, that the Parties had the opportunity to seek legal counsel regarding this Agreement, and that the Parties understand their responsibilities and obligations under the Agreement.
24. ENTIRE AGREEMENT. This Agreement incorporates by reference Exhibit A attached hereto as part of this Agreement and constitutes the entire agreement between the Parties.
25. SEVERABILITY. The Parties agree that, if any term of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms will not be affected.
26. NOTICES. The Parties must send any notices, invoices, or other written communications required by this Agreement through the United States Mail, first-class postage paid, electronic mail ("e-mail"), or personally delivered to the addresses below. SSC is responsible for notifying the City of any changes to the addresses below within seven (7) calendar days of the change. The City is not responsible for any communications not received by SSC as a result of failure to maintain to current addresses.

CITY

SSC

Mailing Address:  
City Manager  
13125 SW Hall Boulevard  
Tigard, OR 97223

E-mail:

Signature page to follow.

APPROVED BY:

CITY

SSC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**AIS-2333**

**D.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 15 Minutes

**Agenda Title:** Tigard/Beaverton IGA for Joint Land Partition

**Prepared For:** Gary Pagenstecher, Community Development

**Submitted By:** Gary Pagenstecher, Community Development

**Item Type:** Update, Discussion, Direct Staff      **Meeting Type:** Council  
Business  
Mtg - Study  
Sess.

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Shall Council approve an Intergovernmental Agreement (IGA) with the City of Beaverton to provide an efficient approach to partitioning a parcel that straddles SW Scholls Ferry Road and is located partially within each jurisdiction?

**STAFF RECOMMENDATION / ACTION REQUEST**

City staff recommends council approve the IGA.

**KEY FACTS AND INFORMATION SUMMARY**

West Hills Development Company ("West Hills") is the contract purchaser of a portion of a parcel of land (the "Property") described in Exhibit A presently owned by the Crescent Grove Cemetery Association. The Property straddles SW Scholls Ferry Road on both sides of SW 175<sup>th</sup> Avenue and SW Roy Rogers Road, as shown on Exhibit B.

West Hills wishes to partition the Property into two parcels north of SW Scholls Ferry Road, located in the Beaverton city limits, and one parcel south of SW Scholls Ferry Road, located in Tigard city limits, to consummate its purchase of the portion of the Property north of SW Scholls Ferry Road.

Beaverton and Tigard city limits are contiguous at and around the intersection of SW Scholls Ferry Road and SW 175<sup>th</sup> Ave. Each has land use jurisdiction over the land inside its respective city limits, and authority to review and decide upon land use and land division applications therein.

Beaverton and Tigard wish to provide an efficient approach to achieving the desired partition

that respects the land use regulations of each jurisdiction.

**OTHER ALTERNATIVES**

The cities of Tigard and Beaverton could independently review the proposed minor land partition through parallel approval processes, which would add cost and time to the process.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

NA

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

None

---

**Attachments**

Tigard/Beaverton IGA to Partition

IGA Exhibits

---

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF BEAVERTON AND THE CITY OF TIGARD**

This intergovernmental agreement (“Agreement”) is entered into between the City of Beaverton, an Oregon municipal corporation (“Beaverton”) and the City of Tigard, an Oregon municipal corporation (“Tigard”).

**RECITALS**

WHEREAS, ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform; and

WHEREAS, Beaverton and Tigard each has land use jurisdiction over the land inside its respective city limits, and Beaverton and Tigard each has authority to review and decide upon land use and land division applications within its respective city limits; and

WHEREAS, the city limits of Beaverton and Tigard are contiguous at and around the intersection of SW Scholls Ferry Road and SW 175<sup>th</sup> Ave (to the north of SW Scholls Ferry Road)/SW Roy Rogers Road (to the south of SW Scholls Ferry Road); and

WHEREAS, West Hills Development Company (“West Hills”) is the contract purchaser of a portion of a parcel of land (the “Property”), described in Exhibit A, that is presently owned by the Crescent Grove Cemetery Association; and

WHEREAS, the Property straddles SW Scholls Ferry Road on both sides of SW 175<sup>th</sup> Ave. and SW Roy Rogers Road, all as shown on Exhibit B; and

WHEREAS West Hills wishes to partition the Property into two new parcels north of SW Scholls Ferry Road (located in the Beaverton city limits) and one new parcel south of SW Scholls Ferry Road (located in the Tigard city limits), in order to consummate its purchase of just the portion of the Property to the north of SW Scholls Ferry Road; and

WHEREAS Beaverton and Tigard wish to provide an efficient approach to achieving the desired partition that respects the land use regulations of each jurisdiction.

**AGREEMENT**

**NOW, THEREFORE**, the parties agree as follows:

**1. Processing of Preliminary Partition Application**

- 1.1 Upon receipt of an application from West Hills, signed by the appropriate representative of the Crescent Grove Cemetery Association, for a preliminary partition of the Property into two parcels north of SW Scholls Ferry Road and a third parcel south of SW Scholls Ferry Road, with the third parcel line along the interface between the Beaverton and Tigard city limits, the City of Beaverton shall follow its usual process for review of a preliminary partition.

- 1.2 Beaverton shall charge the scheduled fee appropriate to the partition application.
- 1.3 Tigard shall not charge a fee for the land partition-preliminary plat review.
- 1.4 Beaverton planning staff shall consult with Tigard planning staff as appropriate during completeness review to make certain that Tigard's concerns are addressed in a timely manner before the preliminary partition application is deemed complete under ORS 227.178(2).

## **2. Application of Criteria**

- 2.1 Beaverton shall apply the relevant preliminary partition criteria of the City of Beaverton to that part of the Property within the Beaverton city limits.
- 2.2 Beaverton shall apply the relevant preliminary partition criteria of the City of Tigard to that part of the Property within the Tigard city limits.
- 2.3 In the event there is an actual conflict between any planning or processing criteria of Beaverton and Tigard, the planning criteria of Beaverton shall apply.

## **3. Final Decision**

- 3.1 Tigard may participate in the proceedings before any Beaverton decision-maker and may appeal any final decision Beaverton makes for the preliminary partition application.
- 3.2 Beaverton's final decision for the preliminary partition application, after any appeals, shall bind and be final as to both Beaverton and Tigard.

## **4. Final Plat Application**

- 4.1 Upon receipt of a final plat application from West Hills for the Property, Beaverton and Tigard shall have the same respective rights and responsibilities set forth in Sections 1-3 of this Agreement as apply upon receipt of a preliminary partition application, except that Beaverton shall not charge the scheduled fee appropriate to the final plat application, and Tigard shall charge the scheduled fee appropriate to the final plat application.

## **5. Subsequent Applications**

- 5.1 This Agreement shall only concern the preliminary and final partition applications described herein. Subsequent land division or land use applications made for the Property shall be subject to the exclusive review and approval of the city with jurisdiction over that portion of the Property.

**6. General Provisions**

- 6.1 *Effective Date.* The effective date of this Agreement is the date all parties have duly signed the agreement.
- 6.2 *Modification.* This Agreement may be modified or amended only if made in writing and signed by all parties.
- 6.3 *Compliance with Law.* Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
- 6.4 *Choice of Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding that arises from or relates to this Agreement shall be brought and conducted exclusively within the Circuit Court of Washington County for the state of Oregon. In the event a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon.
- 6.5 *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
- 6.6 *Merger.* This agreement embodies the entire agreement and understanding between the parties hereto and supersedes all previous agreements and understandings with respect to the matters described herein.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

**City of Beaverton**

**City of Tigard**

\_\_\_\_\_  
Denny Doyle, Mayor

\_\_\_\_\_  
John L. Cook, Mayor:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

**EXHIBIT B**  
**MAP OF PROPERTY LOCATION**

**SOUTH COOPER MOUNTAIN**  
**(TAX LOT 200, MAP 2S 1 6)**  
**DESCRIPTION**  
**August 20, 2015**

A tract of land in the northeast one-quarter of Section 6, Township 2 South, Range 1 West, Willamette Meridian, City of Beaverton, Washington County, Oregon, said tract being described as follows:

Beginning at a 5/8-inch iron rod with a yellow, plastic cap inscribed "Hill LS2821" marking the northeast corner of the west one-half of the northeast one-quarter of Section 6, Township 2 South, Range 1 West, Willamette Meridian; thence S.02°06'35"W. along the east line of the west one-half of the northeast one-quarter of said Section 6, a distance of 2,322.33 feet to the northerly right-of-way line of S.W. Scholls Ferry Road, being 49.00 feet from centerline, and a point of non-tangent curvature; thence southwesterly along said northerly right-of-way line on the arc of a 1,481.39 foot radius curve left (the radius point of which bears S.07°56'00"E.) through a central angle of 5°26'15", distance of 140.58 feet (chord bears S.79°20'52"W., a distance of 140.53 feet); thence continuing along said northerly right-of-way line S.76°37'45"W., a distance of 257.90 feet; thence leaving said northerly right-of-way line N.58°22'41"W., a distance of 48.71 feet to the easterly right-of-way line of S.W. 175<sup>th</sup> Avenue (CR 3110), being 49.00 feet from centerline; thence tracing said easterly right-of-way along the following courses: N.13°22'15"W., a distance of 274.56 feet to the point of curve left of a 1,174.00 foot radius curve; thence along the arc of said curve left through a central angle of 29°09'38", a distance of 597.50 feet (chord bears N.27°57'04"W., a distance of 591.08 feet); thence N.42°31'53"W., a distance of 157.69 feet to the point of curve right of a 1,251.00 foot radius curve; thence along the arc of said curve right through a central angle of 44°40'09", a distance of 975.31 feet (chord bears N.20°11'48"W., a distance of 950.80 feet); thence N.02°08'16"E., a distance of 619.97 feet to the north line of the northeast one-quarter of said Section 6; thence S.88°21'08"E. along said north line, 1,268.78 feet to the Point of Beginning;

**AND INCLUDING** the following described tract of land:

Commencing at the S.W. Scholls Ferry Road centerline Station 122+98.50, as centerline is shown on Survey No. 32411, Washington County Survey Records; thence N.76°37'45"E. along said centerline, a distance of 206.59 feet; thence leaving said centerline S.13°22'15"E., a distance of 80.00 feet to the southerly right-of-way line of S.W. Scholls Ferry Road and the TRUE POINT OF BEGINNING of the tract herein described; thence tracing said southerly right-of-way line along the following courses: N.76°37'45"E., a distance of 31.93 feet; thence N.13°22'15"W., a distance of 13.00; N.76°37'45"E., a distance of 171.34 feet;

thence leaving said southerly right-of-way line S.46°08'38"E., a distance of 64.43 feet to the westerly right-of-way line of S.W. Roy Rogers Road (CR 3150), being 87.00 feet from centerline, and a point of non-tangent curvature; thence southeasterly along said westerly right-of-way line on the arc of a 294.97 foot radius curve right (the radius point of which bears S.85°35'57"W.) through a central angle of 4°34'23", a distance of 23.54 feet (chord bears S.02°06'51"E., a distance of 23.54 feet) to the northerly right-of-way line S.W. Scholls Highway 210 (CR 348), being 30.00 feet from centerline; thence N.87°59'12"W. along said northerly right-of-way line, a distance of 242.23 feet to the True Point of Beginning.

**AND INCLUDING** the following described tract of land:

Commencing at the S.W. Scholls Ferry Road centerline Station 122+98.50, as centerline is shown on Survey No. 32411, Washington County Survey Records; thence N.76°37'45"E. along said centerline, a distance of 684.08 feet; thence leaving said centerline S.13°22'15"E., a distance of 55.00 feet to the southerly right-of-way line of S.W. Scholls Ferry Road and the TRUE POINT OF BEGINNING of the tract herein described; thence N.76°37'45"E. along said southerly right-of-way line, a distance of 192.58 feet to the point of curve right of 1,377.39 foot radius curve; thence continuing along said southerly right-of-way line on the arc of said curve right through a central angle of 0°13'49", a distance of 5.54 feet (chord bears N.76°44'40"E., a distance of 5.54 feet) to the northwesterly right-of-way line of S.W. Scholls Highway 210, being 25.00 feet from centerline; thence S.59°11'32"W. along said northwesterly right-of-way line, a distance of 309.20 feet; thence leaving said northwesterly right-of-way line N.02°40'02"E., a distance of 38.58 feet; thence N.43°48'57"E., a distance of 102.58 feet to the True Point of Beginning.

**AND INCLUDING** the following described tract of land:

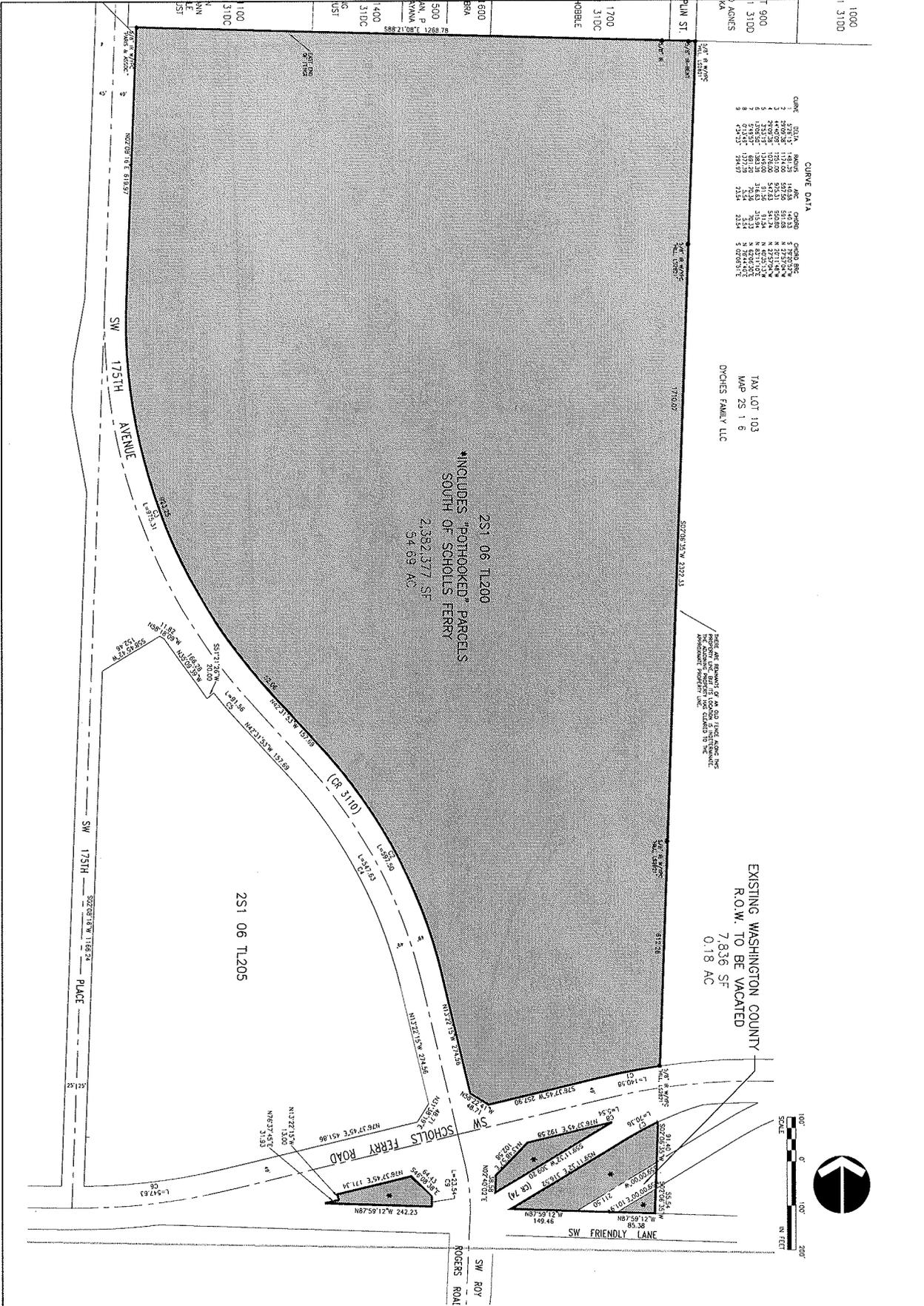
Beginning at a point on the east line of the west one-half of the northeast one-quarter of Section 6, Township 2 South, Range 1 West, Willamette Meridian, which point bears S.02°06'35"W., a distance of 2,448.66 feet from the northeast corner of said west one-half of the northeast one-quarter and being on the southeasterly right-of-way line of S.W. Scholls Highway 210, being 25.00 feet from centerline; thence S.02°06'35"W. along said east line of the west one-half of the northeast one-quarter, a distance of 91.40 feet to the northwesterly right-of-way line of Unnamed County Road 746, being 25.00 feet from centerline; thence S.59°00'00"W. along said northwesterly right of way line, a distance of 211.50 feet to the northerly right-of-way line of S.W. Friendly Lane (CR 348); thence N.87°59'12"W. along said northerly right-of-way line, a distance of 149.46 feet to said southeasterly right-of-way line of S.W. Scholls Highway 210, being 25.00 feet from centerline; thence N.59°11'32"E. along said southeasterly right-of-way line, a distance of 316.52 feet to the point of curve right of a 691.20 foot radius curve; thence continuing along said southeasterly right-of-way line on

the arc of said curve right through a central angle of  $5^{\circ}49'57''$ , a distance of 70.36 feet (chord bears  $N.62^{\circ}06'30''E.$ , a distance of 70.33 feet) to the Point of Beginning.

**AND INCLUDING** the following described tract of land:

Beginning at a point on the east line of the west one-half of the northeast one-quarter of Section 6, Township 2 South, Range 1 West, Willamette Meridian, which point bears  $S.02^{\circ}06'35''W.$ , a distance of 2,599.74 feet from the northeast corner of said west one-half of the northeast one-quarter and being on the southeasterly right-of-way line of Unnamed County Road 746, being 25.00 feet from centerline; thence  $S.02^{\circ}06'35''W.$  along said east line of the west one-half of the northeast one-quarter, a distance of 55.54 feet to the northerly right-of-way line of S.W. Friendly Lane (CR 348), being 30.00 feet from centerline; thence  $N.87^{\circ}59'12''W.$  along said northerly right of way line, a distance of 85.38 feet to the southeasterly right-of-way line of said Unnamed County Road 746; thence  $N.59^{\circ}00'00''E.$  along said southeasterly right-of-way line, a distance of 101.94 feet to the Point of Beginning.

Contains 54.69 acres, more or less.



PRELIMINARY EXHIBIT- 8/18/2015

**SOUTH COOPER MOUNTAIN HEIGHTS**  
 BEAVERTON, OREGON

EXISTING CONDITIONS

**OLAK**  
 OLAK ENGINEERING & ARCHITECTURE  
 608 SW 3rd Ave, Ste. 300  
 Beaverton, OR 97004  
 Tel: (503) 641-8000  
 Fax: (503) 641-8000  
 WWW.OLAK.COM

Hand-drawn by:  
 JESSIE P. BERGSTEIN  
 Project: 10000  
 Sheet: P1.0  
 Scale: As Shown

NO.	DATE	BY	REVISION COMMENTS

Design	Drawn	Checked	Date	Issue	Date
BDS	MH	MAP			

**AIS-2351**

**3. A.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** Consent Item

**Agenda Title:** Receive and File: Council Calendar and Council Tentative Agenda

**Submitted By:** Carol Krager, Central Services

**Item Type:** Receive and File

**Meeting Type:** Consent -  
Receive and  
File

**Public Hearing:** No

**Publication Date:**

---

**Information**

**ISSUE**

Receive and file the Council Calendar and the Tentative Agenda for future council meetings.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is requested; these are for information purposes.

**KEY FACTS AND INFORMATION SUMMARY**

Attached are the Council Calendar and the Tentative agenda for future Council meetings.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A - Receive and File Items

---

**Attachments**

Three-Month Council Calendar

Tentative Agenda

---



# MEMORANDUM

TO: Honorable Mayor & City Council/City Center Development Agency Board

FROM: Carol A. Krager, City Recorder

RE: Three-Month Council/CCDA Meeting Calendar

DATE: September 1, 2015

## September

1	Tuesday	City Center Development Agency – 6:30 p.m., Town Hall
8*	Tuesday	Council Business/CCDA Meeting – 6:30 p.m., Town Hall
15*	Tuesday	Council Workshop/Business Meeting – 6:30 p.m., Town Hall
22*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

## October

6	Tuesday	City Center Development Agency – 6:30 p.m., Town Hall
13*	Tuesday	Council Business/CCDA Meeting – 6:30 p.m., Town Hall
16	Friday	Council Tailgate - Tigard High School
20*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
27*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

## November

3	Tuesday	City Center Development Agency – 6:30 p.m., Town Hall (ELECTION DAY)
10*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
17*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
24*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

Regularly scheduled Council meetings are marked with an asterisk (\*).

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

Form #	Meeting Date	Submitted By	Meeting Type	Title	Department	Inbox or Finalized
2139	09/01/2015	Norma Alley	AAA	September 1, 2015 CCDA Meeting		
2348	09/01/2015	Norma Alley	CCDA	0 Minutes - APPROVE CITY CENTER DEVELOPMENT AGENCY MINUTES	City Management	08/24/2015
2126	09/01/2015	Sean Farrelly	CCDA	35 Minutes - Southwest Corridor/Downtown Zoom-In	Community Development	08/25/2015
2128	09/01/2015	Sean Farrelly	CCDA	35 Minutes - Burnham and Ash Redevelopment Design & Permitting Update	Community Development	08/25/2015
<b>Total Time: 70 of 180 Minutes Scheduled</b>						
2033	09/08/2015	Norma Alley	AAA	September 8, 2015 Business Meeting		
2071	09/08/2015	Norma Alley	ACCSTUDY	10 Minutes - Council Liaison Reports	City Management	12/22/2014
2290	09/08/2015	Norma Alley	ACCSTUDY	15 Minutes - Update on Youth Sports League Agreement	City Management	Newton L, Assistant City Manager
2333	09/08/2015	Gary Pagenstecher	ACCSTUDY	10 Minutes - Tigard/Beaverton IGA for Joint Land Partition	Community Development	MartyW, City Manager
	09/08/2015	Carol Krager	ACCSTUDY	10 Minutes - Land Use Procedure Briefing	City Management	
<b>Total Time: 45 of 45 Minutes Scheduled STUDY SESSION FULL</b>						
2309	09/08/2015	Greer Gaston	ACONSENT	Consent Item - Authorize the City Manager to Sign an agreement with Clean Water Services and Beaverton Regarding Barrows Road Sanitary Sewer Phase 3	Public Works	08/24/2015
2351	09/08/2015	Carol Krager	ACONSENT	Consent Item - Receive and File: Council Calendar and Council Tentative Agenda	Central Services	08/26/2015

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

2352	09/08/2015	Carol Krager	ACONSENT	Consent Item - Approve City Council Meeting Minutes	Central Services	08/26/2015
2295	09/08/2015	John Floyd	CCBSNS	1 30 Minutes - Appeal of Heritage Crossing Zone Change and Subdivision (ZON2015-00002 et. al.)	Community Development	MartyW, City Manager
2288	09/08/2015	Louis Sears	CCBSNS	2 15 Minutes - CenturyLink Franchise Agreement	Finance and Information Services	08/26/2015
2319	09/08/2015	Norma Alley	CCBSNS	3 15 Minutes - Update from Greater Portland Inc. on Regional Economic Development	Community Development	08/24/2015
<b>Total Time: 60 of 100 Minutes Scheduled</b>						
2034	09/15/2015	Norma Alley	AAA	September 15, 2015 Workshop and Business Meeting Councilor Woodard Absent		
2345	09/15/2015	Joanne Bengtson	BUSINESS	5 Minutes - Proclaim Aug/Sept Play Ball Month & Recognize Tigard/Tualatin City Little League Majors All-Star Softball Team	City Management	08/25/2015
2201	09/15/2015	Norma Alley	CCWKSHOP	50 Minutes - Continued Discussion on Street Maintenance Fee	Finance and Information Services	LaFrance T, Fin/Info Svcs Director
2339	09/15/2015	Sean Farrelly	BUSINESS	10 Minutes - Quasi-Judicial Public Hearing to Consider Vacation of Public Utility Easement Adjacent to Ash Avenue	Community Development	08/26/2015
2294	09/15/2015	Norma Alley	CCWKSHOP	30 Minutes - Preview & Update on the Library's Automated Material Handling	Library	MartyW, City Manager
<b>Total Time: 95 of 180 Minutes Scheduled</b>						
2035	09/22/2015	Norma Alley	AAA	September 22, 2015 Business Meeting		

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

2072	09/22/2015	Norma Alley	ACCSTUDY	10 Minutes - Council Liaison Reports	City Management	12/22/2014
2292	09/22/2015	Norma Alley	ACCSTUDY	30 Minutes - Executive Session per ORS 192.660(2)(i)	City Management	06/22/2015
2322	09/22/2015	Judy Lawhead	ACCSTUDY	5 Minutes - Briefing on an Agreement with the City of Beaverton Related to Maintenance of Barrows Road	Public Works	Rager B, PW Director
2355	09/22/2015	Norma Alley	ACCSTUDY	10 Minutes - Executive Session per ORS 192.660(2)(h)	City Management	06/22/2015
<b>Total Time: 55 of 45 Minutes Scheduled STUDY SESSION OVERSCHEDULED</b>						
2337	09/22/2015	Joanne Bengtson	ACONSENT	Consent Item - Proclaim Community Action Week, October 11 – 17	City Management	08/25/2015
2332	09/22/2015	Norma Alley	CCBSNS	30 Minutes - Marijuana Taxation	City Management	Gonzalez R, City Mgt Intern
2334	09/22/2015	Gary Pagenstecher	CCBSNS	10 Minutes - Tigard/Beaverton IGA for Joint Land Partition	Community Development	Pagenstecher G, Assoc Planner
2343	09/22/2015	Carol Krager	CCBSNS	5 Minutes - Authorize the City Manager to sign an agreement with the Tigard-Tualatin School District regarding joint use of property	Public Works	Martin S, Division Manager
2291	09/22/2015	Norma Alley	CCBSNS	15 Minutes - Approve the Youth Sports League Agreement	City Management	Newton L, Assistant City Manager
2346	09/22/2015	Buff Brown	CCBSNS	5 Minutes - Consider Authorization of a Community Development Block Grant	Community Development	Brown, B., Assoc Transp Planner
2296	09/22/2015	Loreen Mills	CCBSNS	45 Minutes - Executive Session exempt public records ORS 192.660(2)(f)	City Management	07/01/2015

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

<b>Total Time: 105 of 100 Minutes Scheduled</b>							
2140	10/06/2015	Norma Alley	AAA	October 6, 2015 CCDA Meeting Councilor Henderson Absent			
2129	10/06/2015	Sean Farrelly	CCDA	30 Minutes - Six-Month report from the CCAC	Community Development	Farrelly S, Redev Project Manager	
2130	10/06/2015	Sean Farrelly	CCDA	20 Minutes - Meet with TDA Board of Directors	Community Development	Farrelly S, Redev Project Manager	
2131	10/06/2015	Sean Farrelly	CCDA	20 Minutes - Report on Downtown Events	Community Development	Farrelly S, Redev Project Manager	
2132	10/06/2015	Sean Farrelly	CCDA	20 Minutes - Strolling Street Program Update	Community Development	Farrelly S, Redev Project Manager	
2124	10/06/2015	Sean Farrelly	CCDA	20 Minutes - Fanno Creek Remeander Presentation	Community Development	Farrelly S, Redev Project Manager	
<b>Total Time: 110 of 180 Minutes Scheduled</b>							
2036	10/13/2015	Norma Alley	AAA	October 13, 2015 Business and CCDA Meeting			
2073	10/13/2015	Norma Alley	ACCSTUDY	15 Minutes - Council Liaison Reports	City Management	12/22/2014	
2347	10/13/2015	Lloyd Purdy	ACCSTUDY	20 Minutes - Tigard Enterprise Zone Expansion with City of Lake Oswego	Community Development	Purdy, L, Econ Development Mgr	
2350	10/13/2015	Steve Martin	ACCSTUDY	10 Minutes - Briefing on two upcoming IGA's with Metro for trail segments.	Public Works	Martin S, Division Manager	
<b>Total Time: 45 of 45 Minutes Scheduled STUDY SESSION FULL</b>							
2192	10/13/2015	Lloyd Purdy	CCBSNS	1 25 Minutes - QJ Public Hearing: Comprehensive Plan Amendment and Zone Change for Fields Trust	Community Development	Pagenstecher G, Assoc Planner	

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

2286	10/13/2015	Carol Krager	CCBSNS	2 20 Minutes - Legislative Session Wrap-up	City Management	Newton L, Assistant City Manager	
2303	10/13/2015	Norma Alley	CCBSNS	3 20 Minutes - Develop 2016 Legislative Agenda	City Management	Wyatt K, Management Analyst	
2316	10/13/2015	Carissa Collins	CCBSNS	4 10 Minutes - FY 2016 First Quarter Budget Supplemental	Finance and Information Services	Collins C, Sr Mgmt Analyst	
2344	10/13/2015	Carissa Collins	CCBSNS	5 5 Minutes - FY 2016 City Center Development Agency Budget Supplemental	Finance and Information Services	Collins C, Sr Mgmt Analyst	
2329	10/13/2015	Lisa Shaw	CCBSNS	6 10 Minutes - Consideration of Taser purchase contract	Police	Shaw L, Police Business Manager	
2323	10/13/2015	Sherri Russell	CCBSNS	7 10 Minutes - Consider Authorizing the City Manager to Sign an Agreement with Beaverton Related to Maintenance of Barrows Road	Public Works	Rager B, PW Director	
				<b>Total Time: 100 of 100 Minutes Scheduled MEETING FULL</b>			
				October 16, 2015 Tailgate with the Council Tigard High School Football Game			
<hr/>							
2037	10/20/2015	Norma Alley	AAA	October 20, 2015 Workshop Meeting			
<hr/>							
2330	09/15/2015	Buff Brown	CCWKSHOP	50 Minutes - Tigard Transportation Advisory Committee (TTAC) / City Council Joint Meeting	Community Development	Brown, B., Assoc Transp Planner	
2320	10/20/2015	Carissa Collins	CCWKSHOP	30 Minutes - Discussion on Sidewalk Gap Program	Finance and Information Services	Collins C, Sr Mgmt Analyst	

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

2326	10/20/2015	Norma Alley	CCWKSHOP	75 Minutes - Discussion on Parks & Recreation Charge	Finance and Information Services	LaFrance T, Fin/Info Svcs Director
<b>Total Time: 155 of 180 Minutes Scheduled</b>						
2038	10/27/2015	Norma Alley	AAA	October 27, 2015 Business Meeting		
2312	10/27/2015	Carol Krager	ACCSTUDY	25 Minutes - Receive Update from Metro Councilor Dirksen	Central Services	Krager C, City Recorder
2074	10/27/2015	Norma Alley	ACCSTUDY	15 Minutes - Council Liaison Reports	City Management	12/22/2014
<b>Total Time: 40 of 45 Minutes Scheduled</b>						
2342	10/27/2015	Lloyd Purdy	CCBSNS	10 Minutes - Enterprise Zone: Resolution Expanding Tigard Enterprise Zone	Community Development	Purdy, L, Econ Development Mgr
2349	10/27/2015	Sherri Russell	CCBSNS	10 Minutes - Consider a Resolution Concurring with Washington County Findings Regarding Right-of-Way Vacation of an Unnamed Street	Public Works	Barrie, L, Sr. Admin Spec.
<b>Total Time: 20 of 100 Minutes Scheduled</b>						
2141	11/03/2015	Norma Alley	AAA	November 3, 2015 CCDA Meeting - <b>ELECTIONS NIGHT</b>		
2127	11/03/2015	Sean Farrelly	CCDA	25 Minutes - Future of Saxony Site – Update	Community Development	Farrelly S, Redev Project Manager
2133	11/03/2015	Sean Farrelly	CCDA	20 Minutes - Brownfield Initiative Update	Community Development	Farrelly S, Redev Project Manager

