



City Council

September 15, 2025

6pm

Newberg Public Safety Building 401 E. Third Street

Denise Bacon Community Room

Online: <https://us06web.zoom.us/j/89536547180>

[Public Comment Registration](#)

[View Slides](#)

-
1. Call to Order
 2. Roll Call
 3. Pledge of Allegiance
 4. [City Manager Report](#)
 - 4.1. [August Narrative](#)
 5. Public Comments
 6. Presentations
 - 6.1. [Juliette's House](#)
 - a. [Child Abuse Reporting Guide](#)
 - b. [Community Resources for Responding](#)
 - c. [Recursos de la comunidad](#)
 - 6.2. [Housing Authority of Yamhill County](#)
 7. Consent
 - 7.1. [Purchase of Wheeled Loader with Boom Mower](#)
 - a. [Exhibit A- FGR Equipment Quote- Loader- Mower](#)
 - b. [Exhibit B – Newberg Sourcewell Membership](#)
 - c. [Exhibit C – XCMG Sourcewell Contract](#)
 - d. [Exhibit D – Diamond Mowers Sourcewell Contract](#)
 - 7.2. [Master Fee Schedule Date Change](#)
 8. Continued Business
 - 8.1. Review of CET Grant Contract
 - a. [Draft SPARK Contract](#)
 9. Public Hearings
 - 9.1. [Repealing Outdated Code Sections on Dancing, Cigarette Vending Machines, and Cable Communications Commission](#)
 - a. [NMC 5.20, 5.25, and 5.30 Strikethrough version](#)
 - b. [NMC 5.20, 5.25, and 5.30 Clean Copy](#)
 - 9.2. [Nuisance Ordinance Change- Construction Hours](#)
 - a. [Exhibit A-1 NMC 8.15.150 Amendment w Comments](#)



- b. [Exhibits A-2 – NMC 8/16.150 Amendment Clean Copy](#)
- c. [Exhibit D – Construction Hours Comparison](#)

10. New Business

10.1. [Proposed Chapter 12 Code Revisions on Street Trees](#)

- a. [Attachment 1 - Newberg Municipal Code Chapter 12.05.260](#)
- b. [Presentation](#)

11. Executive Session*

Pursuant to ORS 192.660 (2)(a) To consider the employment of a public officer, employee, staff member or individual agent.

12. Adjournment

ADA Statement: Contact the City Recorder's Office for physical or language accommodation at least 2 business days before the meeting. Call (503) 537-1283 or email cityrecorder@newbergoregon.gov. For TTY services please dial 711.

*Indicates supplementary item

REQUEST FOR COUNCIL ACTION



Date Action Requested: (September 15 2025)

Order <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Information <input checked="" type="checkbox"/> Proclamation <input type="checkbox"/>	
Subject: CM narrative of events for August, 2025	Staff: Will Worthey CM Department: Administration
Work Session <input type="checkbox"/> Business Session <input checked="" type="checkbox"/>	Order On Agenda: CM report

Is this item state mandated? Yes ☐ No ☒

If yes, please cite the state house bill or order that necessitated this action: NA

Recommendation: NA

Executive Summary: The summary of events conducted by city departments in August of 2025.

Fiscal Impact: All were conventionally budgeted items.

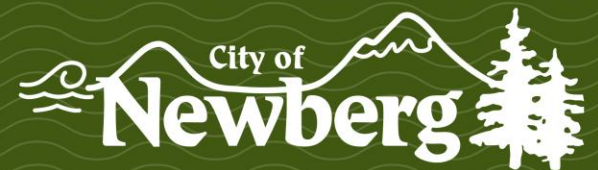
Council Goals:

Goal 4: Create and maintain a high level of transparency with our residents in order to build trust.

O1: Expand communication outreach in regard to regular city events and additional involvement with city businesses by the end of 2026.

Newberg CM report

Monthly Events for August



Community Development

- Short-term rental ordinance was passed (Effective September 3rd barring an appeal)
- Passed Ordinance for the Economic Opportunities Analysis
- GFU Cinematic Arts Building to Open in September
- Street Tree Policy Discussion Coming to Council Soon
- Phase 1 of Springbrook Meadows at Crestview – North of Jory/West of Crestview being finished up
- Working on submittal criteria for formal solicitation for one-time UGB Expansion under SB1537

Community Development – Construction Boom Underway

- Apartment Buildings (76 units). First Building now open (28 units)
- TVFR Temporary and New Station 20 Design Reviews have been submitted to the City
- Nagomi at Springbrook (NE of the Allison Inn) has submitted Public Improvement Permit for their approved 100-Lot Subdivision.
(This will likely take time before dirt moves as reviews go through)
- Collina at Springbrook Ph 1 likely to get final plat approval sometime in September.
- Phase 2 likely not far behind. Should see additional homes being built in area

Community Engagement

In the month of August, Community Engagement worked with our Public Works and Engineering teams to spread the word about several initiatives, including:

- Road improvements south of downtown Newberg
- Sewer smoke testing
- Water Quality Month, highlighting our annual Water Quality Report produced by the Operations team

Community Engagement - Social Media

CE saw high levels of engagement on a few posts, including:

- State of the City interview video, which received over 200 views on YouTube
- Clips pulled from the full video highlighting specific topics
- A traffic safety reminder for the start of the school year, urging motorists and pedestrians to practice being attentive and making safe choices
- Street closure at E Illinois Street where it intersects with N Main Street

NDPD Events

- NNO August 5th @ Memorial Park was a huge success each year we had more citizens attend than ever
- Safety Town was the week of August 4-8th
- We rolled out our new E-ticketing program to automate many steps in our safe driving program





National Night out!!