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

2134	11/03/2015	Sean Farrelly	CCDA	20 Minutes - Downtown Housing Inventory and Report	Community Development	Farrelly S, Redev Project Manager
2135	11/03/2015	Sean Farrelly	CCDA	20 Minutes - Downtown Jobs Inventory and Report	Community Development	Farrelly S, Redev Project Manager
<b>Total Time: 85 of 180 Minutes Scheduled</b>						
2039	11/10/2015	Norma Alley	AAA	November 10, 2015 Business Meeting		
2075	11/10/2015	Norma Alley	ACCSTUDY	15 Minutes - Council Liaison Reports	City Management	12/22/2014
2310	11/10/2015	Judy Lawhead	ACCSTUDY	10 Minutes - Briefing on an Agreement with Metro Regarding a Grant to Develop Dirksen Nature Park	Public Works	08/26/2015
<b>Total Time: 25 of 45 Minutes Scheduled</b>						
2040	11/17/2015	Norma Alley	AAA	November 17, 2015 Workshop Meeting		
2338	11/17/2015	Steve Martin	CCWKSHOP	50 Minutes - Joint Meeting with the Park and Recreation Advisory Board	Public Works	Martin S, Division Manager
2327	11/17/2015	Norma Alley	CCWKSHOP	60 Minutes - Continued Discussion on Parks & Recreation Charge	Finance and Information Services	LaFrance T, Fin/Info Svcs Director
2325	11/17/2015	Carissa Collins	CCWKSHOP	20 Minutes - Continued Discussion on the Sidewalk Gap Program	Finance and Information Services	Collins C, Sr Mgmt Analyst

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
8/31/2015 3:19 PM - Updated**

2167	11/17/2015	Lloyd Purdy	CCWKSHOP	20 Minutes - Economic Development Update	Community Development	Purdy, L, Econ Development Mgr
<b>Total Time: 150 of 180 Minutes Scheduled</b>						
2041	11/24/2015	Norma Alley	AAA	November 24, 2015 Business Meeting		
2076	11/24/2015	Norma Alley	ACCSTUDY	15 Minutes - Council Liaison Reports	City Management	12/22/2014
<b>Total Time: 15 of 45 Minutes Scheduled</b>						
1758	11/24/2015	Carol Krager	CCBSNS	15 Minutes - PLACEHOLDER - Google Franchise Agreement	City Management	Mills L, Asst to City Manager
2311	11/24/2015	Judy Lawhead	CCBSNS	10 Minutes - Authorize the City Manager to Sign an Agreement with Metro Regarding a Grant to Develop Dirksen Nature Park	Public Works	Staedter C, Project Coordinator
<b>Total Time: 25 of 100 Minutes Scheduled</b>						
2142	12/01/2015	Norma Alley	AAA	December 1, 2015 CCDA Meeting		
2125	12/01/2015	Sean Farrelly	CCDA	15 Minutes - Fanno Creek Overlook Update	Community Development	Farrelly S, Redev Project Manager
2136	12/01/2015	Sean Farrelly	CCDA	45 Minutes - Annual Report on the Urban Renewal District	Community Development	Farrelly S, Redev Project Manager
<b>Total Time: 60 of 180 Minutes Scheduled</b>						
2042	12/08/2015	Norma Alley	AAA	December 8, 2015 Business Meeting		

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
 8/31/2015 3:19 PM - Updated**

2077	12/08/2015	Norma Alley	ACCSTUDY	15 Minutes - Council Liaison Reports	City Management	12/22/2014
<b>Total Time: 15 of 45 Minutes Scheduled</b>						
2353	12/08/2015	Liz Lutz	CCBSNS	5 Minutes - Appoint Audit Committee Members	Finance and Information Services	Lutz L, Conf Exec Asst
2354	12/08/2015	Liz Lutz	CCBSNS	5 Minutes - Appoint Budget Committee Members	Finance and Information Services	Lutz L, Conf Exec Asst
2293	12/08/2015	Norma Alley	CCBSNS	20 Minutes - Update on Homelessness	City Management	Newton L, Assistant City Manager
2324	12/08/2015	Carissa Collins	CCBSNS	15 Minutes - Sidewalk Gap Program	Finance and Information Services	Collins C, Sr Mgmt Analyst
<b>Total Time: 45 of 100 Minutes Scheduled</b>						
2043	12/15/2015	Norma Alley	AAA	December 15, 2015 Workshop Meeting		
2044	12/22/2015	Norma Alley	AAA	December 22, 2015 Business Meeting		
2078	12/22/2015	Norma Alley	ACCSTUDY	15 Minutes - Council Liaison Reports	City Management	12/22/2014
<b>Total Time: 15 of 45 Minutes Scheduled</b>						
2328	12/22/2015	Norma Alley	CCBSNS	45 Minutes - Public Hearing: Approving Parks & Recreation Charge	Finance and Information Services	LaFrance T, Fin/Info Svcs Director
<b>Total Time: 45 of 100 Minutes Scheduled</b>						

**AIS-2352**

**3. B.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** Consent Item

**Agenda Title:** Approve City Council Meeting Minutes

**Submitted By:** Carol Krager, Central Services

**Item Type:** Motion Requested

**Meeting Type:** Consent  
Agenda

**Public Hearing:** No

**Publication Date:**

---

**Information**

**ISSUE**

Approve City Council meeting minutes.

**STAFF RECOMMENDATION / ACTION REQUEST**

Approve minutes as submitted.

**KEY FACTS AND INFORMATION SUMMARY**

Attached council minutes are submitted for City Council approval:

- July 14, 2015
- July 28, 2015

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

---

**Attachments**

July 14, 2015 Minutes Placeholder

July 28, 2015 Minutes Placeholder

---

Placeholder for July 14, 2015 Minutes

Minutes will be attached on  
September 3, 2015

Placeholder for July 28, 2015 Minutes

Minutes will be attached on  
September 3, 2015



Agreement Responsibilities

Clean Water Services (District):

- Review plans and specifications provided by Beaverton
- Prepare bid documents utilizing design drawings and specifications provided by Beaverton
- Advertise for bids, respond to bidder questions, prepare addenda, and select a contractor to construct the project
- Administer construction of the project and pay contractor all contract costs
- Pay 84.4% of sewer costs

City of Beaverton:

- Provide all necessary planning, design, special inspections and permits for the project
- Provide construction inspections of the project roadway, pathway, trench backfill, and street lighting
- Pay District 7.8% of sewer construction costs
- Pay District 100% of retaining wall, fence, and street lighting costs

City of Tigard:

- Review plans and specifications
- Pay District 7.8% of sewer construction costs
- Pay Beaverton 7.8% of sewer design costs

The agreement has been reviewed by the city attorney. Their comments have been incorporated into the agreement.

**OTHER ALTERNATIVES**

The council could propose changes to the agreement or could decide not to approve the agreement. Should the council decide not to approve the agreement, the consequences would be a lack of capacity to serve certain portions of the River Terrace development.

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

This project provides needed sanitary sewer capacity to the recently annexed properties comprising the River Terrace master-planned community.

**DATES OF PREVIOUS CONSIDERATION**

The council was briefed on this agreement at its August 25, 2015, meeting.

---

	<b>Fiscal Impact</b>
<b>Cost:</b>	\$85,000
<b>Budgeted (yes or no):</b>	Yes

**Where Budgeted (department/program):** Sanitary Sewer Fund

**Additional Fiscal Notes:**

The Adopted FY 2016 Budget for this project is \$89,000. The estimated components for the project at the time of budget adoption were:

- External Construction: \$77,300
- Internal Staff: \$4,908
- Project Contingency: \$6,792

The cost of the IGA to City of Tigard is 7.8% of the total project cost for sanitary sewer design and construction. Per the IGA, Tigard's costs for this portion of the project is not to exceed \$85,000. If the project outlined in the IGA reaches the not to exceed amount, it will use all the budgeted construction and contingency and some of our estimated budget for internal staff as outlined above. Due to the tight constraints this puts Tigard in to manage the project budget internally, it is possible that this project will need a minor budget adjustment in a future supplemental. The Sewer Fund has sufficient budgeted contingency (\$400,000) to cover this possibility.

---

**Attachments**

IGA-BARROWS SS3

---

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF BEAVERTON, CITY OF TIGARD, AND  
CLEAN WATER SERVICES TO CONSTRUCT  
THE BARROWS ROAD SEWER UPSIZING PROJECT  
(PROJECT NO. 6791)**

This Agreement, dated \_\_\_\_\_, 2015, is between CLEAN WATER SERVICES (District), a county service district organized under ORS Chapter 451, the CITY OF BEAVERTON (Beaverton), an Oregon municipal corporation, and the CITY OF TIGARD (Tigard), an Oregon municipal corporation.

**A. RECITALS**

ORS 190.003 - 190.110 encourages intergovernmental cooperation and authorizes local governments to delegate to each other authority to perform their respective functions as necessary.

District, Tigard, and Beaverton intend to undertake the Barrows Road Sewer Upsizing Project 6791 (Project) to replace the existing 8-inch gravity sewer with a new 24-inch gravity sewer and install street lighting. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

**B. PROJECT DESCRIPTION**

The sewer portion of the Project consists of constructing approximately 1,650 linear feet of 24-inch diameter sanitary sewer and manholes, as needed, from the eastern terminus of an existing 24-inch sewer pipe in SW Barrows Road at SW Merganser Lane to a manhole approximately 1,600 feet eastward on SW Barrows Road at SW 154<sup>th</sup> Ave, and connecting to the existing sewer line, believed to be 18 inches, near CWS Manhole No. 16660, all as shown on Exhibit A, attached hereto.

The street lighting portion of the Project consists of installing two new street lights, including lights, poles and bases, junction boxes, conduit and wiring, near the intersection of SW Barrows Road and SW 154<sup>th</sup> Ave.

Beaverton will design and permit the Project. District will select the construction contractor, inspect, and administer the construction contract for the Project.

**C. DEFINITIONS**

1. **Beaverton Planning and Design Cost** – Beaverton labor and benefit costs and consultant costs paid by Beaverton associated with the services outlined in Section E, excluding street lighting design costs.

2. **Capital Improvement Program Prioritization Committee** – The committee established by District and the member cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Tigard, Tualatin, and Sherwood to identify and prioritize sanitary and storm system improvement projects throughout District’s service area.
3. **Retaining Wall and Fence Cost** – Includes the cost of all design work, all line items, bid schedules, restoration work, change orders, any associated restoration work, design, overhead, bidding, inspection and project administration that can be accurately allocated to the chainlink fence and concrete segmental retaining wall, and the prorated share of all general construction line items (mobilization, work-zone traffic control, erosion control), as described in the Project Description for retaining wall and fence work, and any other costs associated with bidding and installing or modifying the retaining wall and fence.
4. **Sewer Cost** – Includes public bidding costs, cost of all line items, bid schedules, change orders, any associated restoration work, overhead, inspection, project administration, and any other costs associated with bidding and installing or modifying the new sanitary sewer line.
5. **Street Lighting Cost** – Includes the cost of all design work, all line items, bid schedules, restoration work, change orders, any associated restoration work, design, overhead, bidding, inspection and project administration that can be accurately allocated to the street lighting, and the prorated share of all general construction line items (mobilization, work-zone traffic control, erosion control), as described in the Project Description for street lighting work, and any other costs associated with bidding and installing or modifying the street lighting.

#### **D. DISTRICT OBLIGATIONS**

District shall:

1. Appoint Bradley Crement or another employee acceptable to Beaverton as District’s project manager.
2. Provide direction to Beaverton on the anticipated capacity requirements of sewer lines larger than 12 inches in diameter.
3. Review plans and specifications provided by Beaverton and, within ten days of receipt, provide comments to Beaverton.
4. Provide written evidence to Beaverton and Tigard that funds for District’s share are available prior to bidding for the fiscal year in which payment is due.
5. Prepare bid documents utilizing design drawings and specifications supplied by Beaverton, advertise for bids, respond to bidder questions, including issuance of necessary addenda, and select a contractor to construct the Project.
6. Provide timely response to contractor’s Project information requests.

7. Require all contractors to include Beaverton and Tigard as additional insureds on insurance coverage required for construction work performed in completing the Project.
8. Administer construction of the Project and pay contractor all contract costs.
9. Construct the Project and provide construction, inspection, and management services for the Project.
10. Consult with and inform Beaverton and Tigard on proposed changes to the Project, such as design changes, field directives, change orders, or use of the contingency line items, as well as updates regarding the resolution of any disagreement, dispute, delay or claim.
11. Provide construction inspection of the Project bid items, including review and approval of shop drawings, submittals, and onsite inspection, to determine compliance with the contract documents. District's inspector shall be onsite as much as possible when the contractor is working on the Project. The inspector will be responsible for enforcing all applicable specifications during the Project work, including, but not limited to, night work and weekend work, and accommodations for public and work zone traffic.
12. Obtain Beaverton's approval for any proposed street lighting design or other changes to the street lighting work. Obtain Beaverton's consent before taking any of the following actions for the street lighting work: a) authorizing any design changes, b) approving any change orders, or c) authorizing use of contingency line items.
13. Obtain Beaverton's approval for any proposed retaining wall or fence design or other changes to the retaining wall and fence work. Obtain Beaverton's consent before taking any of the following actions for the retaining wall and fence work: a) authorizing any design changes, b) approving any change orders, or c) authorizing use of contingency line items.
14. Provide final acceptance of the Project, following Beaverton's inspection and approval of its portion of the work.
15. Provide Beaverton as-built mark-ups from contractor and inspector for all underground work within 10 days of final acceptance of the Project.
16. Assist Beaverton with any required notice, public involvement, or communication with the neighborhood and property owners within the Project limits. Respond to public calls arising from work being completed for the Project.
17. Track Sewer Cost, Retaining Wall and Fence Cost, and Street Lighting Cost separately.
18. Provide documentation of the Sewer Cost, Retaining Wall and Fence Cost, and Street Lighting Cost to Beaverton and Tigard prior to invoicing.
19. Upon final acceptance of the Project, invoice Beaverton 7.8% of the Sewer Cost, 100% of the Retaining Wall and Fence Cost, and 100% of the Street Lighting Cost, less 84.4% of the Beaverton Planning and Design Cost, upon final acceptance of the Project unless the result is negative. If the result is negative, pay Beaverton 84.4% of the Beaverton Planning and Design Cost less 7.8% of the Sewer Cost, 100% of the Retaining Wall and Fence Cost, and 100% of the Street Lighting Cost, not to exceed \$40,000.
20. Invoice Tigard 7.8% of the Sewer Cost upon final acceptance of the Project.

21. Require payment in full from Beaverton and Tigard prior to allowing Beaverton and Tigard to connect to the portion of the pipe from the manhole at SW 154th Ave west through SW Roy Rogers Road.

## **E. BEAVERTON OBLIGATIONS**

Beaverton shall:

1. Appoint Andrew Barrett or another employee acceptable to District, as Beaverton's project manager.
2. Select, contract with, and pay consultants to perform surveying, civil investigations, utility locates, potholing, environmental consultation, and other work as necessary for use in designing and obtaining permits for the Project.
3. Provide all necessary planning, design, special specifications, and permits for the Project.
4. Provide Tigard and District at least ten business days to review plans and specifications for the Project at 50%, 90%, and 100% completion, and incorporate their review comments into the plans.
5. Prior to bidding, provide written evidence to District and Tigard that funds for Beaverton's share are available for the fiscal year in which payment is due.
6. Assist District with providing timely responses to bidders' questions about the Project. If necessary, provide District with revised design drawings or exhibits no later than five business days prior to the bid opening, for issuance of addenda.
7. Review traffic control plans provided by contractor within ten days of receiving them and provide written comment. Provide written acceptance of traffic control plan.
8. Provide construction inspection of the Project roadway, pathway, trench backfill, and street lighting items (asphalt, base rock, retaining wall, chainlink fence, fill material above the pipe zone, and street light equipment), including review of and comment on shop drawings, submittals, and onsite inspection, to determine compliance with the contract documents. Beaverton's inspector shall be onsite as much as possible and responsible for enforcing all applicable specifications relating to roadway repairs, pathway construction, installation of retaining and fence, trench backfilling, and street lighting, including but not limited to night and weekend work.
9. Provide timely response to District for any proposed changes to the Project, such as design change, field directive, change order, or use of the contingency line item.
10. Provide District written notice accepting roadway repairs, pathway construction and street light installation within ten days of receiving notice from the District that Beaverton's portion of the Project work is complete.
11. Provide District as-built construction drawings for the Project within 60 days after Project acceptance. The as-built drawings shall be based upon contractor and inspector mark-ups and survey if needed. As-builts shall be provided in camera-ready hard copy, 11 x 17 inches, with a CD in both PDF and AutoCAD digital format.

12. Provide any required notice and communicate with the neighborhood and property owners within the Project limits. Take the lead in coordinating public involvement related to the Project.
13. Coordinate and participate with District to aid in resolving any disagreement, dispute, delay or claim related to, or as a result of, the Project.
14. Waive any land use or permit fees for work related to the Project.
15. Provide documentation of the Beaverton Planning and Design Cost to District and Tigard, prior to invoicing.
16. Upon being invoiced, pay District 7.8% of the Sewer Cost, not to exceed \$73,000, less 84.4% of Beaverton's Planning and Design Cost, plus 100% of the Retaining Wall and Fence Cost and 100% of the Street Lighting Cost, unless the result is negative. Payment, if required, shall be made within 30 days of approving the invoice.
17. Upon completion of the Project, invoice Tigard for 7.8% of Beaverton's Planning and Design Cost.

#### **F. TIGARD OBLIGATIONS**

Tigard shall:

1. Appoint Jeff Peck or another employee acceptable to District and Beaverton as Tigard's project manager.
2. Review plans and specifications provided by Beaverton for the Project and provide comments to Beaverton within ten working days of receiving them.
3. Provide written evidence to District and Beaverton that funds for Tigard's share are available prior to bidding for the fiscal year in which payment is due.
4. Waive any land use or permit fees for work related to the Project.
5. Provide timely response to District on any proposed changes to the Project such as design change, field directives, change orders, or the use of the contingency line item; provide timely responses regarding the resolution of any disagreement, dispute, delay or claim related to, or as a result of the Project.
6. Pay District 7.8% of the Sewer Cost as bid and modified during construction, not to exceed \$73,000, upon completion of the Project and within 30 days of approving the invoice.
7. Pay Beaverton 7.8% of Beaverton's Planning and Design Cost, not to exceed \$12,000, upon completion of the Project and within 30 days of approving the invoice.
8. Prior to bidding, provide written evidence to District and Beaverton that funds for Tigard's share are available for the fiscal year in which payment is due.

#### **G. GENERAL TERMS**

1. Laws and Regulations. Beaverton, Tigard, and District agree to abide by all applicable laws and regulations.

2. Term of this Agreement. This Agreement is effective from the date the last party signs it and shall remain in effect until the Project is complete and the parties' obligations have been fully performed or this Agreement is terminated as provided herein.
3. Amendment of Agreement. Beaverton, Tigard, and District may amend this Agreement from time to time, by mutual written agreement.
  - A. Proposed changes of scope during the Project implementation must be reviewed and endorsed by the Capital Improvement Program Prioritization Committee. Changes necessitated by conditions discovered during design or construction, but consistent with the original scope of the Project, may be approved by District and Beaverton for the Project without further approval from the Capital Improvement Program Prioritization Committee.
  - B. The construction contract amount may be increased by up to 20% without amending this Agreement, provided the increase shall not exceed any not-to-exceed amount contained in this Agreement.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of the parties, or by any of the parties notifying the others in writing prior to award of a construction contract, with the termination being effective in 30 days.
5. Integration. This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement, and no waiver by a party of any right under this Agreement shall prejudice the waiving party's exercise of the right in the future.
6. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall indemnify and defend the others and their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions or errors of the indemnitor, its employees, agents, contractors or representatives.
7. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the Beaverton Mayor, Tigard City Manager and District's General Manager will attempt to resolve the issue. If they are not able to resolve the dispute, the parties will submit the matter to mediation, each party paying its own costs and sharing equally in common costs. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the

arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as otherwise provided in Oregon law.

8. Interpretation of Agreement.

A. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.

B. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.

9. Severability/Survival. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.

10. Approval Required. This Agreement and all amendments, modifications or waivers of any portion thereof shall not be effective until approved by 1) District's General Manager or the General Manager's designee and when required by applicable District rules, District's Board of Directors 2) Beaverton's Mayor, and 3) the Tigard City Manager or the City Manager's designee. Proposed changes of scope to the Project must also be approved by the Capital Improvement Program Prioritization Committee.

11. Choice of Law/Venue. This Agreement and all rights, obligations and disputes arising out of the Agreement shall be governed by Oregon law. All disputes and litigation arising out of this Agreement shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington County, Oregon.

**CLEAN WATER SERVICES**

**CITY OF BEAVERTON, OREGON**

By: \_\_\_\_\_  
General Manager or Designee

By: \_\_\_\_\_  
Mayor or Designee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

\_\_\_\_\_  
District Counsel

\_\_\_\_\_  
City Attorney

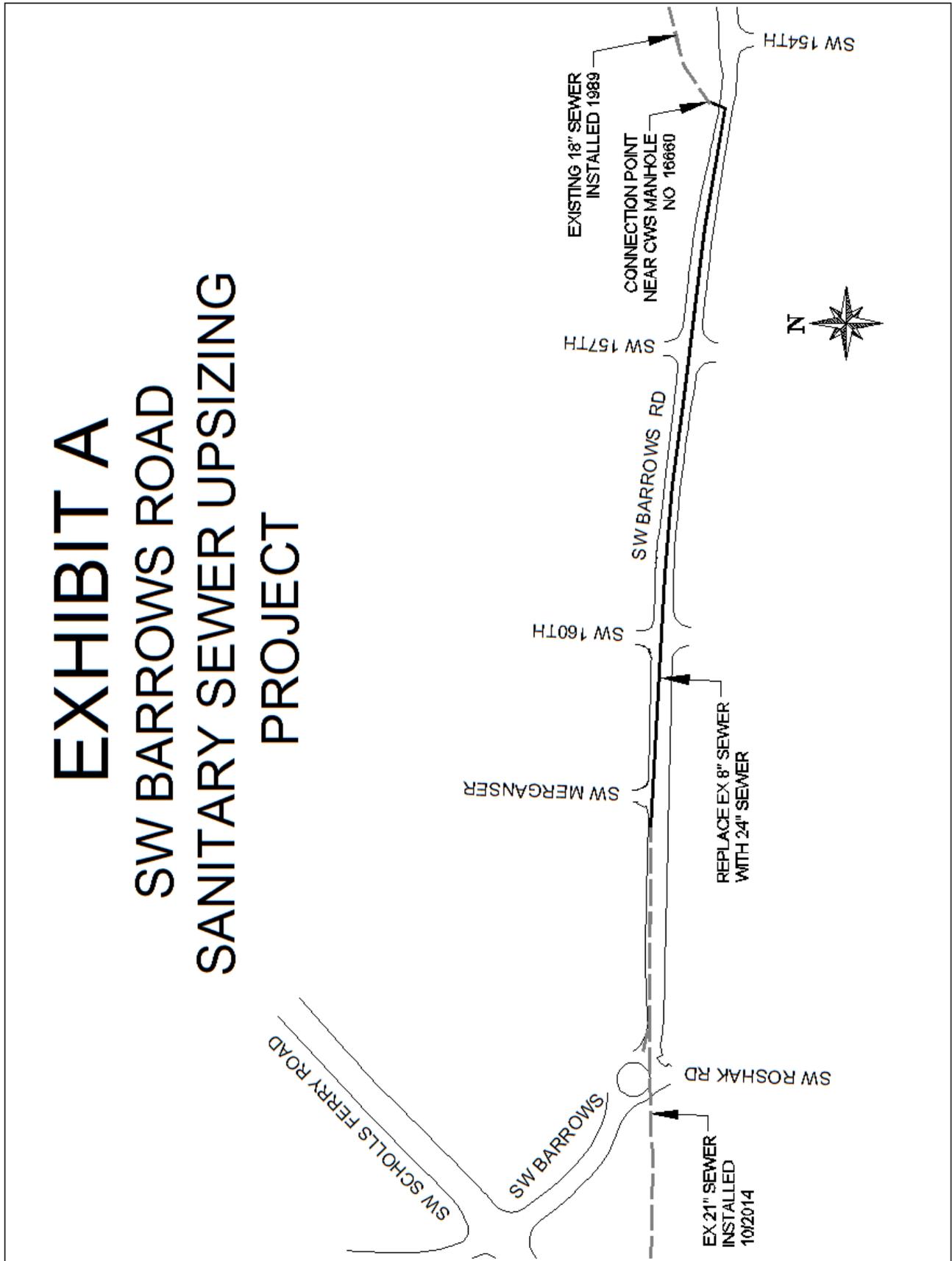
**CITY OF TIGARD**

By: \_\_\_\_\_  
City Manager or Designee

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

Exhibit A  
Project Location Map



**AIS-2295**

**4.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 30 Minutes

**Agenda Title:** Appeal of Heritage Crossing Zone Change and Subdivision (ZON2015-00002 et. al.)

**Submitted By:** John Floyd, Community Development

**Item Type:** Public Hearing - Quasi-Judicial

**Meeting Type:** Council Business Meeting - Main

**Public Hearing:** Yes

**Publication Date:**

**Information**

**ISSUE**

Shall Council overturn the Planning Commission's decision to deny the Heritage Crossing Zoning Map Amendment and Subdivision Application.

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends Council uphold the Planning Commission denial of the Heritage Crossing Zoning Map Amendment and Subdivision application (ZON2015-00002, SUB2015-00001, and VAR2015-00001).

**KEY FACTS AND INFORMATION SUMMARY**

July 14, 2015, the Council held a public hearing on the Heritage Crossing Zoning Map Amendment and Subdivision. The item is before Council on appeal. After receiving testimony, Council closed the record to all parties except the applicant, who requested the opportunity to provide a final written argument. The applicant provided their final argument on July 28, along with draft findings of approval for Council's consideration which are attached to this AIS. With the record now closed to all parties, Council must now deliberate on the evidentiary record and make a decision.

In considering the appeal, the central issue for Council is whether the application meets local and regional approval criteria for a quasi-judicial zoning map amendment. In order to grant the appeal and approve the project, Council would have to determine that the application meets all three approval criteria for a quasi-judicial zone change (TDC18.380.030.B), not just one or two. To aid Council in its consideration of the appeal, staff has prepared the table below. The approval criteria are summarized in the left column. The right column summarizes the Planning Commissions findings for why the requested map amendment was

denied by the Planning Commission.

<b>Approval Criteria for Map Amendment (TDC 18.380.030.B)</b>	<b>Planning Commission Findings</b>
Compliance with Comprehensive Plan policies	Insufficient evidence that the application complies with Comprehensive Plan policies pertaining to Land Use (Chapter 2), Environmental Quality (Chapter 6), Housing (Chapter 10), and Transportation (Chapter 12).
Compliance with the Tigard Development Code or other applicable code or ordinance	Insufficient evidence that the application complies with Title 1 of the Urban Growth Management Functional Plan, which requires cities to maintain or increase housing capacity, particularly along Metro Designated Corridors such as Hall Boulevard.
Evidence of mistake or inconsistency in the zoning map, or evidence of change in the neighborhood or community	Insufficient evidence of substantial change in the neighborhood, or a mistake or inconsistency in the zoning map. There is a clear legislative record associated with the current zoning, which was applied in 1983 as part of the City's first State-acknowledged Comprehensive Plan, and the Planning Commission found no evidence of a mistake. On balance, the Planning Commission found there is more evidence of constancy over time than there is of change.

On July 14, staff recommended that Council deny the appeal, and uphold the Planning Commission's decision to deny the project. Like Council, the Planning Commission was asked to consider both written and oral testimony from neighbors, Metro, and other interested parties. Ultimately, the Planning Commission was not persuaded that the burden of proof had been met to support a zoning map amendment.

As noted in the July 14 agenda item summary, Planning Commission Final Order, and other documents in the record, the Council can find that the project is inconsistent with local and regional policies for infill development. These reasons include, but are not limited to the following:

- The map amendment would reduce the number of dwelling units on site from a maximum of 107 dwelling-units to a maximum of 56 dwelling-units.
- The map amendment would significantly reduce the amount of land available for attached housing. The City's 2013 Housing Strategies report found in general there is a need for more affordable ownership and rental units, that single-family attached is expected to meet 20 percent of the City's future housing need, and that attached housing types will become a higher proportion of housing in coming decades. The applicant has not provided an analysis of the impact such a loss would have on the City's housing diversity.
- The map amendment would be a less efficient use of land, as the site is one of the City's

largest, least constrained, and best-served infill sites.

- The map amendment would potentially halve the number of households within close proximity to three schools, reducing the number of children who could more easily walk to school rather than be driven.
- The map amendment would potentially halve the number of households adjacent to an existing bus stop, served by a significant bus line that is soon to be upgraded from 30 minute to 15 minute headways. This would reduce housing opportunities for people wanting or needing to live near one of Tigard's few frequent service bus lines.
- The site is flat and rectangular in shape with existing street frontages, allowing considerable flexibility in how the site could be designed to ensure compatibility with the neighbors.
- The Tigard Development Code anticipates and addresses potential compatibility issues between the residential zones through site and building design treatments. For example, new housing within Heritage Crossing would be required to maintain a 30 foot setback from the periphery of the project site (twice the normal setback distance).
- The applicant could address potential compatibility issues through flexible design strategies available to all residential development. These include lot size averaging, mixing the proposed housing types, and/or submitting a Planned Development application to ensure development at the edge of the project site is more similar to existing development.

The final decision on the application, including any local appeals, must be made within 120 days of the application being deemed complete by the city, in accordance with Oregon Revised Statutes and the Tigard Community Development Code. The application was deemed complete on March 25 and one extension has been granted by the applicant, moving the expiration date from July 23 to September 8, 2015. A decision must therefore be made by September 8, unless the applicant grants another extension.

## **OTHER ALTERNATIVES**

Council could re-open the record to request or receive additional testimony from staff, the applicant, or any other party.