Smashing fun for all the community.

City Recorder

- Received \$430,800 in grant funds for PLC replacement
- Launched Finance Records Control Project
- Finalized Records Policy
- Worked on updates to Outdated Code – it is ok to dance again in Newberg!

City Recorder

- Led tours for the Sister City Delegation from Asago
- Proceeding with FEMA Disaster Recovery Grant to fund City Hall building repairs and mitigation
- On the 29th, Rachel celebrated 2 years with the City, which makes her eligible to apply to be a Certified Municipal Clerk!

Capital Engineering

- Groundwater Treatment Plant Filter Covers - A pre-construction meeting was held on July 29 with the Contractor, Cedar Mill Construction, the City, and Keller Associates.
- Submittal approval and structural fabrication and delivery are anticipated to occur over the next 3-5 months
- Might be finished by early next year

Capital Engineering - TUF road surface improvements

- All major phases are complete
- Several hundred thousands under the estimated budgets
- But... partly we got lucky on Fulton
- Mountainview has been 100% crack sealed.
- S. Center and adjacent blocks have been milled (grind and inlay).
- Meadow was milled.
- E. Fulton has been completed with grind and inlay repairs and one soft spot full-deep repair.
- Cape and slurry sealing has been completed on Howard and sections of School street and 3rd street in southern districts
- Now working on ramps for 2026 sections

Capital Engineering

River Street Pre-Design / Scoping

- On August 7, the City and Keller Associates held a kick-off meeting on River Street
- Early initiatives in the project include geotechnical exploration (anticipated in late August/September) along the corridor

Smoke testing will identify sources of groundwater infiltration (broken pipes, etc) and undesired cross-connections between the sanitary and stormwater systems.

- It is anticipated that smoke testing field work will occur the weeks of August 18th – 22nd and August 25th – 29th, likely extending into September as necessary

HR News

- HR collaborated with NDPDs K-9 officers to put on the 4th Lunch and Learn of the year “who let the dogs out”
- Refresh on safety training records and planning for trainings in 2026

HR – Recruiting

- Running Recruitments: 3
- Hires: 1 (Crystal – Part Time Office Assistant in the building division)

IT News

- Network upgrade was completed, including new firewalls and reconfiguring the network to eliminate potential points of failure
- Working on the Azure new virtual desktop shift and ironing out the kinks on earlier shifts
- Moved the email repositories to the cloud

Library Land

- Summer Reading finished with 2,109 participants!
- 1,367 children received a free book to keep, thanks to the Ready to Read grant from the State of Oregon
- We had 3,966 mascot finds, which includes our partnership with 20 downtown businesses
- Our first-ever Teen Service Club included fifty-three 6th-12th graders who helped register and run the Summer Reading Program. They were amazing and we look forward to continuing!



Summer Reading Prize Winners!



Teen Service Club Members

Library Repair Work

- The library will be closed to the public on September 2-6, 2025, as we begin repairs on the outside front of the library
- Inside the library during the closure, Library staff, Public Works Maintenance staff, and contractors will work on a long list of minor repairs
- These include painting, recarpeting and upgrading the library's Meeting Room A/V system

Public Works – Emergency Management

- Scheduled ICS 300 & 400 training at Public Safety Bldg. in Fall 2025.
- ICS training at no cost to city. City staff and City volunteers have priority, then local partners with less resources.
- Introductory Meeting Genasys Alerting platform. A Newberg workgroup will develop evacuation zones and routes
- Training links to involved departments sent for them to assign online training to key personnel (NDPD, NEWCOM, TVFR, PW, GIS, PA)
- CPRD, PCC and the School District will all be invited onto the platform

Public Works – Safety Program

- Issued heat reminders to the Safety Committee for staff
- Answered questions: PPE, heat, training, fire escapes
- Wrote up alternative schedule for extinguisher/first aid/AED vendor reducing monthly checks inside secure areas of NDPD and Operations
- Compiled PPE Inventory all departments and submitted to CM - will be saved in SharePoint
- Compiled Safety Training Delivery Survey all departments submitted with recommendations

PW – Some of the Many Activities at the Wastewater Plant

- Replaced a leaking 2,750-gallon sodium hypochlorite tank
- Completed the 500-hour maintenance and acid wash of the hypo generator
- Completed a routine inspection of the solar system
- Installed a new non-slip coating on stairs by maintenance shop
- Conducted troubleshooting on our compost hydraulic system and made adjustments
- Clarifier 2 annual inspection, cleaning and oil change
- Clarifier 3 annual inspection, cleaning and oil change



Sodium Hypochlorite Tank Replacement

PW – Some of the Many Activities at the Water Plant

- Completed annual Disinfection By-Product sampling
- Reviewed 258 backflow test reports
- Prepared list of customers for final backflow test notice
- Tested and replaced failing hypochlorite rectifier diodes
- Replaced failed brine pump VFD
- Replaced failed backwash pump flow meter
- Partnered with PGE to reduce power consumption during high demand energy events
- Hydrogen sensor was replaced and recalibrated
- Added media to filters 3 and 4



Filter Media Replacement

PW – Some of the Many Activities in Maintenance

- Sewer Main Clean – 495 ft
- Sewer Main Video – 375 ft
- Hydrants Repaired - 1
- Water Mains Flushed – 290 ft
- Water Valves Exercised – 17
- Hydrants Painted - 18
- Water Meter Service – 75
- Water Meter Maintenance – 24
- Water Meter MXU's Replaced – 1
- New Meters Installed – 1



**Replaced 2" meter at
George Fox University**



**Replaced Water Meter at 2700
Portland Road
(Newberg Chevrolet)**

Replaced Water service and Meter 502 Villa Rd. (Medical Complex)



Replaced Meter Curb Stop at 2404 N. Hoskins St.



E. 8th St. Water Main Break



Repaired Fire Hydrant damaged by a truck at N. Meridian/ E. Hancock



Installed No Parking Signs and Yellow Curb Sectionals at Mountainview Middle School and Newberg High School



So that's it for smashing August!

What a fund summer of asphalt it has been!

As you can see, residents' tax dollars have been
hard at work as usual.

Questions?

Programs

- ▶ Clinical Services
- ▶ Family Support Services
- ▶ Trauma Recovery Services
- ▶ Prevention Education



Juliette's House

CHILD ABUSE
INTERVENTION CENTER

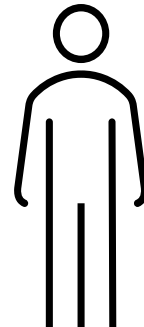
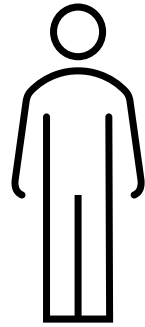
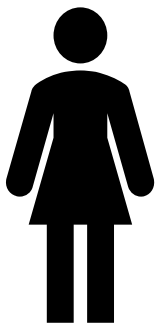
Last Year's Stats

- ▶ 8,464 children received prevention education
- ▶ 278 Adults completed prevention education
- ▶ 228 individuals received services from Clinical & 303 from TRS



More common than we may think

Estimated **1 in 5** children in America has experienced some form of abuse



Impact of ACEs and Child Abuse



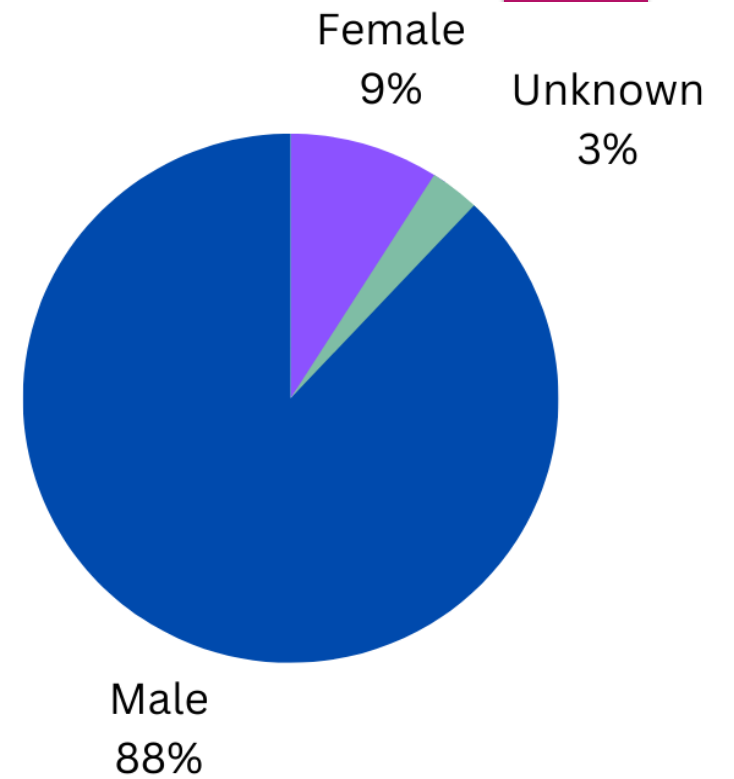
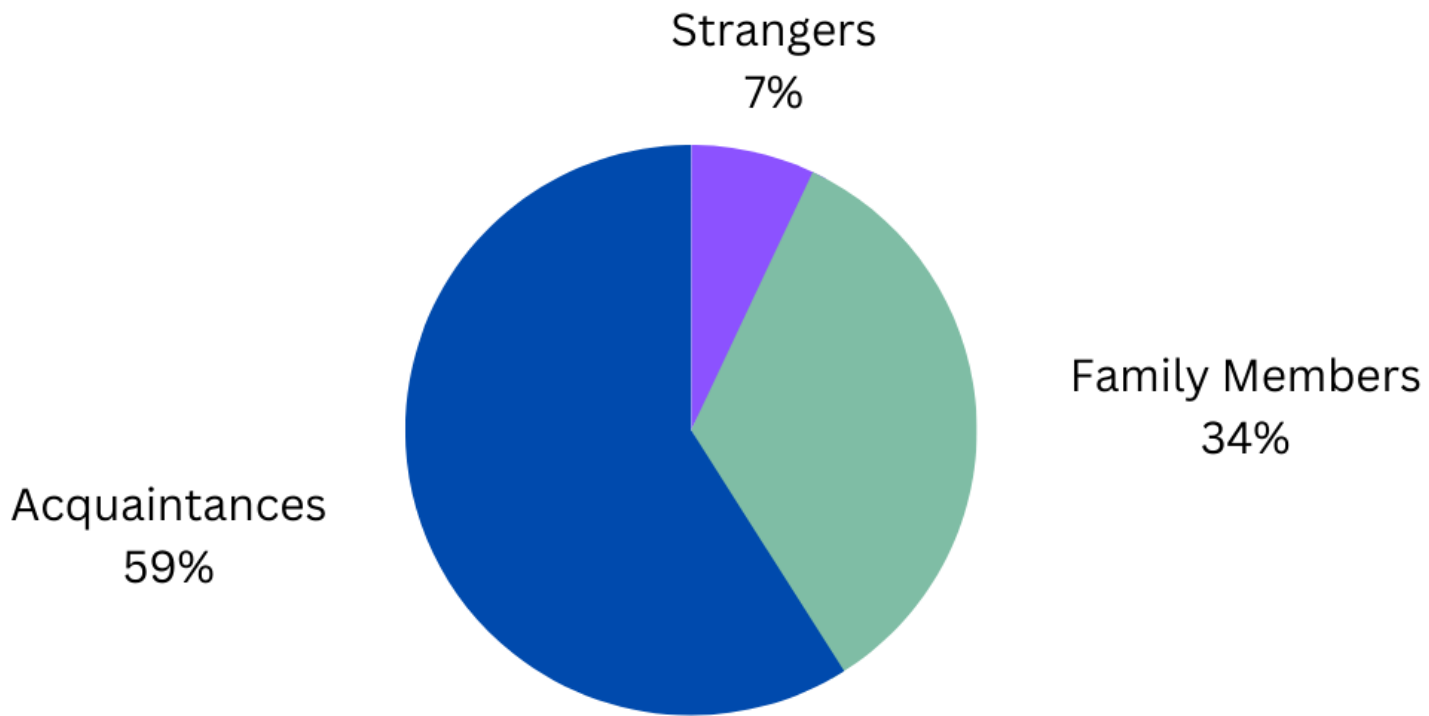
Physical Impact