Council could approve the project by directing staff to prepare findings of approval and associated conditions of approval necessary to implement the project in compliance with local, regional, state, and federal requirements.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

### **Tigard Comprehensive Plan**

Chapter 1: Citizen Involvement - Policy 1.2

Chapter 2: Land Use Planning - Policies 2.1.2, 2.1.3, 2.1.5, 2.1.14, 2.1.15, 2.1.17, and 2.1.23

Chapter 6: Environmental Quality - Policy 6.1.13

Chapter 10: Housing - Policies 10.1.5, 10.2.5, 10.2.7, 10.2.8, and 10.2.9

Chapter 12: Transportation - Policies 12.1.1 and 12.3.1

### **Tigard Strategic Plan**

Goal 2: Ensure Development Advances the Vision

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

July 14, 2015

---

---

### **Fiscal Impact**

#### **Fiscal Information:**

N/A

---

---

### **Attachments**

Applicants Final Written Argument

Applicants Proposed Findings for Approval

---

---

July 28, 2015

Michael C. Robinson  
MRobinson@perkinscoie.com  
D. +1.503.727.2264  
F. +1.503.346.2264

Mr. John Cook, Mayor  
City of Tigard  
Tigard City Hall  
13125 SW Hall Boulevard  
Tigard, OR 97223

**Re: Appeal of Tigard Planning Commission Final Order on ZON2015-0002,  
SUB2015-0001, and VAR2015-0001; Applicant's Final Written Argument**

Dear Mayor Cook and Members of the Tigard City Council:

This office represents the applicant and appellant, Venture Properties, Inc. (hereinafter referred to as "Applicant" or "Appellant"). This letter constitutes the applicant's final written argument submitted pursuant to ORS 197.763(6)(e). This letter is timely submitted on July 28, 2015 prior to 5:00 p.m.

**I. Introduction.**

**A. Status of Appeal.**

The City Council closed the public hearing and record to all other parties except the Applicant on July 14, 2015 after the conclusion of the City Council's public hearing on the appeal. The City Council allowed the applicant to submit final written argument without new evidence on July 28, 2015 by 5:00 p.m. The Appellant's May 6 and May 14, 2015, letters to the Planning Commission and its June 15, 2015 appeal letter to the City Council supplement the Appellant's final written argument. The City Council will deliberate to a tentative decision on the appeal on September 8, 2015. Because the record is closed to all other parties, no additional evidence from any party or staff may be submitted to the City Council. The applicant extended the 120-day clock by 56 days, the period of time between July 14, 2015 and September 8, 2015.

To the extent a staff report is offered after the Appellant's final written argument is submitted, the Appellant requests the opportunity to rebut the staff report. While the Appellant recognizes that staff may speak to the City Council based on evidence in the record and that such discussions are not *ex parte* contacts, ORS 197.763(6)(e) provides that the Applicant has the right to submit final written argument after the record is closed to all other parties. ORS 197.763(6)(e) makes no exception for a staff report. ORS 197.763(3)(i) requires that a staff report be available for inspection at least seven days prior to the hearing.

**B. Draft Findings for Approval.**

Accompanying the final written argument are draft findings demonstrating how the applicable approval criteria are satisfied. The draft findings are based solely on the evidence in the record as of July 14, 2015 and on the Appellant's argument, including final written argument.

**II. Summary of Arguments in Favor of Reversing the Planning Commission.**

a. The zoning map amendment from R-12 to R-7 will have only a negligible effect on the City's residential zoned capacity and Metro has submitted no substantial evidence to show otherwise.

b. The R-7 zone is more compatible with the adjacent and surrounding single family development in the R 4.5 and R-7 zoning districts than is the R-12 and mitigation will not increase compatibility. This infill site is appropriate for R-7 development but not R-12 development

c. Development of the site in the R-7 zone will have no adverse impact on the City's support of transit.

d. The City is not required to force high density housing into an infill site along a Metro-designated Corridor because the Corridor policy is flexible enough to encourage high density development at other appropriate locations along the Metro-designated Corridor or on SW Hall Boulevard. Further, the TCP policy calling for development along transit corridors (not the same as the Metro-designated Corridor) calls for such development in areas with certain characteristics; this area has none of those characteristics.

e. Virtually all of the testimony on this application supported the change from R-12 to R-7.

f. The history of this area as shown by the Appellant's evidence is a change from more intense zoning to less intense zoning and development in those less intense zoning districts. Moreover, there is a proven community need for this type of housing in this particular location. Additionally, there is an inadequate amount of R-7 zoned land as shown in the Appellant's evidence.

g. The City Council has the discretion to approve the zoning map amendment because it can find that all of the applicable approval criteria are satisfied by substantial evidence. Nothing in the TCP or the TCDC requires the City Council to force high density housing into an isolated infill site where it is surrounded by dissimilar housing and where the relevant TCP policies expressly call for compatible development.

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 3

### **III. Specific Reasons Why the Planning Commission Denial Should be Reversed.**

#### **A. The Applicant Has Met Its Burden of Proof by Substantial Evidence to Show that Metro Urban Growth Management Functional Plan, Title I, “Housing Capacity”, Section 3.07.120.E, is Satisfied.**

Metro Functional Plan Section 3.07.120.E provides:

**“A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a negligible effect on the city's or county's overall minimum zoned residential capacity.”**

The Planning Commission found:

**“The application proposes to meet this criterion through the use of Goal 10 methodology, citing excess capacity, but Title I creates separate requirements that provide that any reduction in capacity beyond a negligible effect. The proposed zone change will reduce the overall capacity of the city's housing capacity by 66 housing units when housing type is not taken into consideration. When accounting for the change that allowed housing types, the City could lose capacity for 66 attached units or 107 multi-family units, which is not a negligible effect on the City's overall zoned residential capacity.”**

(Planning Commission Decision at page 31).

The City Council can find that the Planning Commission erred in several respects on this finding and that the Appellant has met its burden of proof to allow the City Council to find that the change from R-12 to R-7 will have a “negligible effect” on the City's *acknowledged* overall minimum zoned residential capacity.

#### **a. The definition of “zoned capacity” does not consider types of dwelling units, only the number of dwelling units.**

The Metro Functional Plan defines “zoned capacity” as “the highest number of dwelling units or jobs that are allowed to be contained in an area by zoning and other City or County jurisdiction regulations.” (Exhibit 1)

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 4

The City Council can find that the definition of “zoned capacity” considers only the number of dwelling units, not the types of dwelling units. To consider the types of dwelling units, as did the Planning Commission, inserts words into the definition of “zoned capacity” that the Metro Council did not chose to include. To do so is error. The City Council’s task is to determine whether the change in zone from R-12 to R-7 results in a “negligible effect” on the City’s overall minimum zoned residential capacity: the number of dwelling units. The Appellant defined “negligible” in its May 14, 2015 letter.

The City Council can find that neither type of dwelling unit nor acres of zoned land are relevant to satisfaction of the Metro Functional Plans zoned capacity requirement. Only the number of dwelling units is considered and, in this case, City Council can find that the zoning map amendment, if granted, would have a “negligible effect” based on the common understanding of the word “negligible” on the City’s acknowledged zoned capacity.

**b. The City Council can find that the City’s residential zoned capacity is in the acknowledged Tigard Comprehensive Plan (“TCP”).**

The Appellant’s July 15, 2015 appeal statement addressed this provision. The appeal stated at pages 7 and 8 “. . . the zoning map amendment would have less than a one percent impact on the City’s minimum zoned residential capacity.” (Appeal at page 8). Additionally, at the City Council appeal hearing, the applicant distributed a page from the City’s “Housing” Chapter entitled “Urban Growth Management Functional Plan”. The page submitted to the City Council and described by the Appellant states in relevant part:

**“The City has committed to providing the development opportunity for an additional 6308 dwelling units between 1998-2017. This number shows Tigard’s zoned capacity for additional dwelling units”. (TCP at page 10-2) (emphasis added) (Exhibit 2)**

The City is obligated to rely upon the analysis in its acknowledged comprehensive plan. *D.S. Parklane, Inc. v. Metro*, 165 Or App 1, 22, 994 P2d 1205 (2000). The Court of Appeals held in *Parklane* that a local government errs by making a decision relying primarily or conclusively on studies and information that has not been adopted as part of its acknowledged comprehensive plans, instead of relying on studies and projections that have been incorporated into the acknowledged comprehensive plans. In fact, *Parklane* remanded Metro’s decision because it relied on a draft report rather than an adopted Metro 2040 document.

The same situation applies here. The City’s acknowledged TCP states that the City’s zoned capacity is 6,308 dwelling units between 1998-2017. The Planning Commission not only erred by considering types of dwelling units when the definition of “zoned capacity” does not consider

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 5

types of dwelling units, but also erred by failing to consider the zoned capacity number in the acknowledged TCP.

Additionally, the staff response to the appeal dated June 30, 2015 improperly considers *zoned land* rather than the number of dwelling units.

The City Council must conclude that the Appellant is correct that based on the zoned capacity of 6,308 dwelling units, the change from R-12 to R-7 will result in the loss of about one percent of the City's residential zoned capacity.

- c. No legislative history supports a contrary conclusion to the Appellant's evidence and the City Council decides whether the Metro Functional Plan standard is satisfied.**

Staff urged the City Council to consider Metro's "legislative history". Metro submitted no legislative history into the record nor did Metro *ever* submit any numerical analysis of the "zoned capacity".

While Metro adopted the Metro Functional Plan provision, the City Council is called upon to apply the standard based on substantial evidence in the whole record. The City Council's task is relatively straight forward: apply the unambiguous language in the Metro Functional Plan. In this case, the unambiguous language requires the City Council to determine the City's "zoned capacity" (which is contained in the City's acknowledged TCP) and then determine whether the zoning map amendment has a "negligible effect" of the zoned capacity. The City Council can so find based on the acknowledged TCP and that only about one percent of the zoned capacity will be reduced if the zoning map amendment from R-12 to R-7 is approved.

- d. Addition of the River Terrace land makes the change of zoning have more of a negligible effect on the City's minimum zoned capacity.**

The June 30, 2015 staff rebuttal to the Appeal included the River Terrace Zoning information. However, the information described the acreage of zoning districts, not the number of dwelling units and is irrelevant to the City's residential zoned capacity. Moreover, the City Council can find that the River Terrace area increased the residential zoned capacity, meaning this zoning map amendment has an even more negligible effect.

- e. Conclusion.**

The City Council can find that the Appellant has met its burden of proof to demonstrate that this Metro Functional Plan provision is satisfied. There is no competing substantial evidence to demonstrate otherwise and City Council must find that zoned capacity is concerned only with the

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 6

number of dwelling units, not dwelling unit type or type of zoning district. For these reasons, the City Council can reverse the Planning Commission on this issue.

Councilor Snider asked staff on July 14 if they could communicate with Metro about the appeal. Staff answered Councilor Snider that “it’s not off the table”; presumably meaning an appeal is possible. While it is possible that Metro could appeal the City Council’s decision, the City Council must be more concerned about a correct application of the law rather than an appeal. Because the Appellant has demonstrated by substantial evidence that the Metro Functional Plan is satisfied, even if Metro were to appeal, the City Council can conclude that the appeal would be unsuccessful on this issue.

**B. No Applicable TCP policy Requires the City Council to Consider Housing Diversity in a Quasi-Judicial Application.**

The Planning Commission found that the Appellant failed to satisfy TCP Policy 10.1.1, which provides as follows:

**“The City shall adopt and maintain land use policies, codes, and standards that provide opportunities to develop a variety of housing types that meet the needs, preferences, and financial capabilities of Tigard’s present and future residents.”**

The Planning Commission found that the proposed zone change would reduce the variety of housing types available to Tigard’s residents. Further, the Planning Commission found that the Appellant failed to provide evidence that the larger lot sizes allowed in the R-7 zone and the reduction of the availability of attached or multi-family units would meet the needs, preferences, and financial capabilities of Tigard’s present and future residents to a degree greater than that allowed in the R-12 zone.

First, the City Council can find that TCP policy 10.1.1 is not applicable to this application. The TCP policy calls for the City to “adopt and maintain” land use policies, codes and standards, meaning that the policy instructs the City to implement the policies goals through the City’s TCP and land use regulations. The TCP and the implementing land use regulations achieve the policies goals. The policy does not prohibit a zone change where *applicable* approval criteria are satisfied.

Second, staff asserts in its June 30, 2015 response to the appeal that the Applicant acknowledged the TCP policy 10.1.1 is applicable. The Applicant addressed the policy but did not take a position on its applicability until the appeal. The Appellant may challenge the applicability of

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 7

the policy and the City Council should conclude that the policy is inapplicable to a quasi-judicial application because of its express language.

Third, the City Council can find that the record demonstrates that this property has remained vacant despite development around it. The City Council can conclude that a likely reason for the non-development of the property is its R-12 zoning because the clear preference as indicated by evidence in the record for development is single family homes on larger lots. This indicates a need, preference, and financial capability of future residents for R-7 type lots. The City Council can find that beyond this policy, no TCP policy in either TCP Chapters 2 or 10 require "Housing Diversity".

The City Council can reverse the Planning Commission finding on this policy.

**C. The R-12 Zoning District Is Incompatible with Surrounding R-4.5 and R-7 Zoning Districts and Cannot Be Made Compatible.**

Several TCP policies call for the City to consider or promote compatibility in its land use decisions. These policies include TCP policy 2.1.15.F ("Land uses allowed in the proposed designation would be compatible, are capable of being made compatible, with environmental conditions and surrounding land uses"); TCP policy 6.1.3 ("The City shall promote land use patterns which reduce dependency on the automobile, are compatible with existing neighborhoods, and increase opportunities for walking, biking, and/or public transit."); TCP policy 10.2.7 ("The City shall ensure that residential densities are appropriately related to location, characteristics, and site conditions such as the presence of natural hazards and natural resources, availability of public facilities and services, and existing land use patterns."); TCP policy 2.1.23 ("The City shall require new development, including public infrastructure, to minimize conflicts by addressing the need for compatibility between it and adjacent existing and future land uses."); and TCP policy 10.2.9 ("The City shall require infill development to be designed to address compatibility with existing neighborhoods.")

The City Council can find that the R-12 zone is incompatible with the existing adjacent and surrounding R-4.5 and R-7 zoning districts for the following reasons.

First, the uses allowed in the R-12 zone are inconsistent with those allowed in the other two zoning districts in which the adjacent and surrounding neighborhoods are developed. The R-12 zoning district allows multi-family and attached dwelling units, whereas the two adjacent and surrounding zoning districts do not.

Second, the R-12 zone requires a much smaller single family lot size when compared to the adjacent and surrounding zoning districts.

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 8

Third, as the Appellant's exhibits demonstrated before both the Planning Commission and the City Council, in order to meet the minimum density requirement of the R-12 zoning district, a developer would be forced to build multi-family dwellings with parking around the perimeter of the site adjacent to the single-family homes, or small lot attached single-family development inconsistent with the adjacent single-family homes. **(Exhibits 3-7)**

Fourth, the City Council can note that almost every person who testified orally or in writing concerning the zone change did so in support. The families who live around the site do not want the property developed in R-12 because it will be incompatible with their single-family homes. **(Exhibit 8)**

Fifth, to the extent the City Council is called upon to define the term "compatibility", the TCP defines compatibility as follows: "Compatibility - the ability of adjacent and/or dissimilar land use to coexist without aesthetic, environmental, and/or operational conflicts that would present persons to enjoy, occupy, or use their properties without interference. A variety of remedies to compatibility conflicts are normally provided in a jurisdiction's land program; including limited land use designation, buffering, screening, site and building design standards, transportation facility design, etc." (Planning Commission decision at page 27).

Sixth, the City Council can find that this site is not near shopping, other than a very small convenience store, and is not otherwise at a location intended to support high density development. The City Council can take official notice of its zoning map, showing that virtually all of the City's more intense zoning is located near shopping opportunities. It makes no sense to promote high density development in an isolated area not adjacent to the kinds of facilities and services appropriate for high density development. The Tigard zoning map is included as an exhibit to the Appellant's May 6, 2016 letter to the Planning Commission. **(Exhibit 9)**

Seventh, City Council can find that TCP policy 10.2.9 expressly requires the City to require infill development to be designed to address compatibility with existing neighborhoods. To the extent this TCP policy applies at all, the R-7 zone will be more compatible with the existing adjacent neighborhoods than the R-12 zone.

For these reasons, the City Council can find that the relevant Policies applicable to a quasi-judicial application concerning compatibility require the R-7 zone at this location rather than development in the R-12 zone.

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 9

**D. Changing the Zone From R-12 to R-7 Will Have No Impact on Transit or Support of Commuter Rail.**

As an initial matter, the Planning Commission erred in finding TCP policy 12.1.1:1-6 applicable to this quasi-judicial application. This policy calls for the City to plan for a transportation system that achieves certain goals. The application before the City Council has nothing to do with the transportation system. The City Council must find that TCP policy 12.1.1:1-6 is inapplicable to this application.

The Planning Commission erred by finding that TCP Policy 10.2.5 (“The City shall encourage housing that supports sustainable development patterns by promoting efficient use of land, conservation management resources, easy access to public transit and other efficient modes of transportation, easy access to services and parks, resource sufficient design and construction, and the use of renewable energy resources.”), TCP policy 10.2.7 (“The City shall ensure the residential densities are appropriately related to locational characteristics and site conditions such as the presence of natural hazards and natural resources, availability and public facilities and services, and existing land use patterns.”) and TCP policy 12.3.1 (“The City shall continue to support the existing commuter rail and bus service in Tigard and will support opportunities for increased service frequency and passenger convenience.”)

First, the City Council can find that TCP Policy 10.2.5 is met to the extent that it applies because the site has “easy access to public transit” regardless of whether it is zoned R-7 or R-12.

Second, the City Council can find that TCP policy 10.2.7 is satisfied because the site is available to a Tri-Met bus line and is, therefore, available to that public service despite its lack of access to other public facilities and services.

Finally, the City Council can find that the Planning Commission erred by finding that TCP policy 10.3.1 is both applicable and not satisfied. This TCP policy calls for the City to support existing commuter rail and bus service in Tigard. The TCP policy says nothing about zoning map amendments. To the extent this policy is even applicable, development of this property in the R-7 zone rather than leaving vacant in the R-12 zone supports bus service; regardless of which zone the property is developed, it has nothing to do with supporting existing commuter rail.

The City Council can find that the only substantial evidence in the record of use of the Tri-Met line is that several witnesses said that they observed over the number of years they have resided in the area either no one or very few people using the bus in this location. Notwithstanding that Tri-Met *might* increase the frequency of bus service on this site, the frequency of bus service has nothing to do with the zoning map amendment. There is no evidence that more bus ridership

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 10

will be encouraged with development in the R-12 zone as opposed to development in the R-7 zone. It would be inappropriate for the City Council to make a finding based on evidence not in the record.

For these reasons, the City Council can reverse the Planning Commission findings on these three (3) TCP policies.

**E. The City Council Can Find that Planning Commission Erred by Concluding that TCP Policies 2.1.5, 10.1.5 and 10.2.8 Are Not Satisfied.**

TCP policy 2.1.5 provides:

**“The City shall promote intense urban level development and metro-designated Centers and Corridors, and employment in industrial areas.”**

First, the City Council can find that TCP policy 2.1.5 is satisfied by the application. The Appellant agrees that Hall Boulevard is a “metro-designated corridor”. However, as explained in the Appellant’s May 6, 2015 letter, this TCP policy calls *only* for the City to promote intense urban-level development in designated corridors. TCP policy 2.1.5 says nothing about whether the City may change a zoning map designation in the case such as this, where the change makes the zoning map designation consistent with the development of surrounding property, and the change is supported by, and implements, other relevant TCP policies.

The Appellant’s May 6, 2015 letter to the Planning Commission stated with respect to Plan policy 2.1.5:

**“Plan policy 2.1.5 provides:**

**“The City shall promote intense urban land development in Metro-designated Centers and Corridors, and employment and industrial areas.”**

**Metro’s 2040 Regional Concept map designates SW Hall Boulevard as a “Corridor.” Notwithstanding this designation, the City is not bound to deny the zoning map Application because of Plan policy 2.1.5. First, the Plan policy calls only for the city to *promote* intense urban-level development in designated corridors. Plan policy 2.1.5 says nothing about whether the City may change a zoning map amendment in a case such as this where the change makes the zoning map designation consistent with the development of surrounding property and the change is supported by other Plan Policies.**

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 11

**Moreover, the Plan policy says nothing about how much intense urban-level development must be promoted by the City, or where it must be located along a Corridor. The City can certainly find that this Plan policy has been satisfied along SW Hall Boulevard without denying this Application. For example, there is intense urban-level development at the north end of SW Hall Boulevard adjacent to Highway 99 and intense urban-level development at the terminus of SW Hall Boulevard near Durham Road.**

**Finally, this Plan policy does not prohibit the City from making a common sense decision where it is clear that the current zoning map designation is inconsistent with surrounding development. "Intense urban land development" in the middle of less-dense single-family development is inconsistent with the City's Land Use Planning Program. Plan Goal 2, "Land Use Planning", Section 1, "Legislative Finding" at pages 2-3 and 2-4 states:**

**"Within residential areas, the City's land use program assures that infill occurs in a way that is sensitive and complimentary to existing residential neighborhoods".**

**This vision is implemented by Plan policy 2.1.15.D which calls for zoning map amendments to be compatible with surrounding areas. This Application achieves the purpose of the City's land use program, whereas leaving the R-12 zoning district in place does not.**

**The Planning Commission can either find that Plan policy 2.1.5 is satisfied by this Application, or does not apply to a quasi-judicial map amendment, or does not prohibit approval of this Application."**

**The City Council can find that intense urban level development at this location is inappropriate and would be inconsistent with other applicable TCP policies, especially those calling for development compatible with adjacent and surrounding land uses. Moreover, the City Council can find that TCP policy 2.1.5 is satisfied by promoting in appropriate locations intense urban level development along the corridor, such as locations closer to Highway 99 West.**

**The City Council enacted TCP policy 2.1.5. The City Council's interpretation and application of the policy is entitled to deference. The Appellant's argument is the better interpretation of the TCP policy than is the Planning Commission's decision."**

TCP policy 10.1.5 provides:

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 12

**“The City shall provide for high and medium density housing in the areas such as town centers (Downtown), regional centers (Washington Square), and along transit corridors where employment opportunities, commercial services, transit, and other public services necessary to support a higher population density are either present [sic] or plan for in the future.”**

The City Council can find that TCP policy 10.1.5 is not applicable to this application because notwithstanding whether this site is located along a “transit corridor” (that term is undefined and neither the Planning Commission or staff define the term), this is not an “area” where “employment opportunities, commercial services, transit and other public services necessary to support high population densities are either present or planned for in the future.”

The Planning Commission erred by considering areas outside of the City of Tigard. The TCP policies require the City to focus on “the areas” near the site. In examining the area in which this site is location, none of the requisites for higher population densities are either present or planned for. This area is primarily a low density residential area. It is certainly not an area where the City is planning to support higher population densities.

The City Council must reverse the Planning Commission on this policy.

Additionally, the City Council can find that the Planning Commission erred by finding TCP policy 10.2.8 as applicable or, if applicable, as not satisfied by this application. This policy provides: “The city shall require measures to mitigate the adverse impacts from differing, or more intense, land uses on residential living environments, such as: A. orderly transitions from one residential density to another; B. protection of existing vegetation, natural resources and provision of open space areas; and C. installation of landscaping and effective buffering and screening.”

Given that this site is an infill site immediately adjacent to low density single family development, there is no possibility of “an orderly transition” from one residential density to another. Furthermore, notwithstanding the possible use of landscaping as a buffering or screening technique, the Appellant's evidence shows that parking areas, the noise from those parking areas, lighting from the parking areas and activity from parking for multi-family development would be immediately adjacent to the backyards of the single family homes surrounding the infill site. The City Council can find that the TCP calls for compatible land use designations in the first place rather than attempting to place a band aid on an incompatible land use designation.

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 13

**F. The City Council Can Find that TCP Policy 2.1.2 Is Satisfied.**

TCP policy 2.1.2 requires the following:

**“The city's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.”**

For the reasons explained elsewhere in this final written argument and in the Appellant's other submittals, the City Council can find that the proposed zoning map amendment is consistent with the acknowledged Tigard Comprehensive Plan.

**G. The City Council Can Find that TCP policy 2.1.4 Is Satisfied.**

TCP policy 2.1.4 provides:

**“Applicants shall bear the burden of proof to demonstrate that land use applications are consistent with applicable criteria and requirements of the Development Code, the Comprehensive Plan and when necessary, those of the state and other agencies.”**

As explained elsewhere in Appellant's final written argument and Appellant's other submittals, the City Council can find that the applicant has met its burden of proof to demonstrate that the zoning map amendment from R-12 to R-7 is consistent with applicable requirements of the Tigard Community Development Code (“TCDC”), the TCP and the Metro Functional Plan.

The City Council can find that the R-12 zone is incompatible with surrounding R-4.5 and R-7 zoning districts for several reasons. First, multi-family or attached housing will have an aesthetic environmental and operational conflict with the surrounding single family dwellings that have a practical impact on how those families enjoy, occupy and use their properties. For example, the Appellant's evidence demonstrates that a multi-family development requires a parking lot on the perimeter of the infill site. The parking lot would be adjacent to the backyards of the adjacent single family homes. The external impacts from off-street parking to serve dozens of apartments would interfere with families' ability to enjoy, occupy or use their properties without interference. The City Council can further find that it is unlikely that simple landscaping or fencing would mitigate this interference. The better result, and one dictated by the acknowledged TCP, is to place higher density development in an appropriate location. This infill site, which is surrounded by low density single family development, is not such a location.

The Planning Commission relied on several other examples where detached single family homes were built on small lots as evidence of compatibility. Nevertheless, the City Council can reject

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 14

these examples for three reasons. First, there is no requirement that the Appellant use a planned unit development for this site. Second, the Planning Commission's examples provide no context of surrounding uses, or whether there are any single family homes adjacent to the more dense development cited in the Planning Commission's decision. Third, this infill site is appropriate for development matching its surrounding use. It is one thing to allow intense urban development in an isolated area where no low density single family development exists adjacent to the site but it is another to allow intense development in the middle of an existing and long established low density single family site such as this.

**H. TCDC 18.380.030.C.3 is met because there has been a change in the neighborhood.**

The evidence shows that the area around the site (**Exhibit 10**) has, over time, changed so that the site is the only remaining R-12 area that is undeveloped (**Exhibit 11 and 12**). Substantial changes since 1983 (**Exhibit 13**) show how the area has changed so that R-12 development is not desirable and a change in the zoning is warranted. (See also Applicant's narrative at pages 16-19).

**I. TCP Policy 2.1.15.C is satisfied because the Appellant's evidence shows a proven need for R-7 housing in this location.**

The Application narrative at page 71 explains that proven community need for R-7 development is based on the City-commissioned 2010 Goal 10 study by Johnson Reid.

Further, it is clear that this site is vacant only because of its R-12 zoning given that it is the only remaining vacant site in the area.

**J. Possible condition of approval.**

While the Appellant believes it has satisfied all of the relevant approval criteria, it would consider a condition of approval whereby an R-12 strip would remain along SW Hall Boulevard, subject to discussion with the Appellant.

**IV. Conclusion**

For the reasons contained in this letter and other submittals by the Appellant, the City Council can reverse the Planning Commission and approve the Application.

Mr. John Cook, Mayor  
City of Tigard  
July 28, 2015  
Page 15

Very truly yours,



Michael C. Robinson

MCR:rsp  
Enclosures

cc: Ms. Kelly Ritz (via email) (w/encls.)  
Ms. Mimi Doukas (via email) (w/encls.)  
Mr. Tom McGuire (via email) (w/encls.)  
Mr. John Floyd (via email) (w/encls.)  
Ms. Shelby Rihala (via email) (w/encls.)

sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

(uuu) "Zoned capacity" means the highest number of dwelling units or jobs that are allowed to be contained in an area by zoning and other city or county jurisdiction regulations.

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 98-721A, Sec. 1; Ordinance No. 98-730C, Sec. 10. Readopted by Ordinance No. 00-839, Sec. 1. Amended by Ordinance No. 00-869A, Sec. 2; Ordinance No. 02-972A, Sec. 1; Ordinance No. 05-1077C, Sec. 6; and Ordinance No. 10-1244B, Sec. 9).

## **TITLE 11: PLANNING FOR NEW URBAN AREAS**

### 3.07.1105 Purpose and Intent

The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long-range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow urbanization become applicable to the areas.

(Ordinance No. 99-818A, Sec. 3. Amended by Ordinance No. 02-969B, Sec. 11; and Ordinance No. 10-1238A, Sec. 5; and Ordinance No. 11-1252A, Sec. 1).

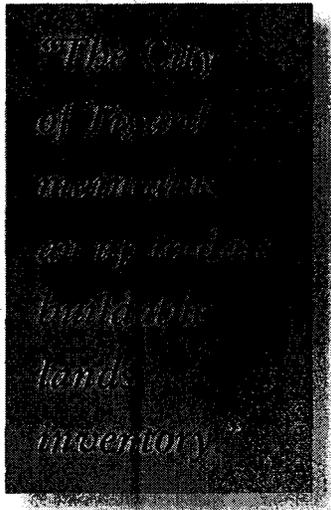
### 3.07.1110 Planning for Areas Designated Urban Reserve

- A. The county responsible for land use planning for an urban reserve and any city likely to provide governance or an urban service for the area, shall, in conjunction with Metro and appropriate service districts, develop a concept plan for the urban reserve prior to its addition to the UGB pursuant to sections 3.07.1420, 3.07.1430 or 3.07.1435 of this chapter. The date for completion of a concept plan and the area of urban reserves to be planned will be jointly determined by Metro and the county and city or cities.
- B. A local government, in creating a concept plan to comply with this section, shall consider actions necessary to achieve the following outcomes:



## Urban Growth Management Functional Plan

Metro implements Goal 10 through Title 1. To meet Title 1, each jurisdiction was required to determine its housing capacity and adopt minimum density requirements. Tigard adopted an 80% of minimum density requirement for development in 1998, which means that a development must build 80% of the maximum units allowed by the zoning designation. The City has committed to providing the development opportunity for an additional 6,308 dwelling units between 1998 – 2017. This number shows Tigard’s zoned capacity for additional dwelling units. It is an estimate based on the minimum number of dwelling units allowed in each residential zoning district, assuming minimum density requirements.