Psychological Impact



Social Impact



Who abuses children?

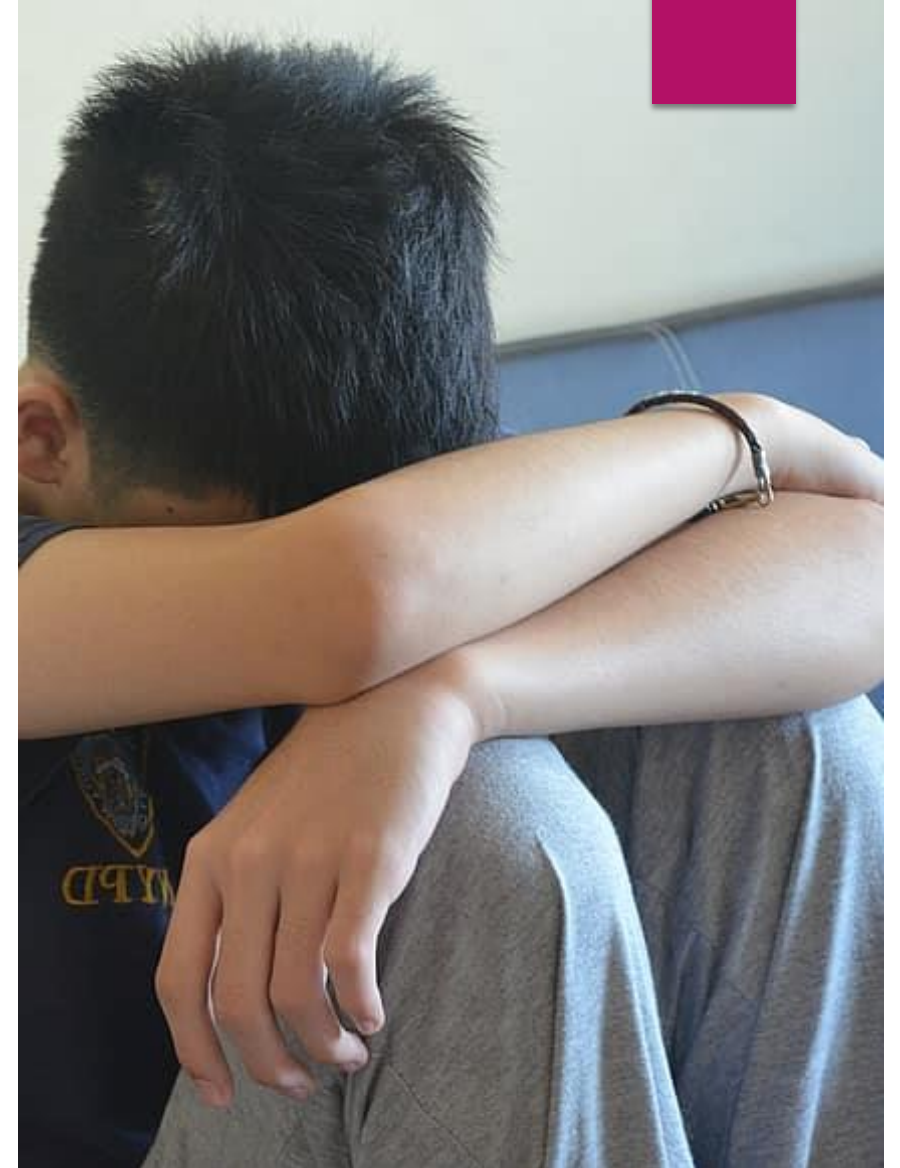
What's normal for children?

- ▶ To be curious about sex, their body parts, and others
- ▶ To seek approval from adults and peers alike
- ▶ To rely on others to protect them



Why might children not disclose abuse?

- ▶ Fear of repercussions
- ▶ Connection to their abuser
- ▶ Guilt and shame
- ▶ Told to keep it a secret
- ▶ They don't know it was wrong
- ▶ They don't have the language to describe abuse
- ▶ They don't feel like they have any safe adults
- ▶ Could be so many more



Why
wouldn't
someone
report
suspected
abuse?

- Personal/cultural beliefs
- Relationships to all those involved
- “What would happen if I’m wrong?”
- Organizational practices

Responding to disclosure

F.I.R.S.T.

- ▶ F – Find a Safe Location
- ▶ I – Identify Concerns
- ▶ R – Build Rapport
- ▶ S – Seek Details
- ▶ T – Talk to professionals



Abuse Reporting Reminders

- ▶ Oregon law protection for good faith reports of child abuse from civil or criminal liability
- ▶ Most signs are behavioral, not physical
- ▶ You are the eyes and ears of the community
- ▶ **You do not need to be certain to make a report**

Make the Call to 1-855-503-SAFE (7233)



Prevention looks like...

- ▶ Needs being met
- ▶ Empowerment
- ▶ Safe Environments and policies
- ▶ Literacy and education
- ▶ Safe role-models
- ▶ Being Trauma-informed
- ▶ Vigilance and communication
- ▶ So much more!

Social and Emotional Competence

Children's early experiences of being nurtured and developing a *positive relationship* with caring adult *affects all aspects* of behavior and development.



Knowledge of Parenting & Child Development

Children *thrive* when parents provide *not only affection*, but *also* respectful communication and listening, consistent rules and expectations, and *safe opportunities* that promote independence.



Social Connections

Parents with a social network of *emotionally supportive friends, family, and neighbors* often find that it is *easier to care* for their children and themselves.



5 Protective Factors

Resilience

Parents who can cope with the *stresses of everyday life*, as well an occasional crisis, have *resilience*; they have the flexibility and inner strength necessary to *bounce back* when things are not going well.



Concrete Support

Families who can meet their *own basic needs* for food, clothing, housing, and transportation—and who know how to access essential services such as childcare, health care, and mental health services to address



What can we all support?

Hours & Contacts

OPEN FROM MONDAY-FRIDAY, 8AM – 5PM
OFFICE PHONE: 503-435-1550

GENERAL QUESTIONS?
INFO@JULIETTESHOUSE.ORG

QUESTIONS REGARDING ASSESSMENTS OR
RESOURCES?
INTAKE@JULIETTESHOUSE.ORG



Oregon Child Abuse Hotline

Child Abuse Reporting Guide



When in doubt, call

Any time you suspect abuse, call. Hotline screeners accept voluntary calls from all concerned individuals. Make an immediate report to the Oregon Child Abuse Hotline if you are a mandatory reporter (see Oregon Revised Statute 419B.005) and have reasonable cause to believe that:

- Any child with whom you have been in contact has suffered abuse, or
- Any person with whom you have been in contact has abused a child.

How to make a report of child abuse

The Oregon Child Abuse Hotline accepts reports 24 hours a day, 365 days a year.

When calling, you can choose from the following options:

- Spanish speaking
- Law enforcement
- Mandatory reporter
- General public
- Call back feature

1-855-503-SAFE(7233)

If the child is in danger, please call 911 immediately.



Mission

The Oregon Child Abuse Hotline's mission is to receive reports of child abuse and provide excellent customer service with equitable and consistent decision making to ensure safety for Oregon's children.

Be prepared to provide the following information (if known):

- Name, date of birth or age for all adults and children involved
- A description of the abuse, including whether the child has current injuries
- Alleged perpetrator's name, location and access to the child
- Whether the child has Native American or Alaska Native heritage
- Telephone numbers, including area code
- Any cultural or language considerations, race and ethnicity
- Addresses, directions or other means to locate the individuals of concern
- Additional information related to family functioning, resources and supports
- Detailed observations and statements made by the child or others
- If applicable, a description of the child's disability or any special needs.