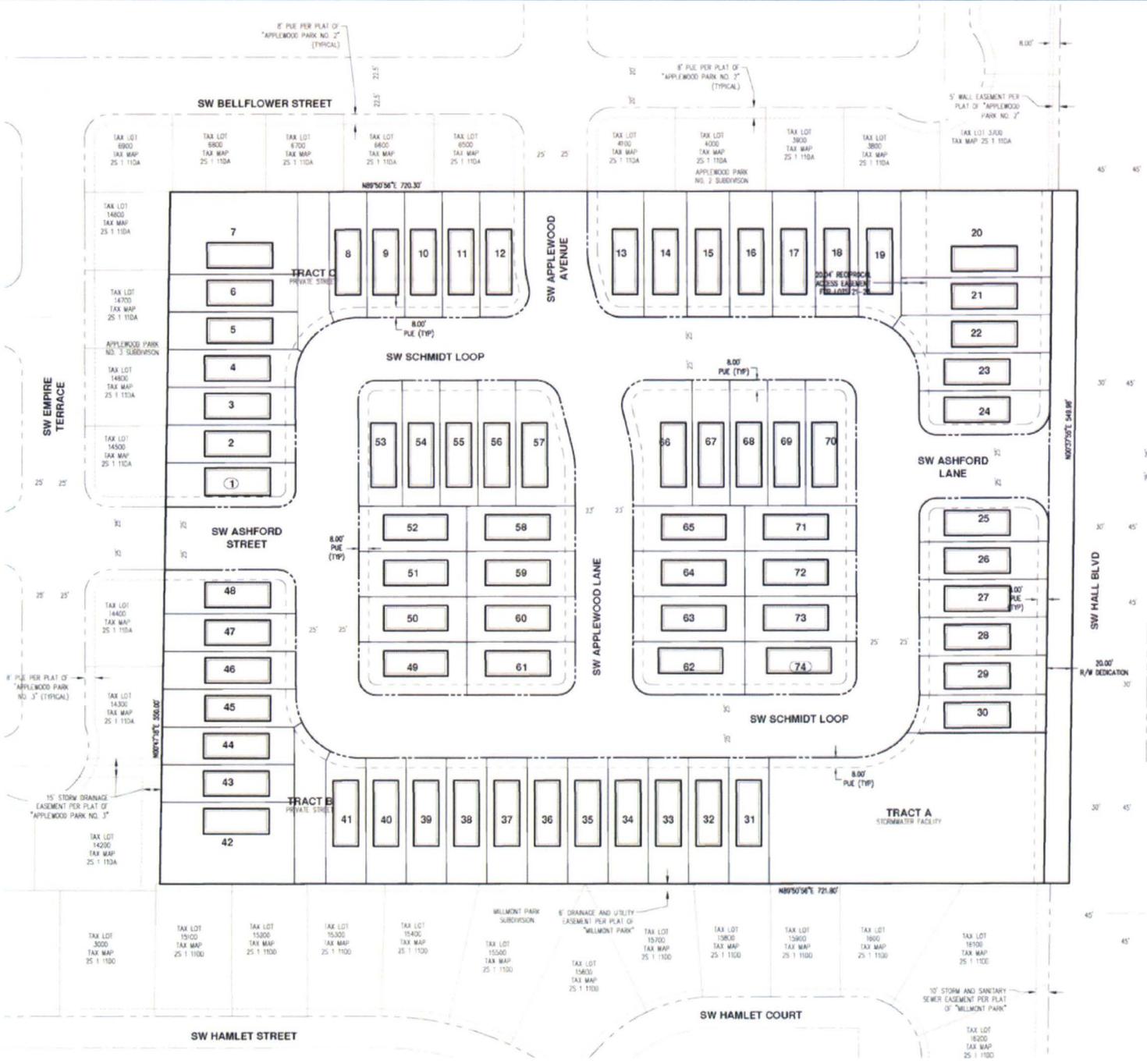
The City of Tigard maintains an up-to-date build-able lands inventory, a permit tracking system for development, as well as complying with Metro’s Functional Plan. The City is responsible for monitoring residential development. All of these tools aid the City in monitoring its progress toward the above goals, and determining if the opportunity remains for current and future residents to have diverse housing choices.

The City of Tigard maintains an up-to-date build-able lands inventory, a permit tracking system for development, as well as complying with Metro’s Functional Plan. The City is responsible for monitoring residential development. All of these tools aid the City in monitoring its progress toward the above goals, and determining if the opportunity remains for current and future residents to have diverse housing choices.

## Tigard’s Geographic Limits to Growth

In the last several years, Washington County has urbanized significant areas of unincorporated land to the south and west of Tigard. It and service districts provide the minimum required facilities and services. The county’s actions, combined with state annexation law, make it is improbable that most of these developed lands will annex to Tigard. Urbanized unincorporated land forms a barrier between Tigard and unincorporated urban growth areas designated by Metro. Thus, Tigard is unlikely to expand its City boundaries in the future. The lack of vacant residential land will require Tigard to meet its housing capacity commitment within its current, mostly built-out, City limits. This will require actions to increase residential density within the appropriate areas such as along major transportation corridors, and within designated Regional and Town Centers. Thus, much new residential development will occur through urban infill and redevelopment.

# Alternate Site Plan – Min R-12 Density



## DENSITY CALCULATIONS

**R-12 ZONE**

GROSS SITE AREA:	396,523 SF (9.10 AC)
PUBLIC R.O.W. DEDICATION:	110,837 SF (2.54 AC)
NET DEVELOPABLE AREA:	285,204 SF (6.56 AC)
MINIMUM AVERAGE LOT AREA: 3,050 SF	
MAXIMUM DENSITY:	$(285,204) = 93.51 = 93 \text{ LOTS}$
MINIMUM DENSITY:	$93 \text{ LOTS}(80\%) = 74.4 = 74 \text{ LOTS}$
PROPOSED UNIT DENSITY:	74 UNITS
PROPOSED AVERAGE LOT AREA:	$(285,055/74 \text{ LOTS}) = 3,446 \text{ SF}$
PROPOSED MINIMUM LOT AREA:	3,000 SF

# Alternate Site Plan – Min R-12 Density



## DENSITY CALCULATIONS

### R-12 ZONE

GROSS SITE AREA: 396,523 SF (9.10 AC)  
 PUBLIC R.O.W. DEDICATION: 110,837 SF (2.54 AC)  
 NET DEVELOPABLE AREA: 285,204 SF (6.56 AC)

MINIMUM AVERAGE LOT AREA: 3,050 SF

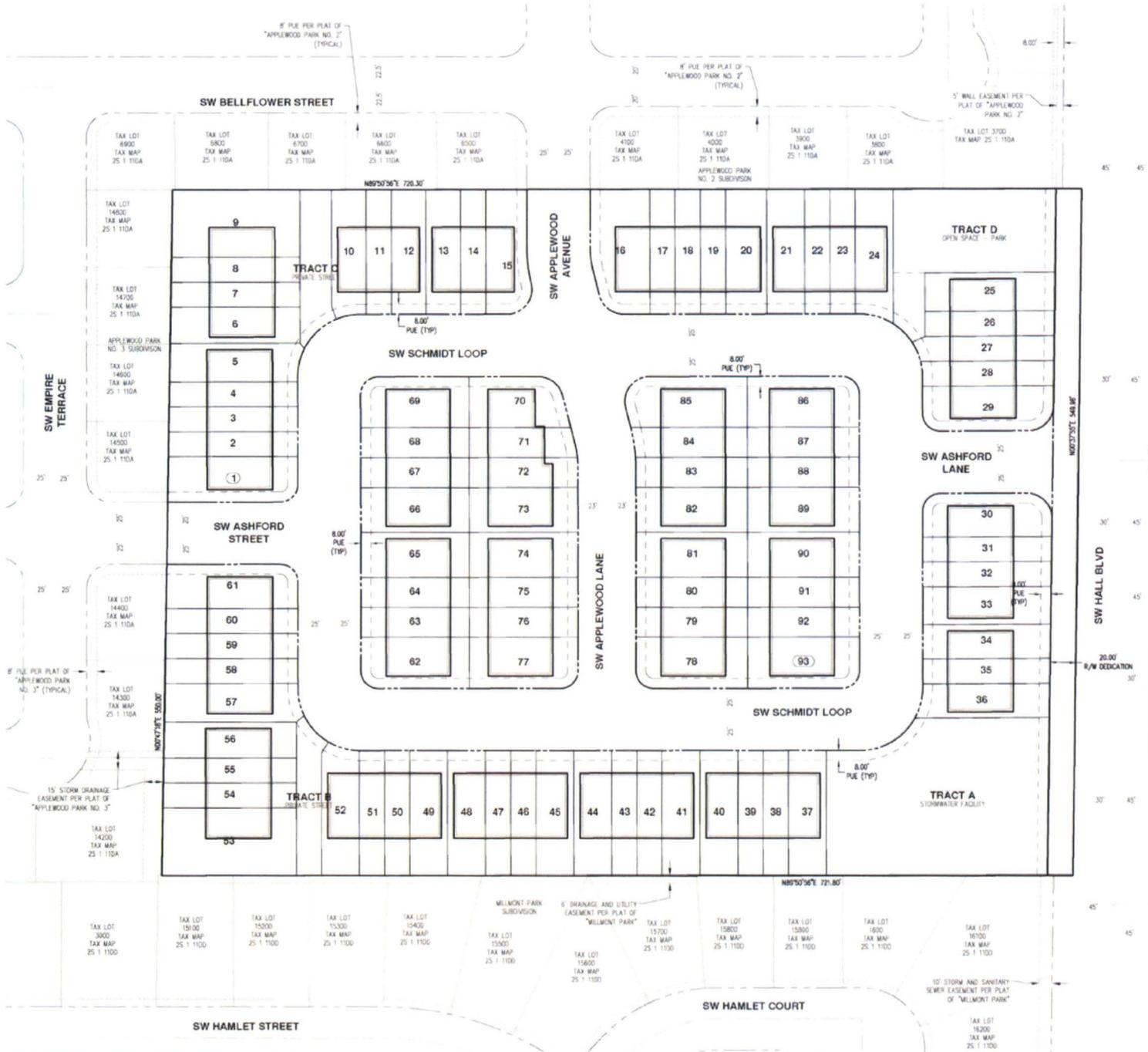
MAXIMUM DENSITY:  $(285,204) = 93.51 = 93$  LOTS  
 MINIMUM DENSITY:  $93 \text{ LOTS} (80\%) = 74.4 = 74$  LOTS

PROPOSED UNIT DENSITY: 74 UNITS  
 PROPOSED AVERAGE LOT AREA:  $(255,055/74 \text{ LOTS}) = 3,446$  SF  
 PROPOSED MINIMUM LOT AREA: 3,000 SF

# Alternate Site Plan – Min R-12 Density



# Alternate Site Plan – Max R-12 for sale Density



## DENSITY CALCULATIONS

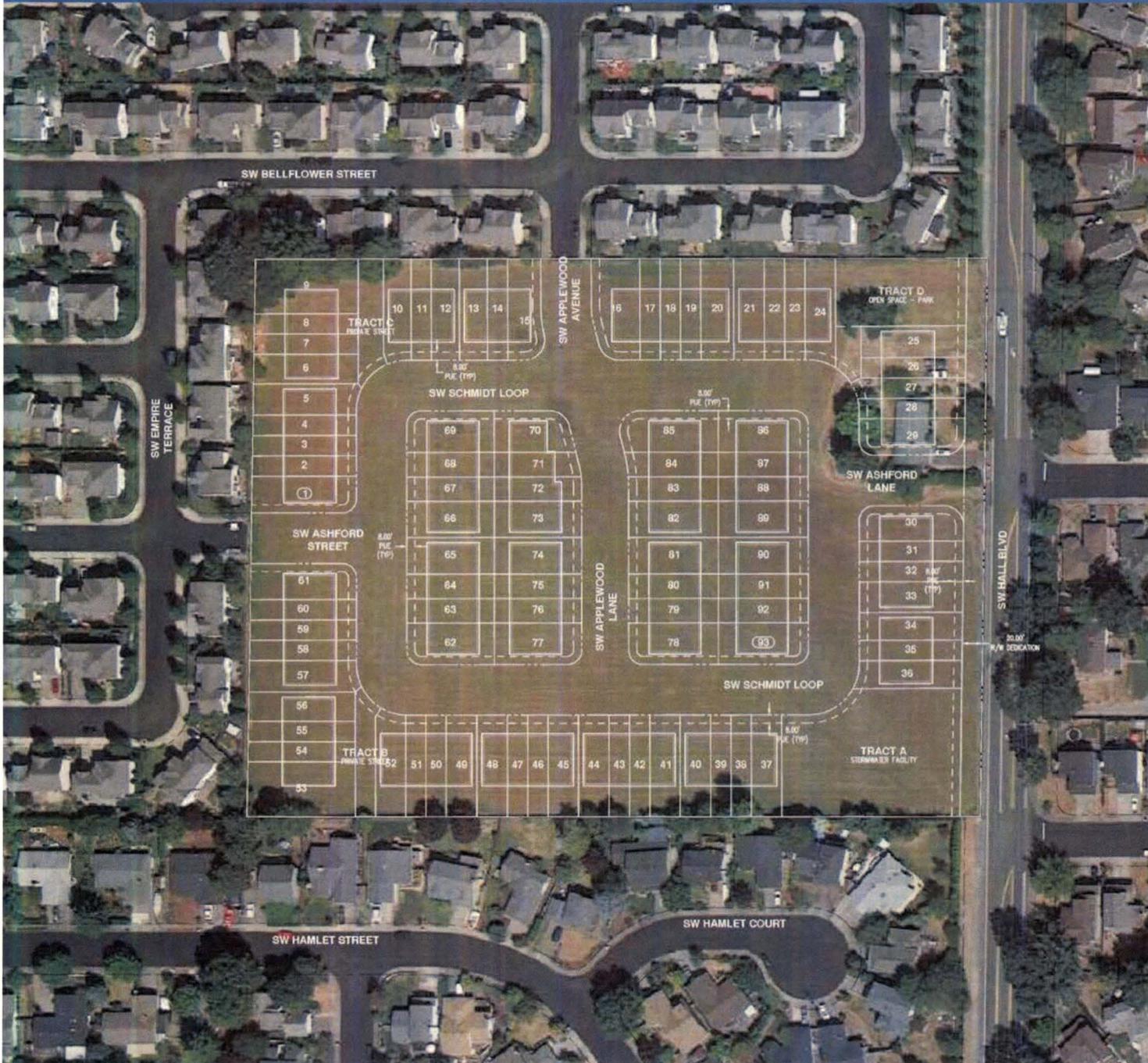
**R-12 ZONE**  
 GROSS SITE AREA: 396,523 SF (9.10 AC)  
 PUBLIC R.O.W. DEDICATION: 110,837 SF (2.54 AC)  
 NET DEVELOPABLE AREA: 285,204 SF (6.56 AC)

MINIMUM AVERAGE LOT AREA: 3,050 SF

**MAXIMUM DENSITY:**  $(285,204) \div 3,050 = 93.51 = 93 \text{ LOTS}$   
**MINIMUM DENSITY:**  $93 \text{ LOTS} (80\%) = 74.4 = 74 \text{ LOTS}$

PROPOSED UNIT DENSITY: 93 UNITS  
 PROPOSED AVERAGE LOT AREA:  $(249,326 / 93 \text{ LOTS}) = 2,680 \text{ SF}$   
 PROPOSED MINIMUM LOT AREA: 2,441 SF

# Alternate Site Plan – Max R-12 for sale Density



## DENSITY CALCULATIONS

### R-12 ZONE

GROSS SITE AREA: 396,523 SF (9.10 AC)  
 PUBLIC R.O.W. DEDICATION: 110,837 SF (2.54 AC)  
 NET DEVELOPABLE AREA: 285,204 SF (6.56 AC)

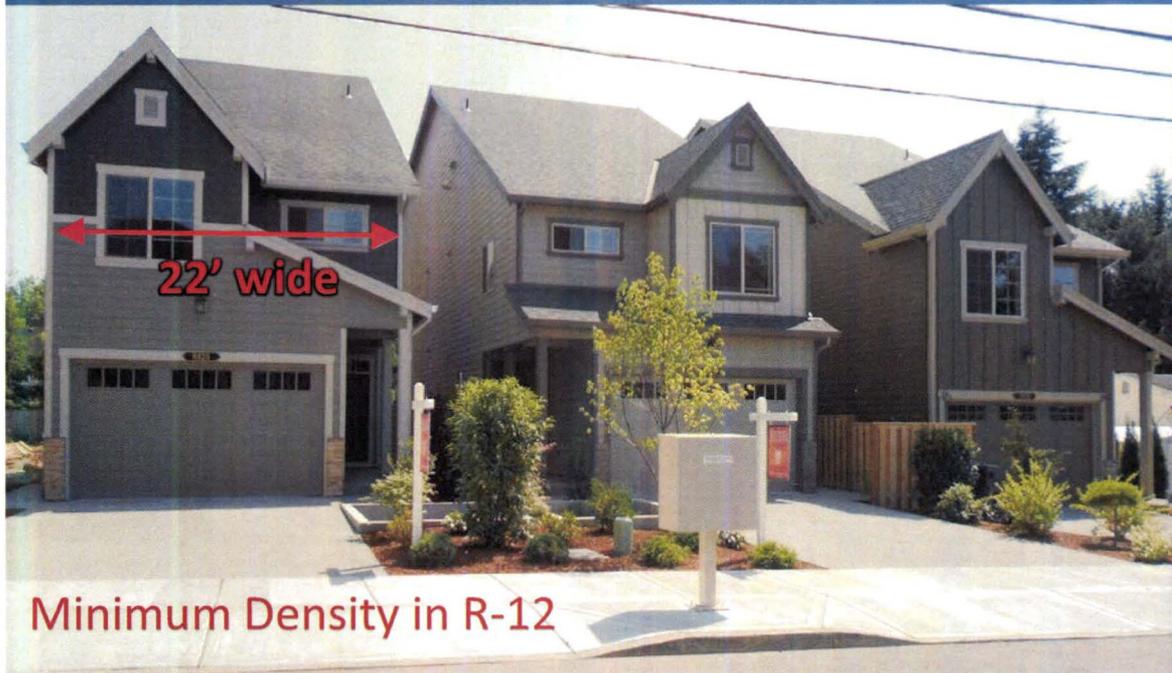
MINIMUM AVERAGE LOT AREA: 3,050 SF

MAXIMUM DENSITY:  $(285,204) = 93.51 = 93$  LOTS  
 MINIMUM DENSITY:  $93 \text{ LOTS} (80\%) = 74.4 = 74$  LOTS

PROPOSED UNIT DENSITY: 93 UNITS  
 PROPOSED AVERAGE LOT AREA:  $(249,326 / 93 \text{ LOTS}) = 2,680$  SF  
 PROPOSED MINIMUM LOT AREA: 2,441 SF



Existing Applewood Homes



Minimum Density in R-12



# Zoning Map

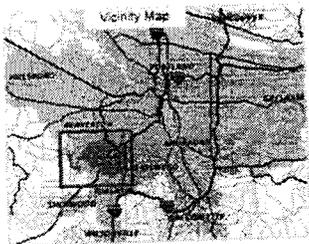
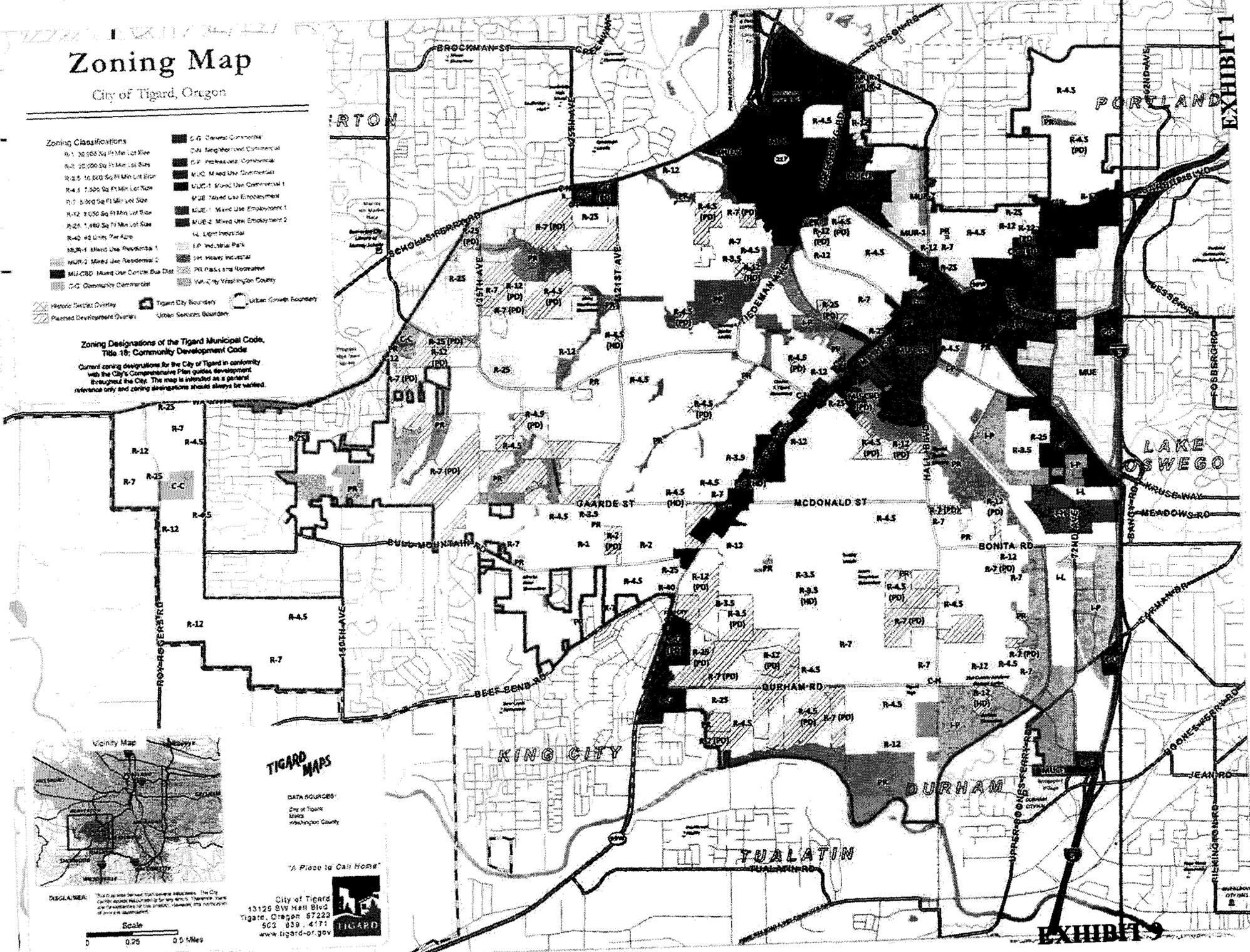
City of Tigard, Oregon

## Zoning Classifications

R-1 30,000 Sq Ft Min Lot Size	C-1 General Commercial
R-2.5 30,000 Sq Ft Min Lot Size	C-2 Neighborhood Commercial
R-4.5 10,000 Sq Ft Min Lot Size	C-3 Professional Commercial
R-7 7,500 Sq Ft Min Lot Size	MUC Mixed Use Commercial
R-12 5,000 Sq Ft Min Lot Size	MUC-1 Mixed Use Commercial 1
R-25 2,000 Sq Ft Min Lot Size	MUE Mixed Use Employment
R-40 40 Units Per Acre	MUE-1 Mixed Use Employment 1
MUR-1 Mixed Use Residential 1	MUE-2 Mixed Use Employment 2
MUR-2 Mixed Use Residential 2	LI Light Industrial
MUC-20 Mixed Use Central Bus Dist	LI-1 Light Industrial
C-2 Community Commercial	LI-2 Light Industrial
	LI-3 Light Industrial
	LI-4 Light Industrial
	LI-5 Light Industrial
	LI-6 Light Industrial
	LI-7 Light Industrial
	LI-8 Light Industrial
	LI-9 Light Industrial
	LI-10 Light Industrial
	LI-11 Light Industrial
	LI-12 Light Industrial
	LI-13 Light Industrial
	LI-14 Light Industrial
	LI-15 Light Industrial
	LI-16 Light Industrial
	LI-17 Light Industrial
	LI-18 Light Industrial
	LI-19 Light Industrial
	LI-20 Light Industrial
	LI-21 Light Industrial
	LI-22 Light Industrial
	LI-23 Light Industrial
	LI-24 Light Industrial
	LI-25 Light Industrial
	LI-26 Light Industrial
	LI-27 Light Industrial
	LI-28 Light Industrial
	LI-29 Light Industrial
	LI-30 Light Industrial
	LI-31 Light Industrial
	LI-32 Light Industrial
	LI-33 Light Industrial
	LI-34 Light Industrial
	LI-35 Light Industrial
	LI-36 Light Industrial
	LI-37 Light Industrial
	LI-38 Light Industrial
	LI-39 Light Industrial
	LI-40 Light Industrial
	LI-41 Light Industrial
	LI-42 Light Industrial
	LI-43 Light Industrial
	LI-44 Light Industrial
	LI-45 Light Industrial
	LI-46 Light Industrial
	LI-47 Light Industrial
	LI-48 Light Industrial
	LI-49 Light Industrial
	LI-50 Light Industrial
	LI-51 Light Industrial
	LI-52 Light Industrial
	LI-53 Light Industrial
	LI-54 Light Industrial
	LI-55 Light Industrial
	LI-56 Light Industrial
	LI-57 Light Industrial
	LI-58 Light Industrial
	LI-59 Light Industrial
	LI-60 Light Industrial
	LI-61 Light Industrial
	LI-62 Light Industrial
	LI-63 Light Industrial
	LI-64 Light Industrial
	LI-65 Light Industrial
	LI-66 Light Industrial
	LI-67 Light Industrial
	LI-68 Light Industrial
	LI-69 Light Industrial
	LI-70 Light Industrial
	LI-71 Light Industrial
	LI-72 Light Industrial
	LI-73 Light Industrial
	LI-74 Light Industrial
	LI-75 Light Industrial
	LI-76 Light Industrial
	LI-77 Light Industrial
	LI-78 Light Industrial
	LI-79 Light Industrial
	LI-80 Light Industrial
	LI-81 Light Industrial
	LI-82 Light Industrial
	LI-83 Light Industrial
	LI-84 Light Industrial
	LI-85 Light Industrial
	LI-86 Light Industrial
	LI-87 Light Industrial
	LI-88 Light Industrial
	LI-89 Light Industrial
	LI-90 Light Industrial
	LI-91 Light Industrial
	LI-92 Light Industrial
	LI-93 Light Industrial
	LI-94 Light Industrial
	LI-95 Light Industrial
	LI-96 Light Industrial
	LI-97 Light Industrial
	LI-98 Light Industrial
	LI-99 Light Industrial
	LI-100 Light Industrial

## Zoning Designations of the Tigard Municipal Code, Title 18: Community Development Code

Current zoning designations for the City of Tigard in conformity with the City's Comprehensive Plan guidelines development throughout the City. The map is intended as a general reference only and zoning designations should always be verified.



**TIGARD MAPS**

DATA SOURCES:  
City of Tigard  
State  
Washington County

"A Place to Call Home"  
City of Tigard  
13125 SW Hill Blvd  
Tigard, Oregon 97223  
503 859 4177  
www.tigard-or.gov

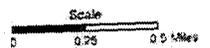


EXHIBIT 1

EXHIBIT 9

# Location

Sattler Street



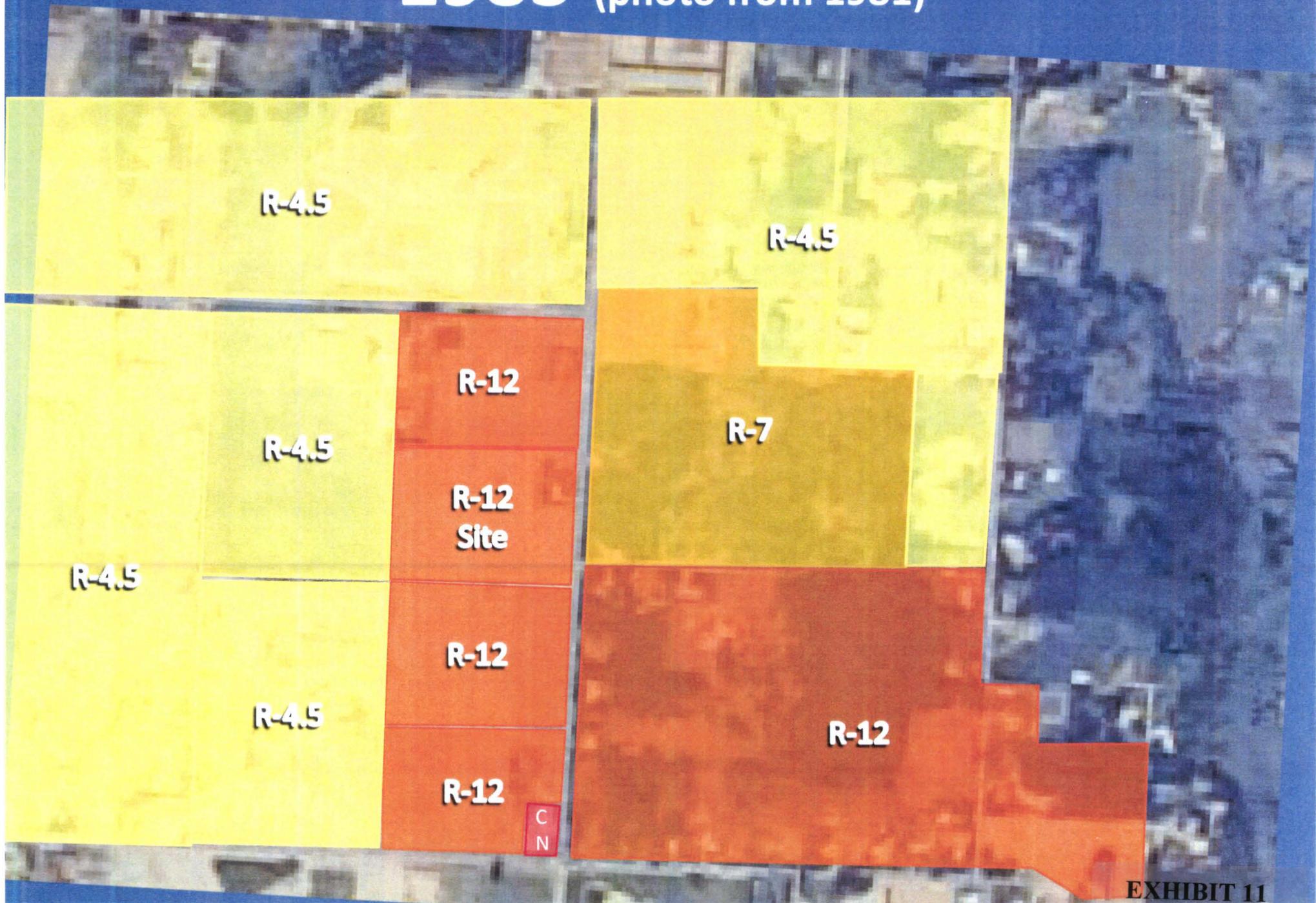
Hall Boulevard

Durham Road

Google earth

EXHIBIT 10

# 1983 (photo from 1981)



# 2013

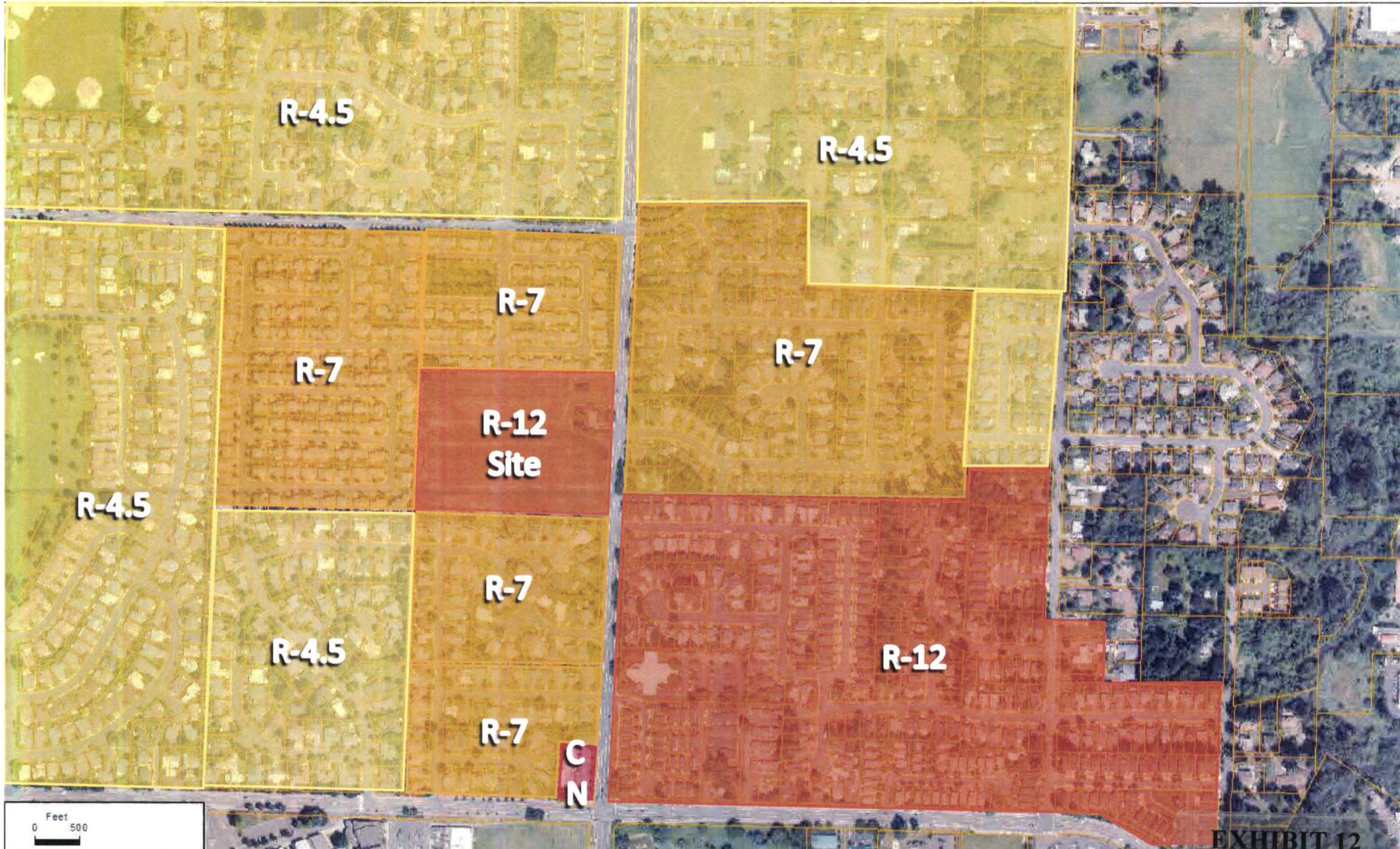


EXHIBIT 12

# Substantial Changes Since 1983

- Rezone of land to the south from R-12 to R-7
- Rezone of land to the north from R-12 to R-7
- Rezone of land to the west from R-4.5 to R-7
- Build-out of most of the corridor between 1983 and 1998
- Establishment of minimum density provisions did not occur until 1998 after most of the neighborhood was built out

## Evidence of a Mistake

- Acknowledged in the Sattler Zone Change decision (Exhibit O)

**BEFORE THE CITY COUNCIL  
FOR THE CITY OF TIGARD, OREGON**

**In the Matter of an Application by  
Venture Properties, Inc. for a Zoning  
Map Amendment from R-12 to R-7, a  
53-lot Subdivision and a Variance  
Application, for Property Located  
West of SW Hall Boulevard and South  
of SW Bellflower Street and North of  
SW Hamlet Street in the R-12 Zoning  
District (the “Site”)**

**DRAFT FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REVERSING  
THE PLANNING COMMISSION’S  
DENIAL OF THE APPLICATIONS AND  
APPROVING THE APPLICATIONS.**

**I. PROCEDURAL STATUS.**

This matter comes before the Tigard City Council (the “City Council”) on an appeal of the Tigard Planning Commission’s denial of the applications effective on June 1, 2015. The City Council finds that the Applicant, who is also the Appellant, filed a timely appeal of the denial on June 15, 2015.