Abuse types:

- Neglect
- Physical abuse
- Mental injury
- Sexual abuse
- Threat of harm

Possible abuse indicators:

- Inadequate supervision
- Failure to provide food, clothing or shelter
- Unexplained or suspicious injuries
- Intimate partner violence
- Substance abuse and misuse that affects the child
- Fear or changed behavior in child
- Atypical interest in sex, knowledge of sexual behavior or acting out sexually
- Rejecting or terrorizing the child.

What you can expect from the hotline:

A focus on safety

- National data reveals with a centralized hotline, more families are found to be eligible for supportive services.
- Screeners are trained and trauma-informed.
- All reports are also reported to law enforcement.

A focus on consistency

- Call center software captures real time data and provides information to improve screener performance.
- Consistent application of Oregon Revised Statutes when screening reports of child abuse.
- Your feedback is used for continuous quality improvement (CQI).

A focus on customer service

- Hotline screeners and supervisors are available 24/7/365 to accept reports of suspected child abuse.
- You are notified of the outcome of your report.

The Oregon Child Abuse Hotline wants to hear your questions, comments and training needs.
Feedback.OregonChildAbuseHotline@dhsosha.state.or.us

You can get this document in other languages, large print, braille or a format you prefer. Contact the Oregon Child Abuse Hotline at 1-855-503-SAFE (7233). We accept all relay calls or you can dial 711.

COMMUNITY RESOURCES

for Responding to Child Abuse

To Report Abuse in Yamhill County, contact the Oregon Department of Human Services (DHS) at 1-855-503-SAFE (7233) or any Law Enforcement Agency at 911.

You are not required to provide proof. Anyone who makes a good faith report based on reasonable grounds is immune from prosecution.

HELPLINES

Yamhill County Mental Health Crisis Hotline	844-842-8200
Oregon Child Abuse Hotline	855-503-7233
CTGR Domestic and Sexual Violence Prevention Program	503-879-1487
CTGR Behavioral Health Department	503-879-2026
Juliette's House Child Abuse Intervention Center	503-435-1550
Henderson House Family Crisis Shelter (24hr)	503-472-1503
Sable House Domestic Violence Crisis Hotline (24hr)	503-623-4033
Childhelp National Child Abuse Hotline (24hr)	800-422-4453
National Mental Health Crisis Hotline (24hr)	800-662-4357
Legal Help Legal Aid Services of Oregon	503-648-7163
Yamhill County Victim Assistance	503-434-7510
Yamhill County CASA for Foster Care Children	503-434-6668
Suicide and Crisis Hotline (24 hr.)	call or text 988
YouthLine - Teen Crisis Helpline	877-968-8491 or text "teen2teen" to 839863
LGBTQ Crisis Support	866-488-7386 or text "start" to 678678

RESOURCES FOR HEALING

Juliette's House Trauma Recovery Services	503-883-9865
Oregon Abuse Advocates & Survivors in Service	503-765-1128
Henderson House Domestic Violence Support Groups	503-472-0244
Sable House Confidential Shelter for Women & Children	503-623-6703
Yamhill County Adult Mental Health	503-434-7523
Yamhill County Family & Youth Programs	503-434-7462
McMinnville Lutheran Community Services	503-472-4020
Youth Outreach Safe Shelter	503-550-9638 (8am-5pm) or 503-538-8023 (after 5pm)

MORE INFO ON CHILD ABUSE PREVENTION

Juliette's House Child Advocacy Center	www.julietteshouse.org
Resources for Parents	www.preventchildabuseoregon.org
Partners, Resources, & Abuse Prevention Education	www.endcan.org

If you have unwanted or inappropriate thoughts, or have hurt a child, please contact:
Stop It Now! Hotline

1-888-PREVENT

Recursos de la comunidad

Respondiendo al abuso de menores

Para denunciar abuso en el condado de Yamhill, comuníquese con el Departamento de Servicios Humanos de Oregon (DHS) al 1-855-503-SAFE (7233) o cualquier agencia policial al 911

No es necesario que proporcione pruebas. Cualquier persona que presente un informe de buena fe basándose en motivos razonables es inmune a ser procesado.

LÍNIAS DE AYUDA

Línea directa de crisis de salud mental del condado de Yamhill	844-842-8200
Línea directa de abuso de menores de Oregon	855-503-7233
Programa de prevención de violencia doméstica y sexual de CTGR	503-879-1487
Departamento de salud conductual de CTGR	503-879-2026
Juliette's House centro de intervención de abuso de menores	503-435-1550
Henderson House centro de crisis familiar (24hr)	503-472-1503
Sable House línea directa de crisis de violencia doméstica (24hr)	503-623-4033
Línea directa nacional de abuso de menores (24hr)	800-422-4453
Línea directa nacional de crisis de salud mental (24hr)	800-662-4357
Ayuda legal servicios de asistencia legal de Oregon	503-648-7163
Asistencia para víctimas en el condado de Yamhill	503-434-7510
CASA en el condado de Yamhill para menores acogidos temporal	503-434-6668
Línea directa de crisis y suicidio (24 hr.)	llamada o texto 988
YouthLine - Línea de ayuda para adolescentes en crisis . 877-968-8491 o texto "teen2teen" to 839863	
Apoyo de crisis para LGBTQ	866-488-7386 or texto "start" to 678678

RECURSOS PARA SANAMIENTO

Juliette's House servicios de recuperación de traumas	503-883-9865
Defensores del abuso y sobrevivientes de abuso de Oregon en servicio	503-765-1128
Henderson House grupos de apoyo contra la violencia doméstica	503-472-0244
Sable House refugio confidencial para mujeres y niños	503-623-6703
Salud mental para adultos del condado de Yamhill	503-434-7523
Programas para familias y jóvenes del condado de Yamhill	503-434-7462
Servicios comunitarios luteranos de McMinnville	503-472-4020
Refugio seguro para jóvenes	503-550-9638 (8am-5pm) or 503-538-8023 (después de 5pm)

MÁS INFORMACIÓN PARA LA PREVENCIÓN DE ABUSO DE MENORES

Juliette's House centro de defensa de menores	www.julietteshouse.org
Recursos para padres.	www.preventchildabuseoregon.org
Socios, recursos y educación sobre prevención del abuso	www.endcan.org

Si tiene pensamientos no deseados o inapropiados, o ha lastimado a un menor, comuníquese con:

Stop It Now! Hotline

1-888-PREVENT



Juliette's House
CHILD ABUSE INTERVENTION CENTER

**Nuestra visión es una comunidad solidaria,
libre de abuso de menores, donde todos
inviertan en criar niños sanos.**



Yamhill County Affordable Housing Corporation

**The City of Newberg Housing
Rehabilitation Grant
Program Update.**



Thank You

On behalf of the Yamhill County Affordable Housing Corporation (YCAHC) and the Housing Authority of Yamhill County (HAYC), I would like to extend my sincere thanks to the Mayor and City Council Members for the opportunity to speak with you today.

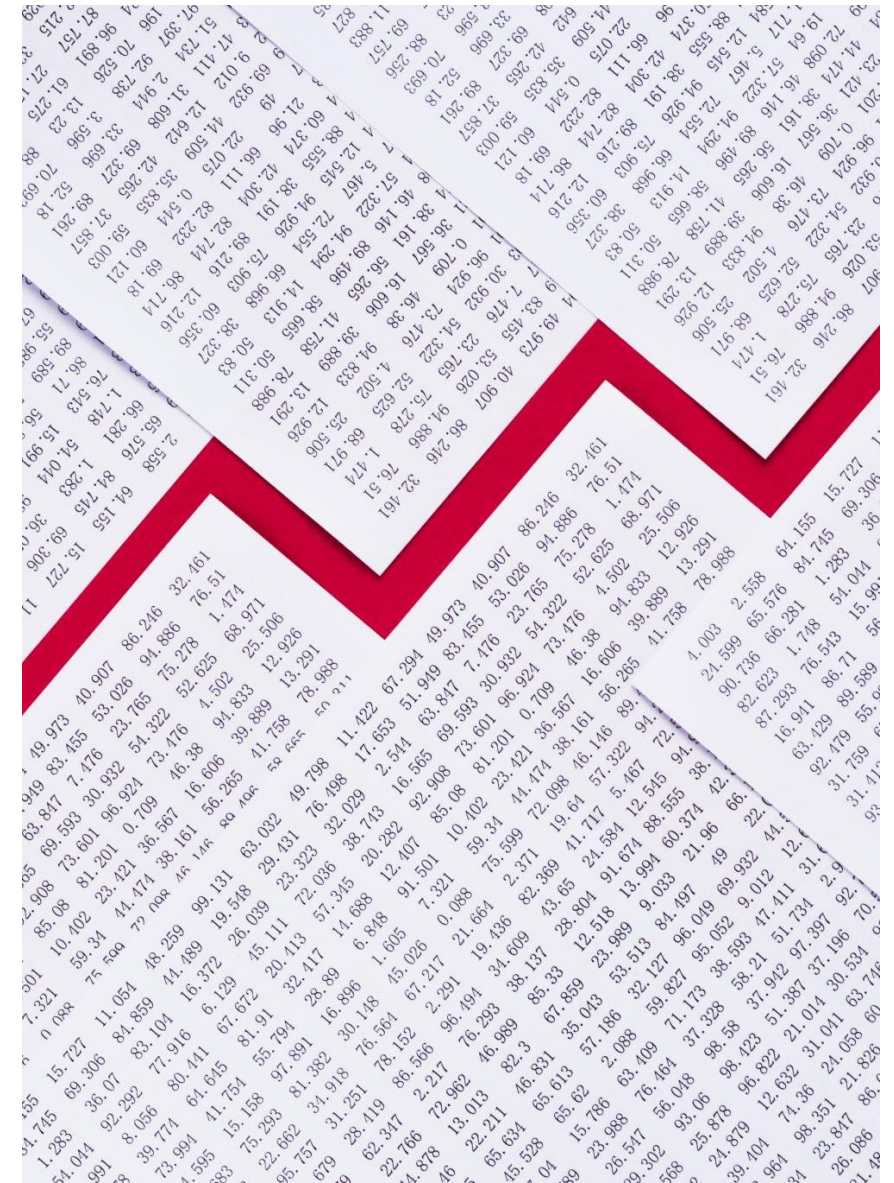
A special thanks to Jim Talt. Without his help, we may have missed this incredible opportunity. Thank you, Jim!