The City Council held a *de novo* hearing on the appeal on July 15, 2015. City Council closed the public hearing and the record to all other parties except the Appellant and allowed the Appellant to submit final written argument no later than July 28, 2015 at 5:00 p.m. The City Council set September 8, 2015 as the date for deliberation and a possible tentative decision on the Application.

The City Council finds that no party challenged the City Council’s jurisdiction to hear the appeal, raised and preserved a procedural error, or challenged any City Council member’s right to participate in the decision.

**II. FINDINGS REJECTING THE PLANNING COMMISSION DENIAL AND SUPPORTING THE APPEAL.**

**A. Incorporation of applicant’s narrative.**

The City Council hereby adopts these findings as its own, rejecting the Planning Commission’s denial of the applications and granting the appeal. The City Council hereby incorporates the conditions of approval recommended by the Planning Department staff, which would have been adopted by the Planning Commission had it approved the applications. The City Council also incorporates the Applicant’s revised narrative dated March 24, 2015 in its entirety consisting of pages 3-80 and submitted to the City on March 25, 2015. To the extent there is a conflict between the incorporated Applicant’s narrative and these findings, these findings shall control.

**B. Additional findings supporting the zoning map amendment.**

**1. Subdivision Application.**

The City Council finds that the Planning Commission denied the subdivision application because the Planning Commission also denied the zoning map amendment, thus rendering the subdivision application inconsistent with the R-12 zoning district. Because the City Council approves the zoning map amendment, it also approves the subdivision application.

**a. TCDC 18.430.040.A.1.** The City Council finds that this standard can be approved if the zoning map amendment is approved.

**b. TCDC 18.715.020.A-.C.** The City Council finds that the density standards can be met if the zoning map amendment is approved.

**c. TCDC 18.810.030.A.3.** The Planning Commission did not make a finding on whether the pavement section on SW Hall Boulevard meets Oregon Department of Transportation ("ODOT") standards. The City Council finds that the Planning Commission did not conclude that this standard was not met. The City Council finds that this standard is met.

**d. TCDC 18.810.060.B.** The City Council finds, as did the Planning Commission, that lots 4 and 30 can be conditioned to provide a minimum of 25' of frontage on SW Schmidt Loop, thus meeting this standard.

**e. TCDC 18.810.070.C.** The City Council finds that the Plan can be conditioned to provide a 6' wide concrete sidewalk adjacent to the curb.

## **2. Variance Application (Special Adjustment to Street Standards).**

The Planning Commission Decision at page 5 explains that the Appellant requested a special adjustment to street standards to provide an alternate street section for the proposed local street extensions of SW Ashford Street and SW Applewood Avenue to match existing street sections to the north and west. The Planning Commission concluded that the variance and adjustment standards have been met. The City Council hereby makes the same findings.

**a. TCDC 18.810.030.E (page 17).** The Planning Commission found that this adjustment should be allowed.

For these reasons, because the City Council finds that the zoning map amendment can be approved, it also approves the variance application (special adjustment to street standards).

## **3. Zoning Map Amendment from R-12 to R-7.**

The City Council finds that all applicable TCDC requirements and Tigard Comprehensive Plan ("TCP") policies are satisfied. It is clear that the proposed R-7 zoning district is more compatible with the surrounding residential development than is the R-12 zoning district. The R-12 and R-7 zoning districts are consistent with the acknowledged Plan designation of "Medium-Density Residential" for the Site and, more importantly, the Site is surrounded on the west side of SW Hall Boulevard by other R-7 development and is adjacent to other R-7 development on the east side of SW Hall Boulevard. Only a small area of R-12 development is across SW Hall Boulevard from the southeast corner of the Site but it is developed to R-7 standards.

Additionally, of eight (8) persons who testified at the May 18, 2015 Planning Commission hearing, none of them testified against the zoning map amendment. Two (2) persons testified solely based on the impacts of the development to wetlands. The Planning Commission concluded at page 33 of its decision that, because the wetlands are not listed as "significant" on the Tigard Local Wetlands Inventory ("TLWI") map, the TCDC only requires the City to ensure that state and federal permits are obtained by the Applicant. Six (6) persons told the Planning Commission that they thought the proposed R-7 zoning district would be more compatible with their development than would be the R-12 zoning district. Three (3) persons testified in favor of the Application at the City Council hearing.

Finally, some of the TCP policies found not to be satisfied by the application are not applicable to the Application. TCDC 18.380.030.C.1 requires that the Applicant demonstrate compliance only with *applicable* Plan policies and map designations. As explained below, because some of the Plan policies are not applicable, they are not a basis for a denial of this Application.

a. **TCDC 18.380.030.B.1.** The City Council finds, for the reasons explained below, that all *applicable* Plan policies are met.

b. **TCDC 18.380.030.B.2.** The City Council finds that the Metro Functional Plan is neither part of "this Code", nor is it an "applicable implementing ordinance". In the alternative, the City Council finds that the Metro Functional Plan is an "applicable implementing ordinance" and, for the reasons explained below, the City Council finds that the Applicant has met its burden of proof to demonstrate that this zoning map amendment will have only a "negligible effect" on the City's overall zoned residential capacity.

c. **TCDC 18.380.030.B.3.** The City Council finds that TCDC 18.380.030.B.3 is satisfied. This criterion requires:

**“Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.”**

The Application narrative explains at pages 16-19 how this area has substantially changed since the imposition of the R-12 zoning designation in 1983, more than 30 years ago. The area has become increasingly less dense since 1983. TCDC 18.380.030.B.3 allows the Planning Commission to approve a quasi-judicial map amendment with “evidence of change in the neighborhood . . .”

The City Council need not find that all three (3) of the criteria in TCDC 18.380.030.B.3 are met because the criterion uses the word “or” between the three (3) factors. The Application narrative demonstrates that the neighborhood has changed. The City Council makes this determination by noting that the surrounding development pattern is consistently lower density single-family in this area. This Site is the only remaining vacant site in the area. The area that has developed around the Site has developed under low-density residential standards and development of the Site in the R-12 zoning map designation would be inconsistent with the surrounding development.

TCP Policy 2.1.15.F provides that “land uses permitted by the proposed designation would be compatible, or capable of being made compatible, with environment conditions and surrounding land uses.” The Application narrative explains that development in the R-12 zoning district would be *incompatible* with surrounding land uses. The Applicant would be required to either develop small lot detached single-family housing (with a minimum lot size of 3050 square feet, compared to a minimum lot size of 5,000 square feet in the R-7 zoning district), or multiple-family housing with the parking areas on the perimeter of the site. Neither type of housing would be compatible with, nor welcomed by, the surrounding residents.

d. The City Council finds, based on substantial evidence in the Application narrative, that there is evidence that there has been either a change in the neighborhood or that a mistake in the zoning has occurred.

e. **TCP Policy 2.1.2.** The City Council finds, based on substantial evidence, that the zoning map amendment is consistent with and will implement the Plan.

f. **TCP Policy 2.1.5.** TCP Policy 2.1.5 provides:

**“The City shall promote intense urban land development in Metro-designated Centers and Corridors, and employment and industrial areas.”**

The Applicant acknowledges that SW Hall Boulevard is a Metro-designated "Corridor." However, the Planning Commission erred in finding that Plan Policy 2.1.5 is not met by the Application. As explained at pages 2 and 3 of the Applicant’s May 6, 2015 letter, this TCP Policy calls only for the City to *promote* intense urban-level development in designated corridors. TCP Policy 2.1.5 says nothing about whether the City may change a zoning map designation in a case such as this, where the change makes the zoning map designation consistent with the development of surrounding property, and the change is supported by, and implements, other TCP Policies.

The TCP Policy does not prohibit other than intense urban-level development along Corridors. The City Council can take official notice of the fact that much of SW Hall Boulevard consists of medium-density residential development, or lower-density residential development, similar to the requested R-7 zoning district for the Site.

Finally, this zoning map amendment complies with, and implements other, applicable TCP policies which, when balanced against this TCP Policy, requires the City Council to approve this zoning map amendment.

Moreover, this TCP Policy says nothing about how much intense urban-level development must be promoted by the City, or where it must be located along a Corridor. The City can certainly find that this TCP Policy has been satisfied along SW Hall Boulevard without denying this Application. For example, there is intense urban-level development at the north end of SW Hall Boulevard adjacent to Highway 99 and intense urban-level development at the terminus of SW Hall Boulevard near Durham Road.

Finally, this TCP Policy does not prohibit the City from making a common sense decision where it is clear that the current zoning map designation is inconsistent with surrounding development. “Intense urban land development” in the middle of less-dense single-family development is inconsistent with the City’s Land Use Planning Program. Plan Goal 2, “Land Use Planning”, Section 1, “Legislative Finding” at pages 2-3 and 2-4 states:

**“Within residential areas, the City’s land use program assures that infill occurs in a way that is sensitive and complimentary to existing residential neighborhoods”.**

This vision is implemented by TCP Policy 2.1.15.D which calls for zoning map amendments to be compatible with surrounding areas. This Application achieves the purpose of the City’s land use program, whereas leaving the R-12 zoning district in place does not.

The Planning Commission can either find that Plan Policy 2.1.5 is satisfied by this Application, or does not apply to a quasi-judicial map amendment, or does not prohibit approval of this Application.

**g. TCP Policy 2.1.14.** The City Council finds that the Applicant has met its burden of proof to demonstrate that the zoning map amendment is consistent with the applicable criteria of the TCDC, the Plan, and the Metro Functional Plan, for the reasons explained in this letter and other evidence submitted by the Applicant.

**h. TCP Policy 2.1.15.C.** The City Council finds that the Application demonstrates that there is a "proven community need" for an R-7 zoning district in this particular location because, as explained in the Application, the R-7 zoning district is the most compatible zoning district with the surrounding development and substantial evidence demonstrates a need for additional R-7 housing at this location, in part, because of the requirement for compatibility.

**i. TCP Policy 2.1.15.D.** The City Council finds that the Application demonstrates that there is an inadequate amount of developable, appropriately designated land for R-7 lots, whereas there is more than adequate available R-12 land, including the River Terrace area based on evidence in the Application.

**j. TCP Policy 2.1.15.F.** The City Council finds that the Planning Commission misapplied this TCP Policy. This TCP Policy provides that "land uses allowed in the proposed designation would be compatible, or capable of being made compatible, with environmental conditions and surrounding land uses." The Planning Commission misapplied the policy because it does not require a demonstration of incompatibility; the Plan Policy simply requires a demonstration of compatibility. Substantial evidence in the record demonstrates that the R-7 zoning district is inherently more compatible with the adjacent R-7 zoning than is the R-12 zoning district. Moreover, the Planning Commission erred in another way because it adopted the word "significantly" when this word does not appear in Plan Policy 2.1.15.F.

**k. TCP Policy 6.1.3.** The City Council first finds that this Plan Policy is inapplicable. This Plan Policy calls for the City to *promote* certain types of land use patterns, but does not require them. To the extent that the City Council finds that this Plan Policy is applicable, substantial evidence supports a finding that the R-7 zoning district, which

matches the zoning district of the surrounding development, promotes compatibility with the existing neighborhoods, does not increase dependency on the automobile and does not decrease opportunities for walking, biking and/or public transit. No evidence in the record demonstrates that more people will drive from the R-7 zoning district, or that fewer people will walk, bike or use public transit from the R-7 zoning district. Regardless of how the Site is zoned, the City Council can conclude that transit remains available (through Tri-Met bus line 76) on SW Hall Boulevard, that sidewalks are located on the interior residential streets and along SW Hall Boulevard, and that most residents use their automobiles to shop and work. The zoning of the Site will not affect the use of automobiles, or biking, walking and transit use.

**l. TCP Policy 10.1.1.** The City Council finds that this Plan Policy is not applicable to the decision because a zoning map amendment is not a "land use policy, code and standard".

**m. TCP Policy 10.1.5.** Plan Policy 10.1.5 provides:

**“The City shall provide for high and medium density housing in the area such as town centers (Downtown), regional centers (Washington Square), and along transit corridors where employment opportunities, commercial services, transit, and other public services necessary to support higher population densities are either present or planned for in the future.”**

A comparison of an aerial photograph of the developed area and the City’s zoning map designation for this site that this Plan Policy is not promoted by leaving this property in its current R-12 zone. First, as the Application narrative explains, notwithstanding that SW Hall Boulevard is served by Tri-Met Bus Line 76 does not operate at headways that support higher population densities nor is SW Hall Boulevard a “transit corridor”. Bus Line 76 operates at only 30 minute headways throughout the day.

Second, this TCP Policy calls for the City to direct high and medium density housing to areas, such as town centers and transit corridors, where employment opportunities and commercial services are either present or planned to support higher population densities. The surrounding area is not within downtown Tigard or Washington Square. Moreover, the surrounding area is a wholly residential area without any employment opportunities or commercial services that support or justify higher population densities.

The City Council finds that this TCP Policy is not applicable because the Site is not along a "transit corridor" in an area where employment opportunities, commercial services, transit and other public services necessary to support higher population densities are either present or planned for in the future. There is no Tigard map designation of "Transit Corridor" on the Site, nor did the Planning Commission define the term. Substantial evidence demonstrates that the Site is located in an area of predominantly single-family homes with no significant retail or employment opportunities anywhere in the area. The fact that Tri-Met bus line 76 may connect to other very distant areas that constitute employment or commercial opportunities does not defeat the fact that this area is an area where these opportunities are not present.

In the alternative, if this TCP Policy were applicable, the City Council finds that it is satisfied by the application because TCP Policy 10.1.5 calls for the City to provide for high and medium density housing in areas with certain characteristics not found in the area in which this site is located.

**n. TCP Policy 10.2.5.** The City Council finds this Plan Policy is not applicable to a quasi-judicial application because it directs the City to implement certain types of housing by "encouraging" certain activities.

**o. TCP Policy 10.2.7.** The City Council finds that this policy is satisfied because the R-7 residential density is "appropriately related" to the existing land use pattern of R-7 development and is supported by available public facilities and services. No natural hazards or natural resource areas identified and mapped by the City are located on the Site.

**p. TCP Policies 10.2.8 and 10.2.9.** The City Council finds that the Planning Commission erred by failing to provide specific findings on TCP Policy 10.2.8. Further, the Planning Commission erred by finding that TCP Policy 10.2.9 is not met. Substantial evidence in the whole record demonstrates that the R-7 zoning district is compatible with existing neighborhoods. In fact, the Planning Commission found at page 28 that TCP Policy 2.1.23 was satisfied. The Planning Commission's finding states "The proposal is for a zone consistent with that applied to adjoining properties for development was constructed according to R-7 zoning. No compatibility issues are anticipated as a result of the zone change. This TCP Policy is satisfied." Having found TCP Policy 2.1.23 satisfied, it is inconsistent to find that TCP Policy 10.2.9 is not satisfied.

**q. TCP Policy 12.1.11-6 and TCP Policy 12.3.1.** The City Council finds that the Planning Commission erred by failing to adopt specific findings related to the express language of the TCP Policies. Moreover, the City Council must find that TCP Policy 12.1.11-5 is inapplicable because the TCP Policy is a direction to the City to implement a particular type of transportation system. Additionally, the City Council must find that TCP Policy 12.3.1 is also inapplicable because it is a direction to the City to support existing commuter rail. No substantial evidence supports the Planning Commission's findings that the R-7 zoning district will be less supportive of the City's transportation system and existing commuter rail than would be the R-12 zoning district because there is no evidence as to potential ridership of residents of either zone.

**r. Metro Functional Plan.**

Metro Code 3.07.120.E. provides as follows:

**“A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a negligible effect on the city’s or county’s overall minimum zoned residential capacity.”**

The Planning Commission found at page 31 of its decision that the Applicant had failed to meet its burden of proof to demonstrate that Metro Functional Plan 3.07.120.E is satisfied, which

provides that the City may reduce the minimum zoned capacity of a single lot, provided the reduction has a "negligible effect" on the City's overall minimum zoned residential capacity. The evidence relied upon from Metro contains no comparative number which allowed the Planning Commission to conclude that the reduction of a certain number of dwelling units would be more than a negligible effect on the City's overall zoned residential capacity. However, the Applicant's May 14, 2015 letter at pages 3 and 4 explained that the zoning map amendment would have less than a one percent impact on the City's minimum zoned residential capacity. No substantial evidence rebuts the Applicant's evidence.

The Tigard Comprehensive Plan contains the City's minimum zoned capacity pursuant to acknowledgment by Metro. Tigard Comprehensive Plan Goal 10, Page 10-2, provides that an additional 6038 dwelling units can be constructed in the city (the 1996 number). Substantial evidence in the whole record demonstrates that the difference between the R-12 development of 130 lots and the R-7 development of 79 lots for a net difference of 51 lots is "negligible" because it represents less than one percent of the City's minimum zoned capacity for additional dwelling units (and an even smaller percentage of the City's total zoned capacity).

The word "negligible" is undefined in the TCDC. TCDC 18.120.010 directs that the commonly accepted, dictionary meaning be used where a word is undefined in the TCDC. "Negligible" is defined as "so small or unimportant or of so little consequence as to warrant little or no attention; trifling." Merriam-webster.com.

The City Council finds that the reduction of units is a negligible reduction. Moreover, while the phrase "negligible effect" is found in the Metro Code adopted by the Metro Council, the City Council in this quasi-judicial proceeding may apply that term based on evidence before it. Metro's argument that the reduction units is not negligible is not supported by the evidence in the record. The City Council finds that the zoning map amendment will have only a negligible effect on the City's "zoned capacity", as this term is defined in Metro Code 3.07.1010.

### **C. Response to additional issues.**

#### **1. Response to letter from Mr. Mitchell.**

Mr. Mitchell raises two (2) issues concerning the two (2) wetlands on the site. The first is his question about the delineation of the wetlands. Venture contracted with AKS Engineering to delineate the wetlands. AKS has delineated the wetlands and the Oregon Department of State Lands ("DSL") has accepted the delineations.

Second, Mr. Mitchell raises the issues of whether the wetlands will be filled. The wetlands are not mapped on the Tigard Sensitive Lands map and are wetlands over which DSL and the United States Army Corps of Engineers ("COE") have jurisdiction. Venture has applied for a fill permit to fill both of the isolated wetlands.

The City does not regulate the fill of wetlands not shown on the City's Sensitive Lands map. To the extent the Application is able to satisfy the applicable criteria for fill permits issued by DSL and COE, then the wetlands may be lawfully filled.

Mr. Mitchell also raises two (2) issues unrelated to wetlands. His first issue concerns traffic increase in the neighborhood. The Application's evidence demonstrates that traffic generation from the subdivision proposed by Venture will be consistent with the types of streets serving the subdivision and that those streets have sufficient capacity to accommodate the expected vehicle trip generation from the site. As an aside to Mr. Mitchell's comments, Venture believes that the downzoning of this property from R-12 to R-7 is appropriate and development of the property in the R-7 zone will generate less vehicular traffic than development of the property in the current R-12 zone.

The second issue unrelated to wetlands raised by Mr. Mitchell is the lack of a neighborhood park. No applicable approval criteria require a neighborhood park. The neighborhood in which Mr. Mitchell lives, and which surrounds the site, is a pleasant neighborhood with large single-family lots providing outdoor recreation space for families and children. Venture would like to develop the same type of single-family development on this site and will be able to do so in the R-7 zones but will only be able to provide smaller lots with less open space if the R-12 zone is retained.

## **2. Response to Email from Tualatin Riverkeepers.**

Tualatin Riverkeepers raises an issue regarding the wetlands. As noted above, the City does not regulate wetlands that are not located on the City's Sensitive Lands map. As long as Venture is able to demonstrate to the satisfaction of DSL and the COE that the isolated wetlands may be filled, then that is appropriate.

Tualatin Riverkeepers also argues that the wetlands areas may not be included in density calculations. For the reasons explained below under the discussion of net development area, density calculations are controlled by the TCDC, not Metro.

## **3. Calculation of Net Development Area.**

The City Council finds that the definition of "net development area" in TCDC 18.715.020.A.1 excludes areas not mapped as Sensitive Lands. Wetlands outside of Sensitive Lands may be calculated as part of the net development area. Further, TCDC 18.775.010, part of the "Purpose" statement, does not control over the specific definition found in TCDC 18.715.020.A.1. Finally, TCDC 18.775.020.D, "Jurisdictional Wetlands," provides that wetlands, subject to other jurisdictional requirements and not mapped as sensitive wetlands on the City's map, are not subject to a Sensitive Lands permit.

Because the two (2) isolated wetlands areas on the site are not located on the City's Sensitive Lands map, and because they are subject to the jurisdiction of DSL and the COE, they may be filled if the approval criteria for fill are satisfied.

Ms. Doukas, representing Venture, submitted a separate letter requesting a condition of approval providing that to provide that in the event that Venture demonstrates that it is feasible to obtain the necessary fill permits, then it is appropriate to include the two (2) isolated wetlands areas in the net development area so that they may be calculated for density purposes. If fill permits are not obtained, then they must be excluded from the net development area. In any event, the City Council finds that it is feasible for Venture to obtain the necessary fill permits and, pursuant to

the relevant TCDC provisions cited above, the two (2) isolated wetlands areas may be calculated as part of the net development area and included in the density of the site.

**AIS-2288**

**5.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 15 Minutes

**Agenda Title:** CenturyLink Franchise Agreement

**Submitted By:** Louis Sears, Finance and Information Services

**Item Type:** Ordinance  
Public Hearing -  
Informational

**Meeting Type:** Council  
Business  
Meeting -  
Main

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

**Information**

**ISSUE**

Should City Council approve a new Metro Area Communications Commission (MACC) franchise agreement for CenturyLink?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends approving the new CenturyLink cable franchise agreement.

**KEY FACTS AND INFORMATION SUMMARY**

The City of Tigard is a member of MACC with other regional jurisdictions which includes Washington County, Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, King City, Lake Oswego, North Plains, Rivergrove, Hillsboro, West Linn, and Tualatin. MACC administers the cable franchise agreements for Comcast and Frontier for the MACC member jurisdictions.

MACC jurisdictions voted unanimously to recommend the CenturyLink franchise agreement.

All 5 Affected MACC Jurisdictions must approve the CenturyLink Franchise Agreement for it to become effective, Tigard, Lake Oswego, North Plains, West Linn and unincorporated Washington County.

Please see attached document "CTL-MACC side by side draft" for a comparison to other cable franchise agreements with MACC.

## **OTHER ALTERNATIVES**

City Council could choose not to approve the CenturyLink cable franchise agreement.

## **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Not applicable

## **DATES OF PREVIOUS CONSIDERATION**

Not applicable

---

### **Attachments**

Franchise Comparison

CTL MACC Members Resolution

Q&A

CTL Cable Franchise Agreement

Ordinance

Staff Report

---

MACC Area PROPOSED FRANCHISE COMPARISON  
 Metropolitan Area Communications Commission  
 July 8, 2015

FRANCHISE PROVISION	2015 COMCAST	2007 Frontier	2015 CenturyLink	§
<b>Term</b>	10 years (through mid 2025)	15 years (through mid 2022)	5 years (through mid 2020).  May be extended through 2023 -- if CenturyLink builds to twenty percent of the area by 2018, and  Another extension through 2025 (total of 10 years) if fifty percent of the area is offered service by 2021.  Incentives are built into the franchise to encourage service to more areas.	2.3
<b>PEG PROGRAMMING</b>				
<b>HD Channels</b>	3 new HD channels implemented over 4 years.	No HD requirement	<u>All</u> PEG channels will be in SD and HD.	9.4

FRANCHISE PROVISION	2015 COMCAST	2007 Frontier	2015 CenturyLink	§
<b>PEG/PCN Fee</b>	<p>Although the per subscriber fee, falls to \$0.80 per month, there is no reduction on the PEG/PCN Fund: Combining the three franchises requires Comcast to provide funding based on an additional 25,000 subscribers.</p> <p>Commission will allocate funding following a review of current PEG/PCN Fund Policy early next Fiscal Year.</p>	\$1.00/subscriber/month	<p>\$0.80/subscriber/month</p> <p>Same as new Comcast franchise.</p>	13
<b>PEG Origination Points</b>	<p>Eighteen Origination Points – new sites for council meetings and other programming direct from jurisdiction sites.</p> <p>Includes new Cornelius &amp; Tualatin City Hall locations.</p>	Five Origination Points	Two Origination sites (in West Linn)	9.8
<b>Video On Demand</b>	No Requirement	No Requirement	Up to 25 hours of HD VOD programming available to TVCTV.	

FRANCHISE PROVISION	2015 COMCAST	2007 Frontier	2015 CenturyLink	§
ROW AUTHORITY				
<b>Right of Way Use</b>	ROW requirements are substantively unchanged from previous franchise.	ROW use is independently regulated by jurisdictions' codes.	<p>ROW use is independently regulated by jurisdictions' codes.</p> <p>As with Frontier, CenturyLink uses its existing facilities, over which it will now provide a cable television service. The oversight of those facilities by the jurisdictions will not be changed by this cable franchise.</p> <p>Unlike Frontier, CenturyLink does <u>not</u> propose to provide universal fiber to the home, which would require extensive ROW work.</p>	2.2
<b>Competition</b>	<p>If competitor's franchise has terms that are perceived to be less demanding on these points:</p> <ul style="list-style-type: none"> <li>• 5% franchise fee</li> <li>• PEG funding</li> <li>• PEG channels</li> <li>• Customer Service standards</li> <li>• Complimentary services</li> </ul> <p>Then, Comcast may initiate a process to mitigate perceived competitive inequity.</p>	Not addressed	<p>Not addressed.</p> <p>Competitor has matched the relevant terms of the incumbent</p>	n/a

FRANCHISE PROVISION	2015 COMCAST	2007 Frontier	2015 CenturyLink	§
<b>FINANCE</b>				
<b>Franchise fees</b>	Five Percent Franchise Fee	Five Percent Franchise Fee	Five Percent Franchise Fee	6
<b>Gross Revenue Definition</b>	<p>MACC retained its broad definition of Gross Revenue – the application of a 5% fee on all revenue attributable to Cable Services. Still better standard than most franchises and all area franchises.</p> <p>If the revenue base is the same, MACC collections in CY2015 would be: \$6.5M, a 1.5% drop. (No longer includes PCN revenue due to changes in PCN management.)</p>	Same basis as Comcast	<p>Identical to new Comcast definition.</p> <p>All franchises have same basis for application of 5% franchise fee.</p>	1.22
<b>Insurance Limits</b>	General Liability: \$3 million Broadcasters Liab: \$1 million Auto BI/PD: \$2 million Employers Liab: \$2 million	General Liability: \$3 million Broadcasters Liab: \$1 million Auto BI/PD: \$2 million Employers Liab: \$2 million	General Liability: \$3 million Broadcasters Liab: \$1 million Auto BI/PD: \$2 million Employers Liab: \$2 million	5.1

<b>FRANCHISE PROVISION</b>	<b>2015 COMCAST</b>	<b>2007 Frontier</b>	<b>2015 CenturyLink</b>	<b>§</b>
<b>Audit authority</b>	<p>Retained all data submission requirements.</p> <p>No changes in the timing of, or the way MACC conducts audits.</p> <p>If underpaid 4% or more, company pays the total cost of the audit up to \$15,000. Comparable to Frontier.</p>	Same as Comcast	Same as Comcast	3.6
<b>Insurance Limits</b>	<p>General Liability: \$3 million</p> <p>Broadcasters Liab: \$1 million</p> <p>Auto BI/PD: \$2 million</p> <p>Employers Liab: \$2 million</p>	<p>General Liability: \$3 million</p> <p>Broadcasters Liab: \$1 million</p> <p>Auto BI/PD: \$2 million</p> <p>Employers Liab: \$2 million</p>	<p>General Liability: \$3 million</p> <p>Broadcasters Liab: \$1 million</p> <p>Auto BI/PD: \$2 million</p> <p>Employers Liab: \$2 million</p>	5.1
<b>CUSTOMER SERVICE</b>	Comcast will abide by the Frontier customer service model, unifying the standards that apply to all cable operators in the MACC area.	Substantially same as Comcast	Substantially same as Comcast	Attc. A

**METROPOLITAN AREA COMMUNICATIONS COMMISSION**

**RESOLUTION 2015-07**

**A RESOLUTION RECOMMENDING THAT THE AFFECTED MEMBER JURISDICTIONS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION GRANT QWEST BROADBAND SERVICES, INC. d/b/a/ CENTURLINK, A CABLE SERVICES FRANCHISE**

**WHEREAS**, in 1980 the Metropolitan Area Communications Commission (hereinafter MACC) was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter IGA) to work cooperatively and jointly on communications issues, in particular the franchising of cable services and the common administration and regulation of such franchises;

**WHEREAS**, today the member jurisdictions of MACC consist of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin, and West Linn;

**WHEREAS**, the IGA authorizes MACC to grant one or more nonexclusive franchises to construct, operate, and maintain a cable system within the combined boundaries of the member jurisdictions;

**WHEREAS**, the IGA requires that each member jurisdiction in which cable service will be provided under the franchise formally approve any joint cable services franchise agreements, or any amendment or renewal of such agreements;

**WHEREAS**, Qwest Broadband Services, Inc. d/b/a CenturyLink (hereinafter "CenturyLink"), formally requested a franchise authorizing the provision of cable services to the following MACC member jurisdictions: Lake Oswego, Tigard, North Plains, West Linn and unincorporated Washington County ("Affected Jurisdictions");

**WHEREAS**, MACC has provided adequate notice and opportunities for public comment on the proposed new cable services franchise including a public hearing held on July 8, 2015;

**WHEREAS**, the MACC Board of Commissioners finds the proposed new cable franchise reflects the cable-related community needs of the Affected Jurisdictions, and that CenturyLink has the legal, technical, and financial qualifications to own and operate the proposed cable services system, and therefore recommends to the Affected Jurisdictions that they grant the franchise to Qwest Broadband Services, Inc. d/b/a/ CenturyLink;

RESOLUTION NO. 2015-07

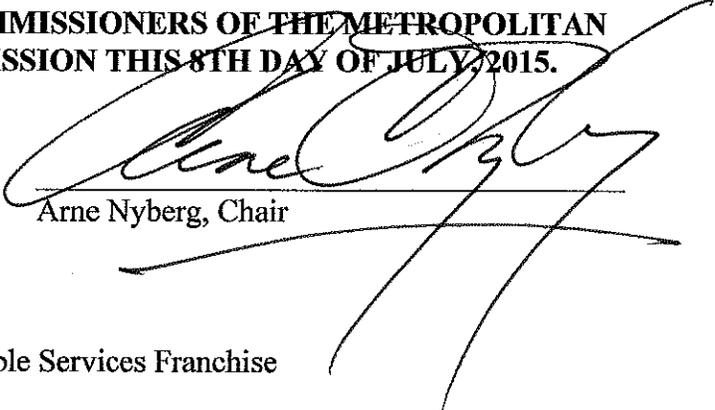
METROPOLITAN AREA COMMUNICATIONS COMMISSION  
RECOMMENDING GRANT OF FRANCHISE TO  
Qwest Broadband Services, Inc. d/b/a CenturyLink

{00469679; 1 }9

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT:**

1. MACC recommends to the Affected Jurisdictions that they grant CenturyLink a cable services franchise substantially in the form attached hereto as Exhibit A ("Franchise").
2. In accordance with the requirements of the IGA, the member jurisdictions' grant of the Franchise shall be contingent on the affirmative vote of each Affected Jurisdiction's governing body.
3. The MACC Administrator is hereby authorized to execute the Franchise on behalf of the Affected Jurisdictions only after MACC staff's determination that CenturyLink has fulfilled the Franchise acceptance provisions contained in the Franchise and that each Affected Jurisdiction has approved the Franchise.
4. This resolution shall be effective from and after its adoption.

**ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 8TH DAY OF JULY, 2015.**



Arne Nyberg, Chair

Attachment: Exhibit A - CenturyLink Cable Services Franchise

**Cable Franchise Adoption  
Questions and Answers**  
Prepared by MACC  
August 2015

**Q1: What is MACC?**

A: Your jurisdiction is a member of the Metropolitan Area Communications Commission – a fifteen member joint powers organization. MACC was created in 1980 to provide a centralized agency to prepare for, negotiate and administer cable television franchises. On behalf of the member jurisdictions, in accordance with its Intergovernmental Agreement (IGA), MACC provides the daily management of the area’s cable franchises (Comcast and Frontier), including:

- Finance - Franchise fee collection, audits, insurance and bonds
- Centralized Customer Service Regulation – all complaint calls should come to MACC
- TVCTV’s Public and Government Access programming services – a division of MACC
- General administration and compliance with Federal cable television franchising rules
- Coordination of the Public Communications Network (PCN)

**Q2: How does MACC operate?**

A: Each member jurisdiction is an equal partner in MACC. Jurisdictions appoint a MACC Commissioner who participates, reviews and recommends new and renewed cable television franchises along with other administrative chores. When MACC recommends a cable franchise, the MACC IGA requires that every affected member jurisdiction approve the franchise in order to make it effective. For the recommended Comcast franchise, that requires all 15 members. For the recommended CenturyLink franchise, the five affected members’ governing boards must approve.

**Q3: How are cable television franchise negotiations different than other negotiations?**

A: Incumbent Cable Operators, such as Comcast, have the right to renew their franchise through negotiation. While there are certain limiting federal laws and requirements, a company already in the Right of Way has rights to continue service unless it has failed to perform, or it will not meet the demonstrated needs of the communities it serves.

Competitive Cable Operators, such as CenturyLink, also have certain rights to provide cable television service over new or existing facilities. These competitive cable franchises cannot be unreasonably denied.

**Q4: What benefits does the Comcast franchise provide my jurisdiction?**

A: The primary benefits are financial, reduced-cost connectivity and customer service regulation:

- The 5% franchise fee paid by Comcast provides about \$6.5million to the member jurisdictions each year. The Franchise provides for continued fee review and audit functions by MACC.
- PCN service costs are reduced.
- Public Meeting coverage through TVCTV is secured, and upgraded to High Definition (HD).
- The PEG/PCN Fee is set at 80¢/month, a lower cost than previously collected, but enough to fully support these programs.
- Complementary TV service will continue to be provided to public buildings.

**Q5: What benefits does the CenturyLink franchise provide my jurisdiction?**

A: In addition to the benefits provided by the new Comcast franchise (which the CenturyLink franchise generally matches or exceeds), the CenturyLink franchise provides the opportunity for CenturyLink telephone customers in five member jurisdictions (Lake Oswego, North Plains, Tigard, West Linn and portions of Washington County, the “Affected Jurisdictions”) to have a new choice in the video marketplace. In addition, a landline competitor provides funding to the Affected Jurisdictions through the franchise fee – satellite alternatives Dish and DirecTV do not.

**Q6: What is non-negotiable in a cable television franchise?**

A: Federal Law restricts local governments from negotiating:

- Rates for service or equipment.
- Programming – either including or excluding any particular channel.
- The type of technology a cable operator uses to transmit its signals.
- Internet regulation.
- The amount of the franchise fee is capped under the Cable Act at 5% of Gross Revenue.

**Q7: How does this franchise address competition issues?**

A: In both franchises, MACC and the companies tried to ensure a level playing field. Cable television is an increasingly competitive environment, with new options and providers every day. In the Comcast franchise, certain provisions were inserted to ensure the viability of the franchise, regardless of new technology or regulation. The CenturyLink franchise mirrors many of the integral Comcast franchise requirements.

**Q8: When will these Franchises be effective?**

A: The Comcast franchise will be effective retroactively back to July 1, following the approval of all 15 MACC jurisdictions. This is expected by early October. CenturyLink’s franchise is effective at the time when the five Affected Jurisdictions have approved the franchise – probably by mid October.

For additional questions about the renewal process, contact **Fred Christ**, MACC Administrator, at **503-645-7365 x206** or at [fchrist@maccor.org](mailto:fchrist@maccor.org). MACC’s website is: [www.maccor.org](http://www.maccor.org)

**CABLE FRANCHISE AGREEMENT**

**between**

**the cities of**

**LAKE OSWEGO,  
NORTH PLAINS,  
TIGARD,  
WEST LINN,  
and  
WASHINGTON COUNTY**

**AS PARTICIPATING MEMBERS OF THE**

**METROPOLITAN AREA COMMUNICATIONS COMMISSION**

**AND**

**QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK**

**2015**

## TABLE OF CONTENTS

ARTICLE	PAGE
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	8
3. SYSTEM FACILITIES .....	12
4. PEG SERVICES .....	13
5. PEG ACCESS AND PCN GRANT FUND.....	17
6. FRANCHISE FEES .....	18
7. CUSTOMER SERVICE .....	20
8. REPORTS AND RECORDS.....	21
9. INSURANCE AND INDEMNIFICATION .....	23
10. TRANSFER OF FRANCHISE.....	24
11. RENEWAL OF FRANCHISE.....	25
12. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	25
13. MISCELLANEOUS PROVISIONS.....	28
EXHIBIT A –FRANCHISE AREA MAPS .....	32
EXHIBIT B - ORIGINATION POINTS .....	35
EXHIBIT C – QUARTERLY FRANCHISE FEE REMITTANCE FORM .....	36
EXHIBIT D – CUSTOMER SERVICE STANDARDS .....	37
EXHIBIT E – GRANTEE CORPORATE STRUCTURE .....	47
EXHIBIT F – QUARTERLY CUSTOMER SERVICE STANDARDS PERFORMANCE REPORT.....	48

1. **DEFINITIONS**

Except as otherwise provided herein the following definitions shall apply:

1.1. *Access Channel*: A video channel, which Franchisee shall make available to Grantor without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by Grantor.

1.2. *Affected Jurisdictions*: Unincorporated Washington County and the cities Lake Oswego, North Plains, Tigard and West Linn

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4. *Basic Service*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522, which currently states, “any service tier which includes the retransmission of local television broadcast signals.”

1.5. *Cable Operator*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(5), which currently states, “any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.”

1.6. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states, “the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.”

1.7. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states, “a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems.” The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise Area and shall not include the tangible network facilities of a

common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.8. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states, “a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).”

1.9. *Commission*: The Metropolitan Area Communications Commission, its officers, agents and employees, and, its member jurisdictions which are the Oregon cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin and West Linn together with Washington County or as that membership may change over time. The Commission was created and exercises its powers pursuant to an Intergovernmental Cooperation Agreement, as authorized by state law (particularly ORS Chapter 190) and the laws, charters, and other authority of the individual member units of local government who are members of the Commission. The powers of the Commission have been delegated to it by its members and although it may exercise those powers as an entity, it remains a composite of its members.

1.10. *Communications Act*: The Communications Act of 1934, as amended.

1.11. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.12. *Days*: Calendar days unless otherwise noted.

1.13. *Designated Access Provider or DAP*: The entity or entities designated by the Grantor to manage or co-manage the Public, Education, and Government Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.14. *Educational Access Channel*: An Access Channel available solely for the use of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area.

1.15. *Effective Date*: The effective date of this Agreement shall be upon the Grantor’s written certification of approval from all Affected Jurisdictions and Grantee’s unconditional written acceptance of this Agreement. If either event fails to occur, this Agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Agreement shall be of no force or effect.

1.16. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of

any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which QC's Facilities are attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Grantee to foresee or control.

1.18. *Franchise Area*: Those portions of the Affected Jurisdictions as shown in Exhibit A, and such additional areas as may be included in the corporate (territorial) limits of the Affected Jurisdictions during the term of this Agreement to the extent those areas are served by the Grantee or its Affiliates.

1.19. *Grantee*: Qwest Broadband Services, Inc. d/b/a CenturyLink and its lawful and permitted successors, assigns, and transferees.

1.20. *Government Access Channel*: An Access Channel available solely for the use of Grantor and other local governmental entities located in the Franchise Area.

1.21. *Grantor*: The Metropolitan Area Communications Commission (MACC) created in 1980 which is the local franchising authority for the Commission's member jurisdictions, and individually (and, where applicable, collectively) the Affected Jurisdictions, or the lawful successor, transferee, or assignee thereof.

1.22. *Gross Revenue*: Gross Revenue means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross revenues include, by way of illustration and not limitation:

- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
- Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
- Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Payments for pre-paid Cable Services and/or equipment;
- Advertising Revenues as defined herein;
- Fees including, but not limited to: (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise

Area; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;

- Revenues from program guides; and
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.

“Gross Revenues” shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee’s revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. “Gross Revenues” shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee’s Cable System to provide Cable Services in the Franchise Area and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. “Gross Revenues” shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, “Gross Revenues” shall not include bad debt.

“Advertising Revenues” shall mean amounts derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising Interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., “revenue offsets” and “contra expenses” and “administrative expenses” or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or similarly affiliated advertising representation firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

“Gross Revenues” shall **not** include:

- actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee, the FCC user fee and PEG fee shall not be regarded as such a tax or fee;
- launch fees and marketing co-op fees; and,

- revenues associated with the provision of managed network services provided under separate business contract.
- Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.

To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.

Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.

Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.

1.23. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), which currently states, "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

1.24. *Living Unit*: A distinct address in QC's network inventory data base including but not limited to single family homes, multi-dwelling units (e.g., apartments and condominiums), government facilities and business locations.

1.25. *Origination Points*: Locations from which PEG programming is delivered to the PEG Access Headend for transmission as set forth in Exhibit B.

1.26. *PEG*: Public, Educational, and Governmental.

1.27. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.28. *Public Access Channel*: An Access Channel available solely for use by the residents and others in the Franchise Area, as authorized by Grantor.

1.29. *Public Communications Network ("PCN") / Institutional Network*: The separate communications network pursuant to a Grantor-issued cable franchise designed principally for the provision of non-entertainment, interactive services to schools, public agencies, or other non-profit agencies for use in connection with the ongoing operations of such institutions. Services provided may include video, audio, and data to PCN subscribers on an individual application, private channel basis. This may include, but is not limited to, two-way video, audio, or digital signals among institutions.

1.30. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Affected Jurisdictions, to the full extent of the Affected Jurisdictions' right, title, interest, and/or authority to grant a franchise to occupy and use such streets and easements for Telecommunications Facilities and Cable Service. Public Rights-of-Way shall also include any easement granted or owned by the Grantor or Affected Jurisdictions and acquired, established, dedicated or devoted for public utility purposes. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.31. *Qwest Corporation or QC*: The Grantee's Affiliate and owner of the facilities within the Right of Way over which Grantor's Cable Service will be provided.

1.32. *Qualified Living Unit*: Any Living Unit designated as qualified for Cable Service in Grantor's loop qualification network inventory database.

1.33. *School*: Any educational institution, public or private, registered by the State of Oregon pursuant to ORS 345.505-525, (excluding home schools), including but not limited to primary and secondary schools, colleges and universities.

1.34. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Grantee express permission.

1.35. *Telecommunications Facilities or QC's Facilities*: The facilities owned by QC over which Grantor's Cable Service will be provided.

1.36. *Title II*: Title II of the Communications Act.

1.37. *Title VI*: Title VI of the Communications Act.

1.38. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states, "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

## **2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, Grantor and Affected Jurisdictions hereby grant to Grantee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.1.1. This Agreement is intended to convey limited rights and interests only as to those streets and Public Rights-of-Way in which the Affected Jurisdictions have an actual interest. It is not a warranty of title or interest in any Public Right-of-Way, it does not provide the Grantee any interest in any particular location within the Public Right-of-Way, and it does not confer rights other than as expressly provided in the grant hereof. Except as set forth in this Agreement, this Agreement does not deprive Grantor or Affected Jurisdictions of any powers, rights, or privileges they now have or may acquire in the future under applicable law, to use, perform work, or regulate the use and control of the Affected Jurisdictions' streets covered by this Agreement, including without limitation, the right to perform work on their roadways, Public Rights-of-Way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

2.1.2. This Agreement authorizes Grantee to engage in providing Cable Service. Nothing herein shall be interpreted to prevent Grantor or Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.

2.1.3. To the extent Grantee uses other parties (whether or not affiliated) to fulfill its obligations hereunder, Grantee will insure such parties comply with the terms and conditions of this Agreement.

2.2. *Regulatory Authority Over QC's Facilities*: Jurisdiction over QC's Facilities is governed by federal, state and local law. Grantor's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of QC's Facilities to the extent QC's Facilities are constructed, installed, maintained, or operated for the purpose of upgrading and/or extending existing QC's Facilities for the provision of non-Cable Services. Nothing in this Agreement shall affect the Grantor or Member Jurisdictions' authority to adopt and enforce lawful regulations with respect to the Public Rights-of-Way.

QC will be primarily responsible for the construction and installation of QC's Facilities in the Public Rights of Way which will be utilized by Grantee to provide Cable Service. So long as QC does not provide Cable Services to Subscribers in the Affected Jurisdictions, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of QC's Facilities in the Public Rights of Way shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with the Grantee) to fulfill its obligations under this Franchise, Grantee will insure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs facilities in the Public Rights of Way of the Affected Jurisdictions, such installations and facilities will be subject to the terms and conditions contained in this Franchise and all applicable Grantor laws, ordinances, resolutions, rules and regulations.

2.3. *Term of Franchise.* This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire on December 31, 2020 unless terminated sooner as provided in this Franchise or extended as provided in Section 2.4.

2.4. *Franchise Term Extension.*

2.4.1. The term of the Franchise under Section 2.3 hereof, and all rights, privileges, obligations and restrictions pertaining thereto, shall be extended:

2.4.2. An additional three (3) years to December 31, 2023 if, by December 31, 2018, Grantee offers Cable Services to percent (20%) or more of the Living Units in the Franchise Area and duly notifies Grantor with reasonable documentation; and

2.4.3. An additional two (2) years to December 31, 2025 if, by December 31, 2021, Grantee offers Cable Services to an additional thirty percent (30%) or more of the Living Units in the Franchise Area and duly notifies Grantor with reasonable documentation.

2.5. The extension of the term of this Franchise under Section 2.4.1. and 2.4.2. shall not become effective until after the Grantor has accepted Grantee's documents substantiating that Grantee has completed the requirements of Section 2.4.1. or Section 2.4.2, as applicable. Grantee shall submit reasonable documentation regarding achievement of the targets set forth in Section 2.4 hereof to the Grantor not less than 180 days prior to expiration of the initial or extended term of the Franchise as applicable.

2.6. *Grant Not Exclusive:* This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor or Affected Jurisdictions to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of the Affected Jurisdictions to use same for any purpose they deem fit, including the same or similar purposes allowed Grantee hereunder. Affected Jurisdictions may, at any time, grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Grantee's authority under this Agreement, and for such additional franchises for cable systems as the Grantor deems appropriate. Any such rights which are granted shall not adversely impact the authority as granted under this Agreement.

2.7. *Effect of Acceptance:* By accepting the Agreement, the Grantee: (1) acknowledges and accepts the Grantor's and Affected Jurisdictions' legal right to issue the Agreement; (2) acknowledges and accepts the Grantor's legal right to enforce the Agreement on behalf of the Affected Jurisdictions; (3) agrees that it will not oppose the Grantor intervening or other participation in any proceeding affecting Cable Service over the Cable System in the Franchise Area; (4) accepts and agrees to comply with each and every provision of this Agreement; and (5) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.8. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise and its exhibits are subject to and shall be governed by all applicable provisions of federal law and regulation as they may be amended, including but not limited to the Communications Act.

2.9. *No Waiver:*

2.9.1. The failure of Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Grantor, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.9.2. The failure of Grantee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse Grantor from performance, unless such right or performance has been specifically waived in writing.

2.10. *Construction of Agreement:*

2.10.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.10.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.11. To the extent permitted by law, if there is a change in federal law or state law that permits Grantee to opt out of or terminate this Agreement, then Grantee agrees not to exercise such option.

2.12. *Police Powers:* In executing this Franchise Agreement, the Grantee acknowledges that its rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce general ordinances necessary to the safety and welfare of the public and Grantee agrees to comply with all lawful and applicable general laws and ordinances enacted by Grantor pursuant to such power. Nothing in this Agreement shall be construed to prohibit the reasonable, necessary, and lawful exercise of Grantor's police powers. Recognizing the Grantee is subject to

Grantor's police powers, Grantor cannot unilaterally change the express provisions of this Agreement that relate to the provision of Cable Services.

2.13. *Service Date.* Grantee shall offer Cable Services on a commercial basis to one or more subscribers within the Franchise Area on a Service Date no later than forty five days after the Franchise Agreement has been fully executed. Grantee shall meet with Grantor at least annually to demonstrate where its Cable Services are available together with its plans, if any, to increase its Cable Service footprint.

2.14. *Non-Discrimination.*

2.14.1. Grantee shall comply with applicable federal, state or local laws relating to non-discrimination. Grantee shall offer and provide Cable Services to all Persons within the Franchise Area under non-discriminatory terms and conditions. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any Person, on the basis of race, religion, color, sex, marital status, familial status, national origin, age, disability, sexual orientation, income level or source of income.

2.14.2. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within the Franchise Area. Grantee's designation of any Qualified Living Unit shall not be based upon race, religion, color, sex, marital status, familial status, national origin, age, disability, sexual orientation, income level or source of income.

2.14.3. Grantee's rates and charges shall be published, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions.

2.14.4. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of Subscriber's race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, disability, income source, or geographic location within the Franchise Area. Nothing in this Section shall be construed to prohibit:

2.14.4.1. The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

2.14.4.2. Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

2.14.4.3. Grantee establishing different and nondiscriminatory rates and charges and classes of services for commercial subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial subscribers; or

2.14.4.4. Grantee from establishing reduced bulk rates for Subscribers.

2.15. *Filing of Rates and Charges.* Grantee shall maintain on file with the Grantor or provide via a working Internet link with contemporaneous notice to Grantor upon change, a complete and current schedule of applicable Subscriber rates and charges for Cable

Services provided under this Franchise, in a form satisfactory to the Grantor. Nothing in this Section shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used solely in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six (6) consecutive months to purchase Cable Services at such rate or charge.

2.16. *Changes in Rates and Charges.*

2.16.1. Grantee shall provide written notice to the Grantor and Subscribers at least 30 days in advance of any increase in rates and charges. Notice to the Grantor of proposed increases in rates and charges shall be filed in a form satisfactory to the Grantor, which may include notice by means of a working Internet link with contemporaneous notice to Grantor upon change.

2.16.2. Unless the Grantor has lawfully required prior review of Grantee's rate increase in accordance with the requirements and conditions of applicable law, Grantee's rate increase shall become effective on the date identified in the form filed by the Grantee, provided that the effective date shall not be earlier than the 31st day after such filing.

2.17. *Provision of Equipment and Services to Individuals with Disabilities.* Grantee shall provide Cable Services and equipment to Subscribers with disabilities in accordance with federal and state laws.

2.18. *Connection of Public Facilities.* Grantee shall, at no cost to Grantor, provide one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to public use buildings, as designated by the Grantor, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to all such future public buildings. Requirement is waived if such building is (a) currently served by any other franchised Cable Operator or (b) not a Qualified Living Unit.

2.19. *Service Extension.* Following the Service Date, Grantee shall provide Cable Services upon request from any Person in the Franchise Area who resides in a Qualified Living Unit.

**3. SYSTEM FACILITIES**

3.1. *System Characteristics:* The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time. Grantee's Cable System shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry standards.

3.1.1. The System shall be capable of standard digital, HDTV, VOD, as well as other future services.

3.1.2. The System shall have a modern design, when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term.

3.1.3. The System shall have protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four (4) hours, at each power supply site.

3.1.4. All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electrical Code, National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

3.2. *Inspection of Facilities:* The Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement upon at least twenty-four (24) hours notice. In all instances, a qualified representative of Grantee must be available to accompany the tour to insure that no privacy requirements are violated.

3.3. *Emergency Alert System.* Grantee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

3.3.1. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the State and Local EAS Plans. Affected Jurisdictions shall permit only appropriately trained and authorized Persons to activate the EAS equipment through the EAS Local Primary Stations (LP1 or LP2) and remotely override the audio and video on all channels on the Cable System. Each Affected Jurisdiction shall take reasonable precautions to prevent any inappropriate use of the EAS or Cable System, or any loss or damage to the Cable System, and, except to the extent prohibited by law, shall hold harmless and defend Grantee, its employees, officers and assigns from and against any claims arising out of use of the EAS by that Affected Jurisdiction, including but not limited to, reasonable attorneys' fees and costs.

#### 4. PEG SERVICES

4.1. *PEG Access Channels:*

4.1.1. All PEG Access Channels provided for herein shall be administered by the Grantor or its designee. Grantor or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531. Grantee shall cooperate with Grantor or its designee in the use of the Cable System for the provision of PEG Access Channels.

4.1.2. In order to ensure universal availability of Public, Educational and Government programming, Grantee shall provide Grantor, within one hundred twenty (120) days of the Effective Date of this Agreement, six (6) dedicated Public, Educational, and Government Access Channels ("PEG Access Channels"). Grantee shall not be required to distribute to its Subscribers a greater number of PEG Access Channels than those distributed by other franchised Cable Operators providing Cable Service within the Franchise Area. All PEG Access Channels will be on the Basic Service Tier and will be fully accessible to Subscribers, consistent with FCC regulations. Grantee shall ensure that the signal quality for all PEG Access Channels is in compliance with all applicable FCC technical standards. Grantee will use equipment and procedures that will minimize the degradation of signals that do not originate with the Grantee. Grantee shall provide regular and routine maintenance and repair/replacement of transmission equipment it supplies necessary to carry a quality signal on the PEG Access Channels and from any Origination Points provided for herein.

4.1.3. Within ten (10) days after the Effective Date of this Agreement, Grantor shall inform Grantee of the general nature of the programming to be carried on the initial PEG Access Channels set aside by Grantee. Grantor and Affected Jurisdictions authorize Grantee to transmit such programming within and outside the Franchise Area. Grantee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from Grantor to the extent such channel assignments do not interfere with Grantee's existing or planned channel line-up. If Grantor later changes the programming carried on a PEG Access Channel(s), Grantor shall provide Grantee with at least ninety (90) days notice of the change(s).

4.1.4. If a PEG Access Channel provided under this Article is not being utilized by Grantor, Grantee may utilize such PEG Channel, in its sole discretion, until such time as Grantor elects to utilize the PEG Access Channel for its intended purpose.

4.1.5. Grantor shall require all local producers and users of any of the PEG facilities or Channels to agree to authorize Grantee to transmit programming consistent with this agreement in writing and to defend and hold harmless Grantee and Grantor from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or PEG Access Channel.

4.1.6. Existing Access Channels: Grantee shall provide up to six (6) high definition ("HD") Downstream Channels for distribution on Grantee's Basic Service level of Public, Educational, and Governmental Access Programming. Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.

4.1.6.1. Grantee shall place one Access Channel under this Franchise on channel 11 in Grantee's channel lineup.

4.1.6.2. Grantee shall place the remaining Access Channels under this Franchise on consecutive channel numbers in Grantee's channel lineup where other commercial standard definition (SD) format channels are carried or, for the high definition (HD) format Access Channels, where other commercial HD format channels are carried.

4.1.6.3. Grantee shall notify the City and the Designated Access Providers of the Access Channel assignments at least 60 days prior to Grantee making the Access Channels available to Subscribers.

4.1.6.4. If Grantee reassigns Access Channel numbers, Grantee shall provide at least 60 days advance notice to the City and the Designated Access Providers. Grantee shall ensure that Subscribers are notified of such reassignment consistent with notice requirements under the City's Cable Television Consumer Protection Policy set forth in Portland City Code Chapter 3.115. Grantee shall also use the customer messaging function of its set-top unit to provide Subscribers the new channel assignments at least 30 days prior to the change and for at least 30 days after the change. In conjunction with any reassignment of any Access Channel, Grantee shall provide a minimum of \$5,000 compensation to a Designated Access Provider for costs associated with the change. Compensation shall be paid on a per-event basis, regardless of the number of channels affected by the change.

4.1.7. Grantee's Use of Mosaic Channel.

4.1.7.1. Grantee may make PEG channels available via a multi view or mosaic display. If so, Grantee shall use Channel 31 in its channel lineup as a means to provide ease of access by Subscribers to the Access Channels placed on channel numbers significantly higher than the access channels have historically been placed under other cable services franchises in the City. Grantee refers to this type of channel as a "Mosaic Channel." As used in this Section 5.3(B), "Mosaic Channel" means a channel which displays miniaturized media screens and related information for a particular cluster of channels with common themes. The Mosaic Channel serves as a navigation tool for subscribers, which displays the cluster of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel in the cluster.

4.1.7.2. Grantee shall use its Channel 31 Mosaic Channel to display all Access Channels required under this Franchise, except the Access Channel carried on Channel 11. Grantee shall not include any other channel on the Channel 31 Mosaic Channel unless the City provides advance written consent.

4.1.7.3. The Mosaic Channel mechanism shall allow subscribers to navigate directly from Channel 31 to the requested Access Channel in a single operation without any intermediate steps. When using the Channel 31 Mosaic Channel, Subscribers shall be directed to the requested Access Channel in a high definition (HD) format if appropriate to the Subscriber's level of service; otherwise, the Subscriber shall be directed to the standard definition (SD) Access Channel.

4.2 Grantee shall consult with the Designated Access Providers to determine the Access Channels information displayed on the Channel 31 Mosaic Channel. However, the information shall be, at a minimum, reasonably commensurate with Grantee's display of commercial channels on Mosaic Channels.

4.3 *PEG Access Program Listings On Cable System's Digital Channel Guide.*

4.3.1 To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Grantor or the DAP to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG/PCN fee as set forth below.

4.3.2. PEG Access Interface with Grantee Video-On-Demand Capabilities. No later than twelve (12) months after the Effective Date, Grantee shall include up to 25 hours, at any given time, of high definition (HD) format Access programming on its video-on-demand ("VOD") platform to be accessible free of charge to Cable Services Subscribers on the same basis as commercially offered VOD content. Grantee shall downconvert HD format Access programming to a standard definition format when necessary to provide VOD Access programming to Subscribers without access to HD format VOD programming. Grantee agrees to work in good faith with the Designated Access Providers to establish a mutually agreeable process for placing Access programming on the VOD platform, including but not limited to, an efficient online, electronic method for provision of HD format programming to Grantee including encoding specifications for programming format. Grantee shall include Access VOD program information in its VOD program guides. Designated Access Providers are responsible for selecting the Access programming and providing it to Grantee in a high definition (HD) format. Grantee and the City recognize that future development of VOD technology may allow for the Designated Access Providers and Grantee to agree on a mutually acceptable alternative to including Access programming on Grantee's VOD platform and increasing the amount of Access programming available to Subscribers.

4.4. *Connection of PEG Access Headend:*

4.4.1. Grantor shall provide suitable video signals for the PEG Access Channels to Grantee at Grantor's PEG Access Headend located at 15201 NW Greenbrier Parkway, Building C-1, Beaverton, Oregon 97006. Upon receipt of a suitable video signal, Grantee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Grantee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Grantee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Grantee to fulfill such obligations. The Grantee shall, at Grantee's expense, provide connection, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the PEG Access Headend as of the Effective Date of this Agreement. If

the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG/PCN fee set forth below.

4.4.2. *Changes in Technology.* In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's Signal delivery technology, which directly or indirectly affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in order to be compatible with such change for purposes of transport of and delivery of any Access Channels Grantee shall, at its own expense and free of charge to Grantor and DAP, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change

4.4.3. *Technical Quality.* The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment, necessary to carry a quality Signal to and from demarcation at Grantor's facilities.

4.4.4. *Live Origination Points.* Two new, permanent Origination Points required by the Grantor as listed in Exhibit B shall be provided by Grantee within 180 days from the Franchise Effective Date, at the expense of Grantee.

4.4.5. Additional Permanent Live Origination Points requested by the Grantor in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor. Such costs may be paid for from the PEG/PCN fee set forth below. There shall be no charge to the Grantor, to the Commission, to any other Access program, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

## **5. PEG ACCESS AND PCN GRANT FUND**

5.1. Grantee shall support the continued Public, Educational and Government (PEG) Programming, through the following funding:

### *5.2. Fund Payments.*

5.2.1. During the term of this Agreement, Grantee agrees to collect and pay Grantor eighty cents (\$0.80) per Subscriber, per month to support the capital costs for PEG Access facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG Access facilities, and to support the capital and operating needs of PCN users. Nothing in this Section shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section for any lawful purpose permitted under applicable federal law. To the extent the

incumbent Cable Operator's fee for this Fund changes to an amount that is different than the fee in this section, upon sixty days written notice from the Grantor, Grantee shall automatically adjust this amount to maintain parity with the incumbent.

5.2.2. Grantee shall make such payments quarterly, following the Effective Date of this Agreement, for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days after the end of each quarter.

5.3. *Annual Grant Award Report.* Grantor shall provide a report annually to the Grantee on the use of the funds provided by to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of the close of Grantor's fiscal year.

5.4. Grantee may reasonably review Records of the Grantor related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial Records of Grantor that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such Records available for inspection and copying during normal business hours at the office of the Grantor.

5.5. *PEG Access Not Franchise Fees.* Grantee agrees that financial support for the PEG Access and PCN Grant Fund, and all other Grantee PEG and PCN obligations set forth in this Agreement shall in no way modify or otherwise affect Grantee's obligations to pay Franchise fees to Grantor. Grantee agrees that although the sum of Franchise fee and the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any past, present or future Franchise fee payments under this Agreement so long as such fees are used in a manner consistent with this Agreement and federal law.

5.5.1. Grantor recognizes Franchise fees and certain additional commitments are external costs as defined under the FCC rate regulations in force at the time of adoption of this Agreement and Grantee has the right and ability to include Franchise fees and certain other commitments on the bills of cable Subscribers (47 C.F.R. Section 76.922).

## 6. FRANCHISE FEES

6.1. *Payment to the Grantor:* Grantee shall pay to the Grantor a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Grantee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee

remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of annual Gross Revenues required herein, Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

6.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a written report prepared by a representative of Grantee showing the basis for the computation in the form attached hereto as Exhibit C. Grantor shall have the right to reasonably request further supporting documentation and information for each Franchise fee payment, subject to the confidentiality provisions in this Agreement; provided that Grantee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Agreement.

6.3. *Acceptance of Payments:* Subject to Section 7.4 below, no acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

6.4. *Audit of Franchise Fee Payments:*

6.4.1. Grantor, or its designee, may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every two (2) years during the Term. As a part of the audit process, Grantor or Grantor's designee may inspect Grantee's books of accounts relative to Grantor at any time during regular business hours and after thirty (30) calendar days prior written notice.

6.4.2. All records deemed by Grantor or Grantor's designee to be reasonably necessary for such audit, which shall include, but not be limited to, all records subject to inspection by Grantor pursuant to Section 9.2 herein, shall be made available by Grantee in a mutually agreeable format and location. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Grantee may provide such responses within a reasonable time after the expiration of the response period above so long as Grantee makes a good faith effort to procure any such tardy response.

6.4.2.1. During any audit period when Grantee has less than 5000 Subscribers, if the results of any audit indicate that Grantee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by five percent (5%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the Franchise fee by more than five percent (5%) during the audit period, then Grantee shall pay the reasonable, documented, third-party costs of the audit up to Ten Thousand Dollars (\$10,000) per audit.

6.4.2.2. During any period when Grantee has 5,000 or more Subscribers, if the results of any audit indicate that Grantee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by three percent (3%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the Franchise fee by more than three percent (3%) during the audit period, then Grantee shall pay the reasonable, documented, third-party costs of the audit up to Fifteen Thousand Dollars (\$15,000) per audit.

6.4.2.3. Grantor agrees that any audit shall be performed in good faith. If any audit discloses an underpayment of the Franchise fee of any amount, Grantee shall pay Grantor the amount of the underpayment, together with interest as provided in Section 7.7 below. Any auditor employed by Grantor shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any.

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

6.6. *Annual Franchise Fee Report:* Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor an annual summary of Franchise fee calculations, substantially in the form attached hereto as Exhibit C but showing annual rather than quarterly amounts.

6.7. *Interest on Late Payments:* In the event that a Franchise fee payment or other sum is not received by Grantor on or before the due date, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the statutory interest rate on judgments in the State of Oregon.

6.8. *Payment on Termination:* If this Agreement terminates for any reason, Grantee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Grantee since the end of the previous calendar quarter for which Franchise fees were paid. If, within sixty (60) days of providing such financial statement, Grantee has not satisfied all remaining financial obligations to Grantor, Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to Grantor by utilizing the funds available in the Letter of Credit provided by the Grantee under Section 13.6 of this Agreement.

6.9. *Costs of Publication:* Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor under applicable law.

## **7. CUSTOMER SERVICE**

7.1. Customer Service Requirements are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

7.2. If, at any time during the term of this Franchise, "Effective Competition," as defined by the Communications Act, as the term may be reasonably applied to Grantee, ceases to exist in the Franchise Area, Grantor and Grantee agree to enter into good faith negotiations to determine if there is a need for additional customer service requirements. Grantor and Grantee shall enter into such negotiations within forty-five (45) days following a request for negotiations by Grantee after the cessation of "Effective Competition" as described above.

## **8. REPORTS AND RECORDS**

8.1. *Open Books and Records:* Upon reasonable written notice to Grantee and with no less than thirty (30) days written notice to Grantee, Grantor shall have the right to inspect Grantee's books and records pertaining to Grantee's provision of Cable Service in the Franchise Area at any time during weekday business hours and on a nondisruptive basis at a mutually agreed location, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Grantee may organize the necessary books and records for appropriate access by Grantor. Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally, or for security reasons cannot be copied and moved, then the Grantee may request that the inspection take place at a location mutually agreed to by Grantor and the Grantee, provided that the Grantee must pay all reasonable travel expenses incurred by Grantor in inspecting those documents or having the documents inspected by its designee, above those that would have been incurred had the documents been produced in Grantee's Title II service territory in the Portland metropolitan area.

8.2. *Proprietary Books and Records:* If the Grantee believes that the requested information is confidential and proprietary, the Grantee must provide the following documentation to Grantor: (i) specific identification of the information; and (ii) statement attesting to the reason(s) Grantee believes the information is confidential. The Grantor shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Franchise Area maps, plans, or other documents requested by Grantor that are provided pursuant to this Agreement to the extent they are designated as such by the Grantee, consistent with the Oregon Public Records Law. Should Grantor be required under state law to disclose information derived from Grantee's books and records, Grantor agrees that it shall provide Grantee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area, or any confidential information relating to such Cable Service where the Grantor and/or Affected Jurisdictions cannot lawfully protect the confidentiality of the information.

8.3. *Records Required:* Grantee shall maintain:

8.3.1. Records of all written complaints for a period of three (3) years after receipt by Grantee. The term "complaint" as used herein refers to complaints about any

aspect of the Cable System or Grantee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.3.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.3.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Grantee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.3.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Grantee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

8.3.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

8.4. *Additional Requests:* The Grantor shall have the right to request in writing such information as is appropriate and reasonable to determine whether Grantee is in compliance with applicable Customer Service Standards, as referenced in Exhibit D. Grantee shall provide Grantor with such information in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for the Grantor to evaluate compliance, subject to Section 9.6.

8.5. *Copies of Federal and State Documents:* Upon request, Grantee shall submit to the Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts, regulatory agencies or other government bodies if such documents specifically relate to the Grantee's provision of Cable Services within the Franchise Area. Grantee shall submit such list or documents to the Grantor no later than thirty (30) days after receiving the request for such documents. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency or a request for confidential treatment is pending. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the Grantor and its duly authorized agents and shall not be made available for public inspection.

8.6. *Report Expense:* All reports and records required under this or any other Section shall be furnished, without cost, to Grantor. Grantee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have not been defined specifically within this Section 8 in order to meet the requirements of this Section 8.

## 9. INSURANCE AND INDEMNIFICATION

### 9.1. *Insurance:*

9.1.1. Grantee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of Three Million Dollars (\$3,000,000) combined single limit for property damage and bodily injury; one million dollar (\$1,000,000) limit for broadcaster's liability. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Grantee's Cable Service business in the Franchise Area.

9.1.1.2. Automobile Liability Insurance in the amount of Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$2,000,000 policy limit.

9.1.2. Grantor and Affected Jurisdictions shall be designated as additional insureds under each of the insurance policies required in this Section 10 except Worker's Compensation and Employer's Liability Insurance.

9.1.3. Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

9.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

9.1.5. Upon written request, Grantee shall deliver to Grantor Certificates of Insurance showing evidence of the required coverage.

9.2. *Indemnification:* General Indemnification. Grantee shall indemnify, defend and hold harmless the Grantor, its officers, agents, boards and employees, from any liability for claims, damages, costs or expenses, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation: copyright infringement; defamation; damages arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents, or its employees; or by reason of any neglect or omission of Grantee to keep its system in a safe condition. Grantee's indemnification obligation shall not extend to liability directly arising out of any negligence or willful misconduct by the Grantor or its officers, agents, boards or employees. The Grantor shall provide Grantee prompt

notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of the Grantor which approval shall not be unreasonably withheld. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor and the Grantor shall fully cooperate with the Grantee.

9.3 Defense of the Franchise. Grantee agrees and covenants to indemnify, defend and hold the Grantor, its officers, agents and employees, harmless from injury, damage, loss, liability, reasonable cost or expense, including expert witnesses and other consultants, court and appeal costs and reasonable attorney fees or expenses, arising from or in any way related to the grant of, or terms of, this Franchise. This agreement to indemnify, defend and hold harmless encompasses, but is not limited to, injury, damages, losses, liabilities, costs or expenses, including expert witnesses and other consultants, court and appeals costs and reasonable attorney fees and expenses that in any way arise in connection with a claim or defense that the Grantor: (1) lacked authority under federal or state law, its charters, city codes or ordinances in granting this Franchise; (2) acted in any disparate or discriminatory manner against any incumbent franchisee or permittee in granting this Franchise; (3) granted this Franchise in violation of any contractual rights belonging to any incumbent franchisee or permittee.

## 10. TRANSFER OF FRANCHISE

10.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no "Transfer of the Franchise" shall occur without the prior consent of Affected Jurisdictions, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under this Section 11.

10.2. A "Transfer of the Franchise" shall mean any transaction in which:

10.2.1. an ownership or other interest in Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Grantee is transferred; or

10.2.2. The rights held by Grantee under the Franchise are transferred or assigned to another Person or group of Persons.

However, notwithstanding Subsections 10.2.1 and 10.2.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee. The parent of Grantee is shown in Exhibit E.

10.3. Grantee shall make a written request ("Request") to Grantor and Affected Jurisdictions for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably requested by Grantor and Affected Jurisdictions in respect to its

consideration of a proposed Transfer of the Franchise. Affected Jurisdictions shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided it has received all requested information. Subject to the foregoing, if the Member Jurisdictions fail to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Grantee and Affected Jurisdictions agree to an extension of time.

10.4. In reviewing a Request related to a Transfer of the Franchise, Grantor and Affected Jurisdictions may inquire into the legal, technical and financial qualifications of the prospective transferee, and Grantee shall assist Grantor and Affected Jurisdictions in so inquiring. Affected Jurisdictions may condition said Transfer of the Franchise upon such terms and conditions as they deem reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective or transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with the terms and conditions of this Agreement.

10.5. The consent or approval of Affected Jurisdictions to any Request by the Grantee shall not constitute a waiver or release of any rights of Affected Jurisdictions, and any transferee shall be expressly subordinate to the terms and conditions of this Agreement.

10.6. Notwithstanding the foregoing, the parties agree that the Affected Jurisdictions' consent and/or approval to any transfer or assignment of any rights, title, or interest of Grantee to any Person shall not be required where Qwest Broadband Services, Inc. or its lawful successor which is not a third party transferee remains the Grantee following any such transfer or assignment.

## **11. RENEWAL OF FRANCHISE**

11.1. The parties agree that any proceedings undertaken by Grantor and Affected Jurisdictions that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

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

## **12. ENFORCEMENT AND TERMINATION OF FRANCHISE**

12.1. *Notice of Violation:* In the event Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

12.2. *Grantee's Right to Cure or Respond:* Grantee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to Grantor, contesting (in whole or in part) Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection 13.3 below; (ii) cure the violation; or (iii) notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps Grantee shall take to cure the violation including Grantee's projected completion date for such cure. The procedures provided in Section 13.4 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation.

12.2.1. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing.

12.2.2. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection 13.2(iii), the Grantor shall set a hearing to determine what fines, if any, shall be applied.

12.2.3. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection 13.2(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

12.3. *Public Hearing:* In the case of any hearing pursuant to section 13.2 above, Grantor shall provide reasonable notice to Grantee of the hearing in writing. At the hearing Grantee shall be provided an opportunity to be heard, to examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.

12.3.1. If, after the hearing, Grantor determines that a violation exists, Grantor may use one of the following remedies:

12.3.1.1. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

12.3.1.2. Establish the amount of fine set forth in Section 13.5, taking into consideration the criteria provided for in subsection 13.4 of this Agreement as appropriate in Grantor's discretion; or

12.3.1.3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law; or

12.3.1.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.7.

12.4. *Reduction of Fines:* The fines set forth in Section 12.5 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

12.4.1. Whether the violation was unintentional;

12.4.2. The nature of the harm which resulted;

12.4.3. Whether there is a history of prior violations of the same or other requirements;

12.4.4. Whether there is a history of overall compliance, and/or;

12.4.5. Whether the violation was voluntarily disclosed, admitted or cured.

12.5. *Fine Schedule:*

12.5.1. For violating telephone answering standards set forth in Exhibit D, Section 2.D for a quarterly measurement period, unless the violation has been cured, fines shall be as set forth below. A cure is defined as meeting the telephone answering standards for two consecutive quarterly measurement periods.

<u>Quarterly Telephone Answer Time Fines</u>			
	<u>1<sup>st</sup> Violation</u>	<u>2<sup>nd</sup> Violation</u>	<u>3<sup>rd</sup> Violation</u>
Quarterly Fine	\$ 2,000*	\$ 4,000*	\$ 6,000*
* If after forty-two (42) months, no fines have been assessed for violations of call answer time standards, these fines shall be reduced by fifty percent (50%).			

12.5.2. For all other violations of this Agreement, the fine shall be \$250 per day.

12.5.3. Total fines shall not exceed Twenty-Five Thousand Dollars (\$25,000) in any twelve-month period.

12.5.4. If Grantor elects to assess a fine pursuant to this Section, such election shall constitute Grantor's exclusive remedy for the violation for which the fine was assessed for a period of sixty (60) days. Thereafter, the remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of

another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

12.6. *Letter of Credit:* Grantee shall provide a letter of credit in the amount of Twenty Thousand Dollars (\$20,000) as security for the faithful performance by Grantee of all material provisions of this Agreement.

12.7. *Revocation:* Should Grantor seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.5 above, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

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

12.7.2. Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.

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

12.8. *Limitation on Grantor Liability:* The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. §555a is applicable to this Agreement.

### 13. MISCELLANEOUS PROVISIONS

13.1. *Actions of Parties:* In any action by Grantor or Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely

manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

13.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

13.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of Grantor.

13.4. *Force Majeure:* Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

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

13.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

13.5.1. Notices to Grantee shall be mailed to:

Qwest Broadband Services, Inc., d/b/a CenturyLink  
1801 California Street, 10<sup>th</sup> Floor  
Denver, CO 80202  
ATTN: Public Policy

with a copy to:

Qwest Broadband Services, Inc. d/b/a CenturyLink  
310 SW Park, 11<sup>th</sup> floor  
Portland, OR  
ATTN: Public Policy

13.5.2. Notices to the Grantor shall be mailed to:

MACC Administrator  
Metropolitan Area Communications Commission  
15201 NW Greenbrier Parkway, Suite C-1  
Beaverton, OR 97006

13.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Grantee and Grantor, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

13.7. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

13.8. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

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

13.10. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

13.11. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

13.12. *Independent Legal Advice:* Grantor and Grantee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

13.13. *Grantor Authority:* Grantor represents and warrants that it is authorized to enter into this Agreement on behalf of its Affected Jurisdictions pursuant an Intergovernmental Cooperation Agreement originating in 1980 and in effect in its current form since February 13, 2003, and that the party signing below is authorized to execute this Agreement on behalf of the Affected Jurisdictions following certification that the governing bodies of each of the Affected Jurisdictions have approved this Agreement as required by Section 4.E of the Intergovernmental Cooperation Agreement.

13.14. *Grantee Authority:* Grantee represents and warrants that it is authorized to enter into this Agreement and that the party signing below is authorized to execute this Agreement.

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

By: \_\_\_\_\_  
Administrator

By: \_\_\_\_\_  
[Title]

EXHIBITS

Exhibit A: Franchise Area

Exhibit B: Live Origination Points

Exhibit C: Quarterly Franchise Fee Remittance Form

Exhibit D: Customer Service Standards

Exhibit E: Franchise Parent Structure as of May 1, 2015

Exhibit F: Quarterly Customer Service Standards Performance Report

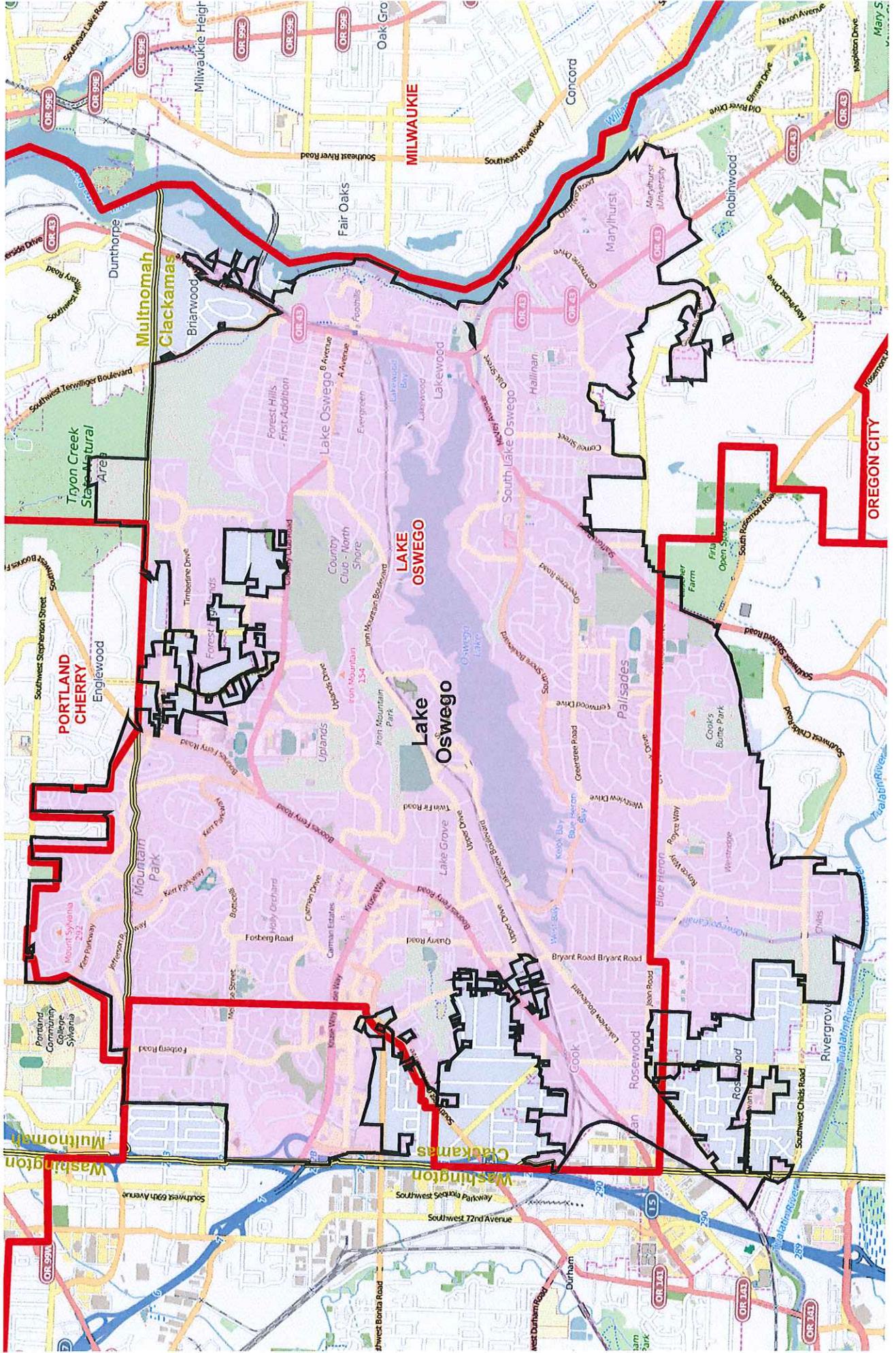
**EXHIBIT A**  
**FRANCHISE AREA MAPS**

# Lake Oswego, Oregon



CenturyLink®

 City  County  CenturyLink Wirecenter



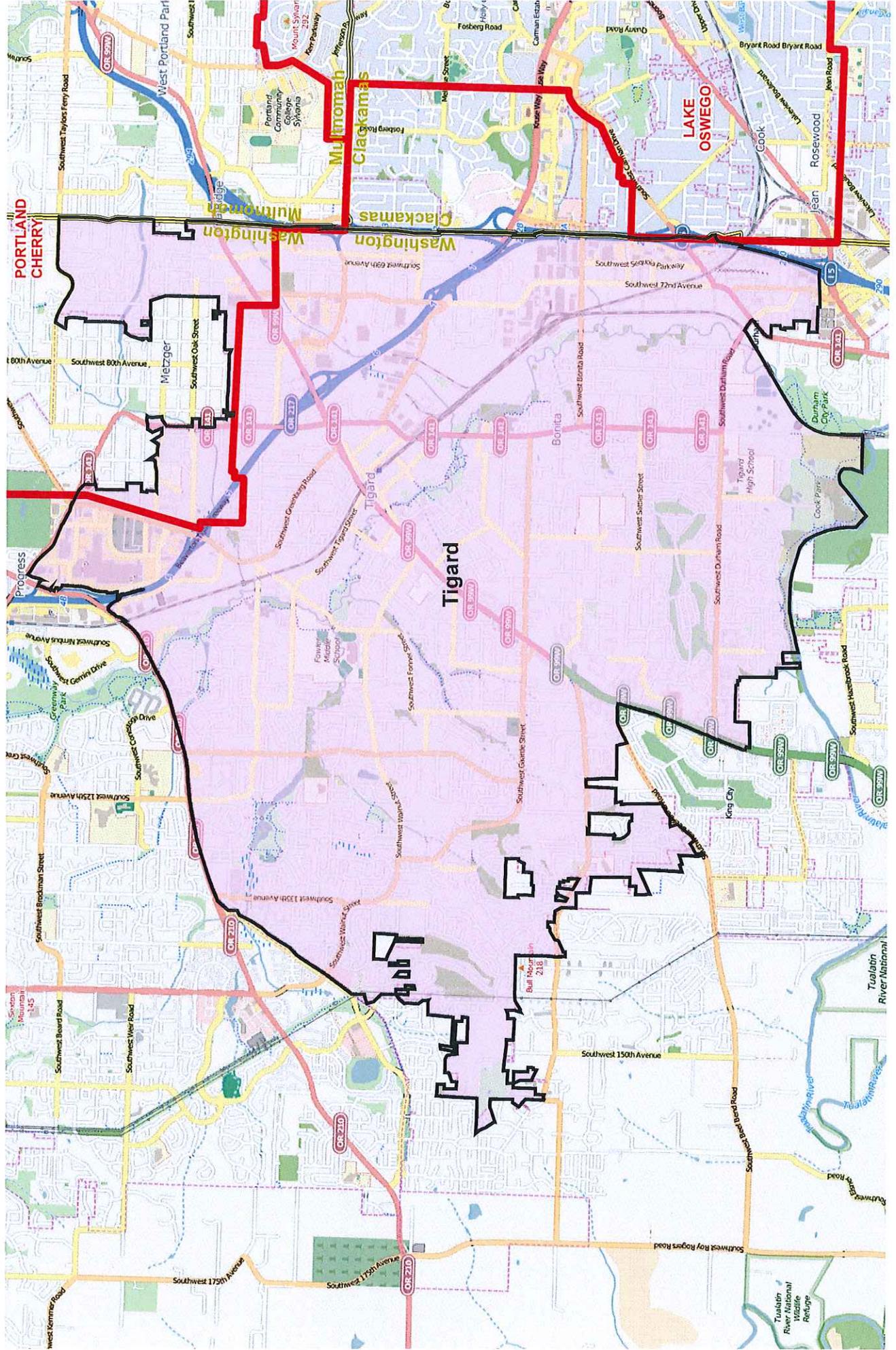


# Tigard, Oregon



CenturyLink®

-  City
-  County
-  CenturyLink Wirecenter

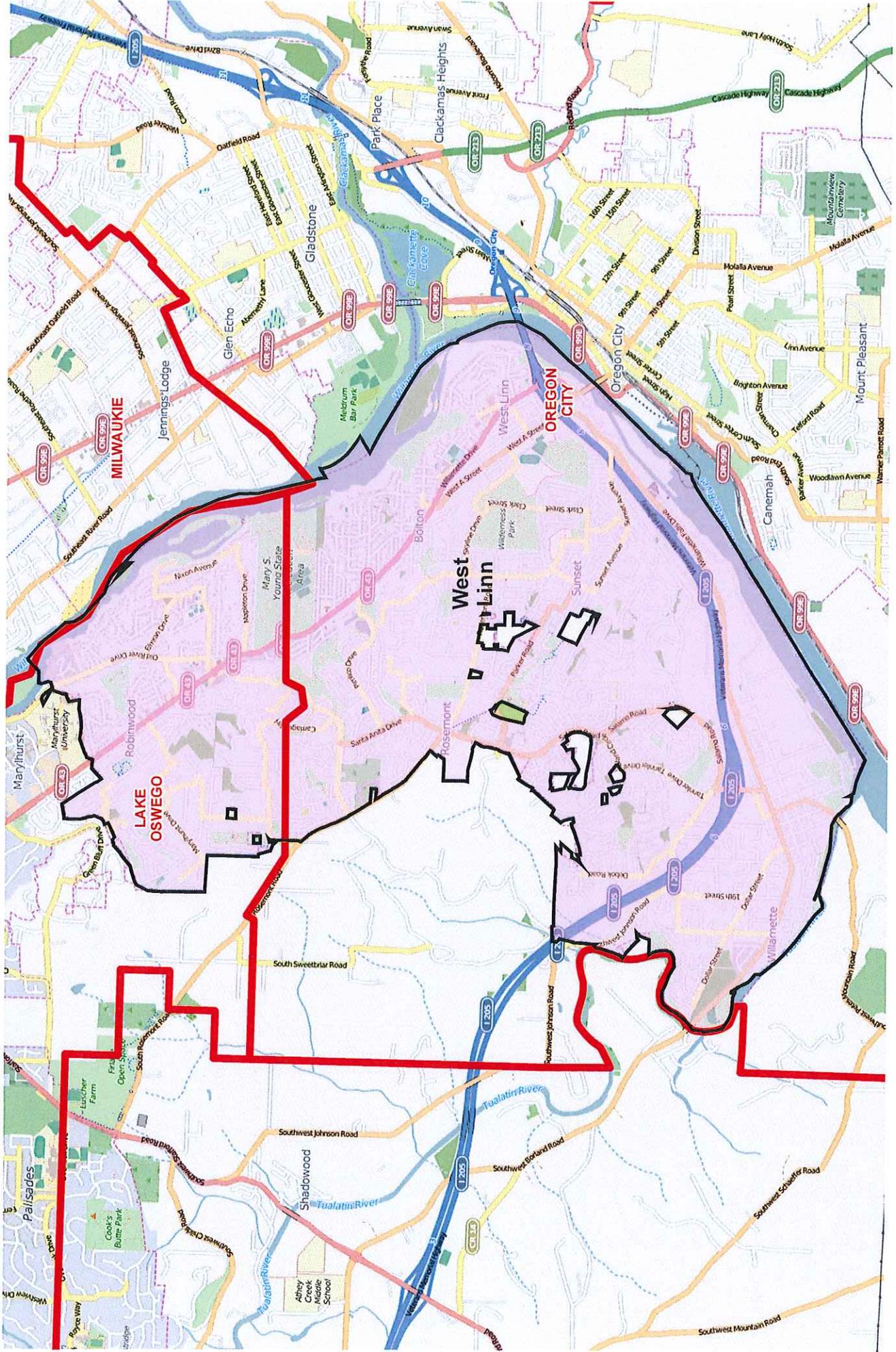


# West Linn, Oregon



CenturyLink®

-  City
-  County
-  CenturyLink Wirecenter





**EXHIBIT B**  
**ORIGINATION POINTS**

**West Linn Wilsonville School District 3JT Office**

**22210 SW Stafford Road**

**Tualatin, OR 97062**

**Clackamas Community College**

**19600 Molalla Ave**

**Oregon City, OR 97045**

**EXHIBIT C**

**QUARTERLY FRANCHISE FEE REMITTANCE FORM**

**MACC  
FRANCHISE FEE SCHEDULE/REPORT**

For the Quarter Ending \_\_\_\_\_

	Month 1	Month 2	Month 3
1 Monthly Recurring Cable Service Charges (e.g., Basic, Enhanced Basic, Premium and Equipment Rental)			
2 Usage Based Charges (e.g., Pay Per View, Installation)			
3 Other Misc. (e.g., Late Charges, Advertising, Leased Access)			
4 Franchise Fees Collected			
Less:			
1 Sales Tax Collected	\$	\$	\$
2 Uncollectibles			
Total Receipts Subject to Franchise Fee Calculation			
Franchise Fee Rate 5%			
<b>Franchise Fee Due</b>			
<b>Quarter Franchise Fee</b>			

Monthly PEG Grant Collection

Quarterly PEG Grant Remission

\$ \_\_\_\_\_

## EXHIBIT D

### CUSTOMER SERVICE STANDARDS

These standards shall apply to Grantee to the extent it is providing Cable Services over the Cable System in the Franchise area. However, for the first three (3) months after the Effective Date, Grantee shall not be required to provide reports under this Agreement and, for the first six (6) months after the Effective Date, Grantor will not impose fines if Grantee fails to meet the customer service standards set forth in this Agreement. This Section sets forth the minimum customer service standards that the Grantee must satisfy.

#### SECTION 1: DEFINITIONS

A. Normal Operating Conditions: Those service conditions which are within the control of Grantee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

B. Respond: The start of Grantee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.

C. Service Call: The action taken by Grantee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Service Interruption: The loss of picture or sound on one or more cable channels.

E. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Franchise Area.

#### SECTION 2: TELEPHONE AVAILABILITY

A. Grantee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives shall be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Grantee representatives shall identify themselves by name when answering this number.

B. Century Link's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Franchise Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.

C. Grantee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Grantee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Grantee shall be answered within thirty (30) seconds. The Grantee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Grantee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

E. Under Normal Operating Conditions, callers to the Grantee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Forty-five (45) days following the end of each quarter, the Grantee shall report to Grantor, using the form shown in Exhibit F, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D; and

(2) Percentage of time customers received a busy signal when calling the Grantee's service center as set forth in Subsection 2.E.

G. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change not less than thirty (30) days in advance.

### **SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS**

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Grantee-supplied equipment and Cable Service.

B. Installations to Qualified Living Units shall be performed within seven (7) business days after an order is placed. Grantee shall meet this standard for ninety-five percent (95%) of the installations it performs, as measured on a calendar quarter basis, excluding those requested by the customer outside of the seven (7) day period.

C. Grantee shall provide Grantor with a report forty-five (45) days following the end of the quarter, noting the percentage of installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.

D. At Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change not less than thirty (30) days in advance.

E. Grantee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Grantee's discretion, Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.

(1) Grantee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.

(2) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

F. Grantee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Grantee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a conveniently located local business office. If requested by a mobility-limited customer, the Grantee shall arrange for pickup and/or replacement of converters or other Grantee equipment at Subscriber's address or by a satisfactory equivalent.

#### **SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES**

A. Grantee shall promptly notify Grantor of any Significant Outage of the Cable Service.

B. Grantee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure,

Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Franchise Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Grantee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

C. Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Franchise Area.

(2) Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.

E. Under Normal Operating Conditions, Grantee shall complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. Grantee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Grantee shall provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request. At the Grantee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. The Grantee shall notify the Grantor of such a change at least thirty (30) days in advance.

H. At Grantee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change at least thirty (30) day in advance.

I. Under Normal Operating Conditions, Grantee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture

or sound for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Grantee to verify the problem if requested by Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

J. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Grantee shall issue a credit upon request to the affected Subscribers in the amount equal to one-thirtieth (1/30) of the monthly recurring charges for each consecutive twenty-four (24) hour period the Cable Service was out. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

#### **SECTION 5: CUSTOMER COMPLAINTS REFERRED BY GRANTOR**

Under Normal Operating Conditions, Grantee shall begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Grantee shall notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Grantee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Grantee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Grantee shall inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, "resolve" means that Grantee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

#### **SECTION 6: BILLING**

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmental-imposed fees. Grantee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Grantee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Grantee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within Grantee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, Grantee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. Grantee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.

G. Grantee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.

H. Grantee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Grantee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Grantee, the payment alternative may be limited.

I. Grantee shall provide Grantor with a sample Cable Services bill, on a monthly basis.

## **SECTION 7: DEPOSITS, REFUNDS AND CREDITS**

A. Grantee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Grantee, or 3) who rent Subscriber equipment from Grantee, so long as such deposits are applied on a non-discriminatory basis. The deposit Grantee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Grantee may charge for Subscriber equipment is the cost of the equipment which Grantee would need to purchase to replace the equipment rented to the Subscriber.

B. Grantee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Grantee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Grantee or its authorized agent. Appropriate time considerations shall be included in Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

#### **SECTION 8: RATES, FEES AND CHARGES**

A. Grantee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Grantee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Grantee's equipment (for example, a dog chew).

B. Grantee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.

C. All of Grantee's rates and charges shall comply with applicable law. Grantee shall maintain a complete current schedule of rates and charges for Cable Services on file with the Grantor throughout the term of this Franchise.

#### **SECTION 9: DISCONNECTION /DENIAL OF SERVICE**

A. Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless Grantee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service

was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior toward Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

#### **SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS**

A. All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Grantee shall wear a clearly visible identification card bearing their name and photograph. Grantee shall make reasonable effort to account for all identification cards at all times. In addition, all Grantee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Grantee shall be clearly identified as such to the public. Specifically, Grantee vehicles shall have CenturyLink's logo plainly visible. The vehicles of those contractors and subcontractors working for Grantee shall have sufficient visible identification to allow for determination that a contractor is working on behalf of CenturyLink.

B. All contact with a Subscriber or potential Subscriber by a Person representing Grantee shall be conducted in a courteous manner.

C. Grantee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Grantee may be referred to Grantor. A copy of the annual notice required under this Subsection 10.C will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers.

D. Grantee shall provide the name, mailing address, and phone number of Grantor on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).

E. All notices identified in this Section shall be by either:

- (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
- (2) A separate electronic notification.

F. Grantee shall provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Grantee. If the change is not within Grantee's control, Grantee shall provide an explanation to Grantor of the reason and expected length of delay. Grantee shall provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.

G. Grantee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Grantee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Grantee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Grantee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Grantee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of Grantee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Grantee and as soon as possible if not with the control of Grantee.

H. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

I. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

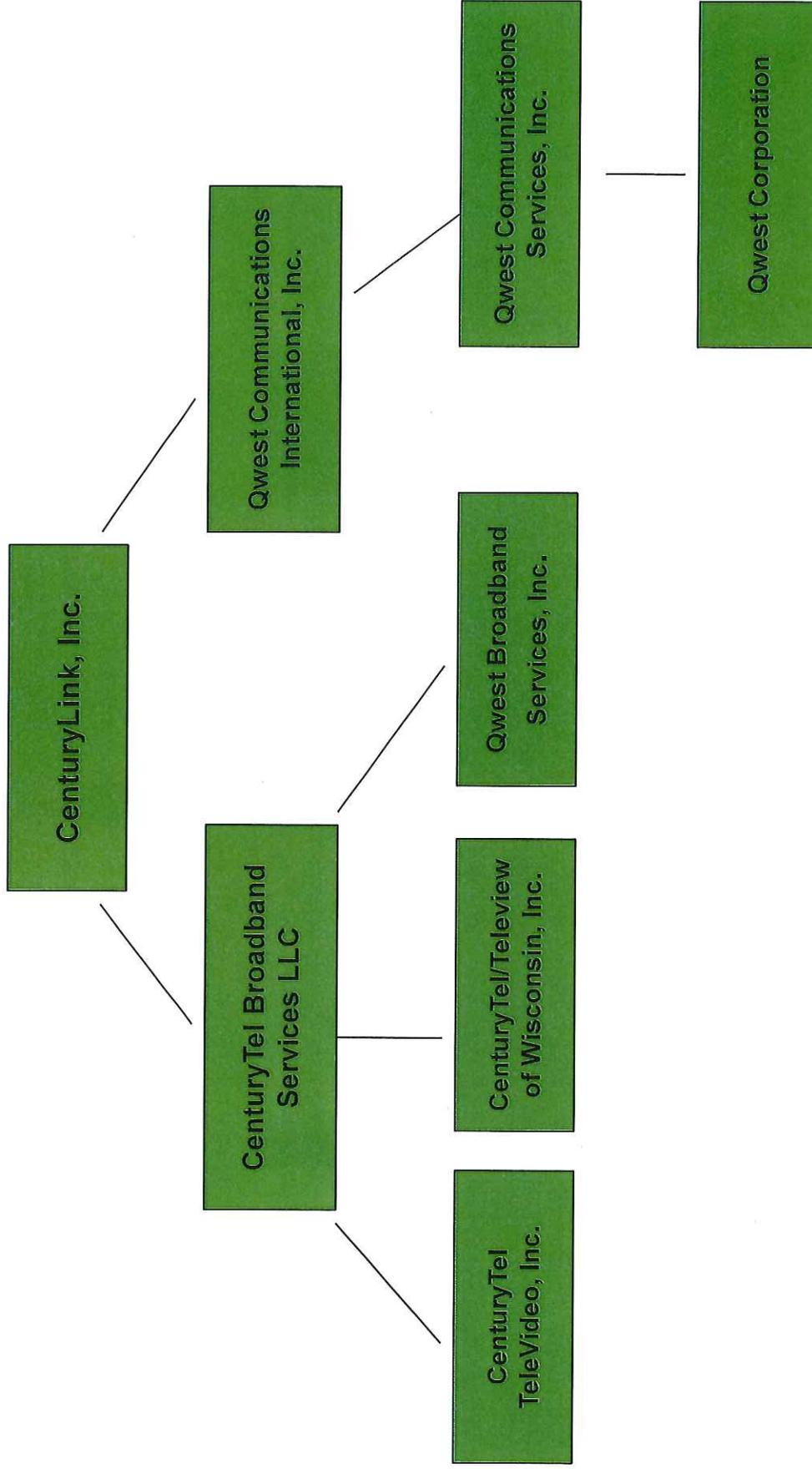
J. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.

K. Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

**EXHIBIT E**  
**GRANTEE PARENT STRUCTURE AS OF May 1, 2015**

# Company Structure



## Exhibit E

**EXHIBIT F  
CUSTOMER SERVICE STANDARD REPORT METRICS**

THE FOLLOWING INFORMATION IS PROPRIETARY AND CONFIDENTIAL AND IS CONDITIONALLY EXEMPT FROM THE OREGON PUBLIC RECORDS LAW. THE FOLLOWING INFORMATION QUALIFIES AS PROPRIETARY AND CONFIDENTIAL BUSINESS INFORMATION PURSUANT TO, WITHOUT LIMITATION, OREGON REVISED STATUTE § 192.501(2) AND ANY OTHER APPLICABLE LAW AND SHOULD NOT BE DISCLOSED.

Verizon Video Franchise Report: Contract Requirements	Jan	Feb	Mar	1st Qtr	April	May	June	2nd Qtr	July	Aug	Sept	3rd Qtr	Oct	Nov	Dec	4th Qtr
	VCC-1 Customer Contact Availability 90% Calls Answered within 30 Seconds															
3% Calls Receiving a Busy																
VMR-3 Trouble Completion Intervals 90% Completed Service Interruption Troubles <72 hours																
VPR-1 Completed within Specified # of Days 95% Standard Installs Completed within seven (7) business days after ONT Placement Date, or if ONT exists on Order Creation Date, within seven (7) business days of Order Creation Date (125 FT)																

**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 15-\_\_**

AN ORDINANCE OF THE CITY OF TIGARD GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter “MACC”) was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter “IGA”) to enable its member jurisdictions to work cooperatively and jointly on communications issues, in particular the joint franchising of cable services and the common administration and regulation of such franchises, and the City of Tigard (hereinafter “City”) is a member of MACC;

WHEREAS, the IGA authorizes MACC and its member jurisdictions to grant one or more nonexclusive franchises for the construction, operation and maintenance of a cable service system within the combined boundaries of the member jurisdictions;

WHEREAS, the IGA requires that each member jurisdiction to be served by the proposed franchisee must approve any cable service franchise;

WHEREAS, Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink”) has formally requested a franchise with MACC and five of its member jurisdictions, including the City, and MACC has reviewed the franchisee’s qualifications in accordance with federal law;

WHEREAS, the Board of Commissioners of MACC, by Resolution 2015-07 adopted on the July 8, 2015, recommended that the five affected member jurisdictions grant a franchise to CenturyLink in the form attached hereto as Exhibit “A”;

WHEREAS, MACC and the City have provided adequate notice and opportunities for public comment on the proposed cable services franchise including a public hearing on July 8, 2015; and

WHEREAS, the Council finds that approval of the recommended franchise is in the best interest of the City and its citizens, consistent with applicable federal law;

**NOW THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:**

SECTION 1: There is hereby granted to Qwest Broadband Services, Inc. d/b/a CenturyLink a non-exclusive cable services franchise on the terms and conditions contained in Exhibit “A”.

SECTION 2: The grant of franchise at Section 1 is conditioned upon each of the following events:

(a) The affirmative vote of the governing body of each of the five affected MACC member jurisdictions: the Cities of Lake Oswego, North Plains, Tigard and West Linn, and Washington County; and

(b) Qwest Broadband Services, Inc.'s fulfillment of the franchise acceptance provisions contained in the Franchise; and

(c) Formal written determination by the MACC Administrator that, in accordance with the requirements of the IGA, each of the above two events has occurred.

PASSED: By \_\_\_\_\_ vote of all council members present after being read by number and title only, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Carol A. Krager, City Recorder

APPROVED: By Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
John L. Cook, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

# CENTURYLINK CABLE TV FRANCHISE RECOMMENDATION TO THE CITY OF TIGARD

Prepared by the Metropolitan Area Communications Commission  
August 2015

On July 8, 2015, the Board of Commissioners of the Metropolitan Area Communications Commission (MACC) recommended, by a unanimous vote, that your City and four other affected MACC member jurisdictions grant Qwest Broadband Services, Inc. d/b/a CenturyLink (CenturyLink) a new, competitive franchise agreement (Exhibit A) to provide cable television services within the City. A copy of the Commission's Recommending Resolution and a Comparison of that agreement to the recommended Comcast franchise (Exhibits B and C) are enclosed with this report.

By the terms of the MACC Intergovernmental Agreement, to which your jurisdiction is a party, every affected MACC jurisdiction must adopt the franchise, as recommended, to renew the Comcast franchise – if one of the five jurisdictions votes no, it vetoes the franchise for the others.

**The Recommended Agreement** – The recommended franchise agreement includes all of the important financial, service and regulatory benefits of the new Comcast franchise, but is structured to provide a series of incentives to expand CenturyLink service throughout the area.

## **BACKGROUND**

In February 2015, MACC received a completed cable services application from CenturyLink and began negotiations for a franchise to serve the MACC member jurisdictions of Lake Oswego, North Plains, Tigard, West Linn and unincorporated Washington County (the Affected Jurisdictions). These areas overlay the telecommunications footprint of CenturyLink – those areas where the state PUC has granted CenturyLink the ability to provide telephone service. CenturyLink's fiber and copper technology is being upgraded to carry video programming.

The MACC Intergovernmental Agreement provides for a franchise for a limited-area cable franchise (in this case, five of the fifteen MACC member jurisdictions), and MACC previously granted such a cable franchise to Frontier Communications (originally Verizon), in 2007 for eleven member jurisdictions (including Lake Oswego, Tigard and Washington County).

Throughout March, April and May, CenturyLink met with MACC staff to negotiate a franchise. Those discussions proceeded relatively quickly and negotiations were generally concluded by late May. A proposed franchise agreement was finalized on June 22, 2015. The proposed franchise is based on the Affected Jurisdictions' needs and interests as well as the similarly-situated Frontier cable television franchise as well as a recent CenturyLink franchise granted to the company by the City of Portland. (CenturyLink began providing cable service in portions of Portland in May, 2015.)

Significant sections of the proposed CenturyLink agreement mirror the obligations in the Comcast franchise, including the definition of Gross Revenue, the Customer Service Standards,

Public, Education and Government (PEG) Access requirements and complementary cable services to public buildings. Other requirements, specifically those tied to the technology and design of the system, as well as the regulation of the public Right of Way (ROW) are the same as those set out in the Frontier franchise.

The proposed CenturyLink franchise is granted to CenturyLink's corporate relative, Qwest Broadband Services, Inc. (QBSI). Qwest Corporation owns the facilities in the Affected Jurisdictions' ROW, and QBSI d/b/a CenturyLink will provide cable services over those facilities. The enforceability of the franchise is not negatively affected by this corporate structure.

If adopted, CenturyLink indicates that it will begin service later this year in some small portions of the five franchised jurisdictions, and has plans to add to those areas in the near future.

### **Staff Analysis and Discussion of Key Elements of the CenturyLink Franchise Agreement**

Term. The term of the proposed franchise is similar to the Portland CenturyLink agreement and structured to incentivize the company to build out its network as it gains confidence that this competitive service is viable.

The franchise will expire in just over five years, on December 31, 2020, if the company cannot or will not expand its network beyond that initial service area. If CenturyLink does expand its network to 20% of the service area by 2018, the franchise provides for an additional three years (expiring in 2023). If CenturyLink can expand to 50% of the service area by 2021, the franchise will expire on December 31, 2025 – slightly more than a full ten year franchise.

At the same time, there are significant provisions in the franchise assuring that the company cannot discriminate in any way. The company must offer service to any customer, residential or business in the franchise area where it is technically feasible.

Gross Revenue Definition. The Gross Revenue definition is identical to the new Comcast franchise. CenturyLink will pay five percent on the same basis as Comcast and Frontier.

Right of Way Regulation. CenturyLink will use the facilities of its corporate relative, Qwest Corporation. Qwest Corp. owns the telecommunications facilities in the Affected Jurisdictions' Rights of Way (ROW) and has a license or franchise if appropriate with the affected jurisdictions. All ROW codes and requirements of those jurisdictions will continue to apply to the Qwest/QBSI/CenturyLink facilities. This is the same regulatory structure that the Frontier cable franchise has with MACC and the member jurisdictions served by that company.

PEG Access. All key Public, Education and Government (PEG) Access commitments in the Comcast franchises are contained in the CenturyLink franchise – and improves upon them. There are no HD requirements in the Frontier franchise, and Comcast has a phased-in PEG HD programming commitment. By contrast, CenturyLink will provide all HD-provided PEG programming to its customers in HD. CenturyLink has also agreed to provide its customers with PEG Video on Demand programming. Neither Comcast nor Frontier has that requirement.

PEG/PCN Fund. CenturyLink will match the new Comcast franchise PEG Fund commitment of \$0.80 per month per subscriber.

Customer Service. CenturyLink will match Comcast's (and Frontier's) Customer Service requirements. All three MACC-franchised cable operators will provide service under this same set of standards.

Franchise Violations and Remedies. The Commission's ability to levy fines against CenturyLink is capped in this Franchise Agreement at \$25,000 per year, commensurate with the level in the Comcast and Frontier franchises.

### **PUBLIC COMMENT**

MACC solicited public comments in local area newspapers, as well as on the [maccor.org](http://maccor.org) website.

### **CONCLUSION**

Your MACC representative, along with the other MACC Commissioners, has recommended granting the CenturyLink Franchise Agreement. If granted, area residences and businesses will be able to choose from an additional cable television service provider. Like the recommended Comcast franchise, the CenturyLink Franchise Agreement retains the basic elements and long-term benefits of the cable television franchises on which the Member Jurisdictions have come to rely — financial stability, the ability to meaningfully respond to customer service deficiencies, and superior PEG Access programming and support. MACC and CenturyLink staff will be available at your meeting for any questions.

A reminder: All 5 Affected MACC Jurisdictions must approve the Franchise Agreement for it to become effective.

Attachment: Exhibit A – Recommended CenturyLink Franchise Agreement  
Exhibit B – MACC Recommending Resolution 2015-07  
Exhibit C – Comparison of the recommended franchises  
Exhibit D – MACC Questions & Answers about the Recommended Franchises

**AIS-2319**

**6.**

**Business Meeting**

**Meeting Date:** 09/08/2015

**Length (in minutes):** 15 Minutes

**Agenda Title:** Update from Greater Portland Inc. on Regional Economic Development

**Prepared For:** Lloyd Purdy, Community Development

**Submitted By:** Norma Alley, Central Services

**Item Type:** Update, Discussion, Direct Staff      **Meeting Type:** Council Business Meeting - Main

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Greater Portland Inc. is Tigard's partner in regional economic development. The City of Tigard supports GPI with a \$5,000 annual contribution. This year, Greater Portland Inc. updated its work plan, long-term strategy for regional economic development, and expanded their programs. GPI Vice President Derrick Olsen will share details with council.

**STAFF RECOMMENDATION / ACTION REQUEST**

Discuss regional vision, plans and actions with Greater Portland Inc. Vice President Derrick Olsen.

**KEY FACTS AND INFORMATION SUMMARY**

The City of Tigard is part of the regional economy. Every workday more than 85 percent of Tigard's working age residents commute to a job outside the city but somewhere within the Portland metropolitan region. Conversely, every workday 90 percent of the jobs in Tigard are filled by a resident commuting into Tigard from somewhere else in the region. Tigard's firms are part of the regional supply chain. A sizable portion of Tigard's manufacturing and professional service firms produce a good or service used by other companies in the region.

As a coordinating entity, GPI brings government and business leaders together to shape the economic future of this region. GPI was established in 2011 to coordinate public and private sector efforts to grow the regional economy. Historically, the organization did this through marketing and business recruitment in targeted sectors.

In a typical year, GPI is responsible for 1/3 of the out-of-state lead responses that we respond to as part of our business recruitment efforts. Greater Portland Inc. is Tigard's primary regional partner working to create a healthier economy. Greater Portland Inc. is a regional partnership focused on helping companies expand and locate in the Portland-Vancouver area. This region includes seven counties and covers two states. Leveraging the region's assets, GPI and partners recruit businesses that improve the economy and promote long-term job growth. Our region is the 20<sup>th</sup> largest metropolitan economy in the country and includes:

- More than 2.3 million people
- 2 states and 7 counties
- A population that is expected to grow by 400,000 in the next 20 years

GPI's 2015 Work Plan includes three overall themes. The first is "*Uniting Regionally to Compete Globally*" which requires building collaborations between public and private partners. The second theme is "*Stay and Grow in Greater Portland*" which requires supporting local business retention efforts of partners like the City of Tigard. The final over-arching theme is "*Choose Greater Portland*" which requires targeted business recruitment in selected industries. GPI's work builds upon the region's assets like existing business clusters in Metal & Machinery, Clean Technology, Athletic & Outdoor Gear, Computer & Electronics, Software/Media and Health Science & Technology. These business clusters vary slightly from state-wide priorities because they are unique to the Portland region.

## **OTHER ALTERNATIVES**

Redirect future economic development funding to local programs.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Working with Greater Portland Inc. is one part of Tigard's economic development program. Investment in regional economic development is supported by the City's Comprehensive Plan Goal 9 and Tigard's 2011 Economic Opportunity Analysis.

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

December 2012

---

---

### **Attachments**

GPI Presentation

---

---



GREATER  
PORTLAND

# Greater Portland Inc

## Regional Economic Development

City of Tigard  
September 8, 2015

# WHAT TO EXPECT



- **Overview of GPI**
- **2015 Work Plan**
- **GPI Services**



## Regional Public-Private Partnership

Established in 2011  
to coordinate a  
transparent  
approach to  
economic  
development

## Greenlight Greater Portland now Greater Portland Inc.

Jun 29, 2011, 1:31pm PDT

Merger between publicly funded  
Regional Partners and privately driven  
Greenlight Greater Portland



Marketing



Recruitment



Retention  
and  
Expansion

## Dynamic Metro: One Region

- 2.3+ million people
- 2 states
- 7 counties
- Population expected to grow by 400,000+ in next 20 years



## Why a regional approach?



- Site selectors look at regions when considering a new location for their clients
- Companies and talent do not pay attention to regional boundaries
- Marketing the assets of the entire region is a far more compelling story
- Regional boundaries align with the regional workshed

# 2015 Work Plan



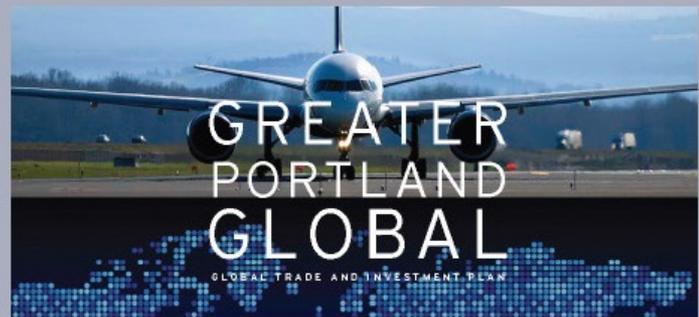
## UNITING REGIONALLY TO COMPETE GLOBALLY

Build cross-border and cross-sector collaboration that leverages the region's assets, engages leadership and aligns efforts to compete in the global market.



## STAY AND GROW IN GREATER PORTLAND

Develop tools and services that support local community partners in their ongoing efforts to retain and grow existing traded-sector companies in the region



## CHOOSE GREATER PORTLAND

Create targeted awareness of the regional value proposition as a place for business; grow the recruitment funnel to bring traded-sector expansion and relocation projects to the region.



## UNITING REGIONALLY TO COMPETE GLOBALLY

Build cross-border and cross-sector collaboration that leverages the region's assets, engages leadership and aligns efforts to compete in the global market.

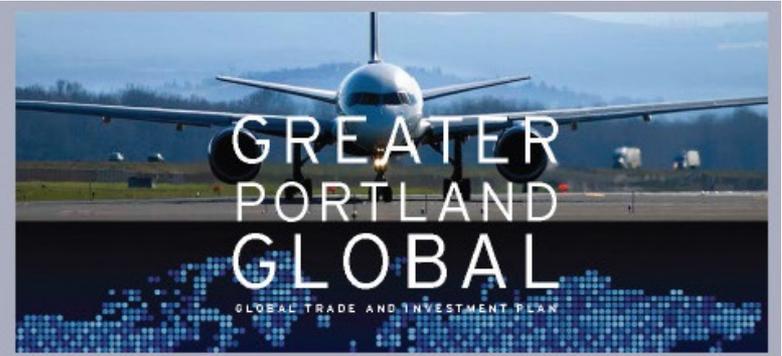


## TACTICS:

- Greater Portland 2020 Plan
- Convene Region's Civic & Business Leaders
- Regional Communications

## STAY AND GROW IN GREATER PORTLAND

Develop tools and services that support local community partners in their ongoing efforts to retain and grow existing traded-sector companies in the region



## TACTICS:

- Greater Portland Global
- Business Retention & Expansion
- Economic & Fiscal Analysis

## CHOOSE GREATER PORTLAND

Create targeted awareness of the regional value proposition as a place for business; grow the recruitment funnel to bring traded-sector expansion and relocation projects to the region.



## TACTICS:

- Large Site Strategy
- Industry Reports & Market Analysis
- Regional Marketing
- Lead Generation

Providing expertise  
and resources to  
local partners within  
the region



Business Development



Marketing



Research + Analysis



Connectivity



Regional Competitiveness



## Business Development

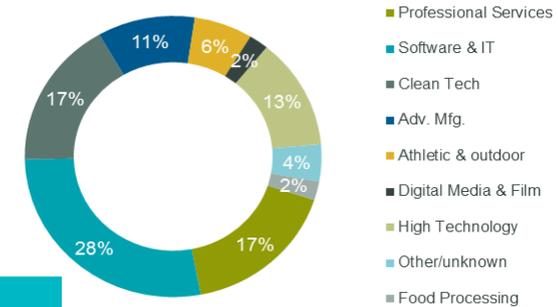
1. Metal & Machinery
2. Clean Tech
3. Athletic & Outdoor
4. Computer & Electronics
5. Software/Media
6. Health Science & Technology



← Contacted us but has not viewed specific sites

← Looking at options and has likely been on a site visit

2014 GPI WINS = 4  
2014 REGIONAL WINS = 7



Projects by Industry	
Professional Services	8
Software & IT	13
Clean Tech	8
Adv. Mfg.	5
Athletic & outdoor	3
Digital Media & Film	1
High Technology	6
Other/unknown	2
Food Processing	1
<b>Total</b>	<b>47</b>





## Research & Analysis

### SAMPLE ANNUAL BUSINESS OPERATING COSTS

Metro Area	Employee Payroll	Fringe and Mandated Benefits	Utilities	Building / Lease Payments	Property Tax	Total Operating Cost
Portland	\$36,236,800	\$10,296,539	\$245,328	\$375,969	\$170,011	\$47,324,647
Denver	\$36,842,650	\$9,951,295	\$219,967	\$342,805	\$335,923	\$47,692,640
Riverside-San Bern.	\$37,587,100	\$10,700,837	\$326,530	\$399,822	\$152,379	\$49,166,668
San Diego	\$37,959,450	\$10,807,498	\$397,673	\$428,478	\$154,772	\$49,747,872
Seattle	\$38,605,650	\$12,001,622	\$255,159	\$413,241	\$159,852	\$51,435,525
San Jose	\$43,481,700	\$12,361,185	\$401,016	\$542,023	\$180,694	\$56,966,618

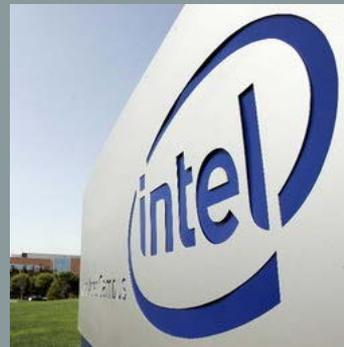
See detailed tables for sources.

*The annual estimated business operating costs table summarizes the annual cost of labor, utilities and facilities for selected metropolitan areas.*

*Detailed calculations and source of costs of doing business for labor, utilities and facilities are provided in the following tables, which include costs such as worker's comp, unemployment insurance, health insurance, gas and electricity, annual real estate (lease or purchase) and taxes.*

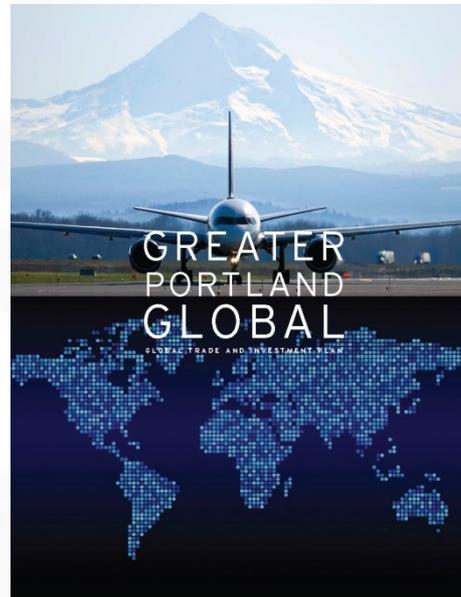


## Connectivity





## Regional Competitiveness





GREATER  
PORTLAND

Thank You!