Who we are and What we do.

- **YCAHC is a 501(c)(3) organization formed for the purposes of promoting homeownership, housing rehabilitation, education and resource assistance for low-income families living in Yamhill County. Specifically, The Newberg Housing Rehabilitation Grant Program offers grants to low-income homeowners within the city limits of Newberg to address immediate health, safety, structural or accessibility issues in their homes.**
-

Stats

1. 9 Projects have been completed totaling \$101,174
2. 14 Families in the process of determining eligibility
3. \$162,954 remaining balance for rehab projects.





Repair Items

Grant funds are used to repair health, safety, structural and accessibility issues.



Roof Replacements

- Historically our grant program was only available to owners of Manufactured homes in a park. The flexibility of this grant allows us to perform work on several different types of homes.
- This is Deanna, she had been on our wait list for years, had an active roof leak. A new roof and gutters will keep her safe and dry for years to come.



Walk in Shower for accessibility

- Andrea, who lives alone, had only one option for bathing, a step-over bathtub/shower. After experiencing two falls in the past year, she was struggling to bathe safely. Converting the step-over tub into a walk-in shower will provide her with a safer, more comfortable bathing experience.





Electrical Repairs and Smoke /C02 Detectors for Safety

- Many of the homes we work on have no functioning smoke or C02 alarms. We make sure participants have updated alarms installed.
- The breaker in this home had been faulty for over two years. Replacement was simple, allowing the owner to have power restored to their bathroom and hall lights.



New windows

- The installation of new energy-efficient windows and storm doors has helped reduce power bills while improving the home's comfort and security. To date, we've replaced six windows and two storm doors.



Ramps, porches and deck repair and or replacement.

- Accessibility is a real issue for many of our participants. Over the past 6 months we have been able to restore safe access to the homes of 4 participants.



HVAC System Repair or Replacement

- Hot weather has been creating a huge need for HVAC repairs. We have completed 2 projects and have 3 under construction.
- Maridine had replaced her heat pump 6 years ago but unfortunately, last summer it failed. A fairly simple repair had her up and running just in time for our hot summer weather!



Plumbing Repairs

- Pamela and Buddy had been patching their plumbing on a regular basis (Polybutylene). A total re-pipe using PEX pipe has solved this problem.



Dry rot and Siding Repairs.

- We have 3 siding and dry rot projects under construction.
- The owner of the home pictured above had received a for cause notice of termination for rotted siding and poor paint. We will replace the siding and give their home a fresh coat of paint.

The true value of this project?

- For many of us \$10,000 or \$20,000 may represent the cost of a used car or a nice family vacation. To the families participating in this project, that same amount of money can be truly life changing. During the completion interview with the families, nearly 100% of the people said, “I don’t know what we would have done without the help!”



Questions?



Thank You

- Mark Irving
- 503-883-4324
- mark@hayc.org

REQUEST FOR COUNCIL ACTION



Date Action Requested: September 15, 2025

Order ☐ Ordinance ☐ Resolution ☒ Motion ☐ Information ☐ Proclamation ☐

No. 2025-3987.

Subject: Authorizing the City Manager to purchase one (1) new XCMG wheeled loader, Model XC948U, and one (1) new Diamond self-contained wheel loader boom flail mower, model DBF050-H, from Forest Glen Equipment (FGR Equipment) in the amount of \$302,428.00.

Staff: Russ Thomas
Department: Public Works

Business Session

Order On Agenda: Consent

Hearing Type: Administrative

Is this item state mandated? Yes ☐ No ☒

If yes, please cite the state house bill or order that necessitated this action:

Recommendation: Adopt Resolution No. 2025-3987 authorizing the City Manager to approve the purchase of one (1) new XCMG wheeled loader, Model XC948U, and one (1) new Diamond self-contained wheel loader boom flail mower, model DBF050-H, from Forest Glen Equipment (FGR Equipment) in the amount of \$302,428.00.

Executive Summary:

The city currently has a 25-year-old 2000 New Holland T/S100 tractor that has a mid-mount 17-foot boom flail mower attached, that is used to mow along public street Rights of Way, utility easements, and various other city properties. With the permanently installed mid-mount mower attachment, its associated weight, and the necessary weighting and of counterbalances on the tractor to compensate for the extended boom mower weight, the tractor is limited to use on flat, gravel or paved surfaces. With only an extended reach of 17 feet, the tractor can only be used for mowing activities that are close to these types of surface areas. Due to the boom mowers weight when extended, and the 25 years of use in some of these challenging ground conditions and locations, the boom mowers frame, along with the tractor mounting points, are experiencing metal fatigue. The boom mower's steel mounting system and travel storage cradle are experiencing metal fatigue, welds have failed, been repaired, only to fail again due to the metal fatigue, and the unit has reached the end of its serviceable life. This has also stressed the tractors' metal undercarriage and frame, with any further use potentially affecting its stability and recoverable investment value. Additionally, due to the tractor's setup for exclusive mowing use and the limited mowing season, it sits idle for much of the year.

The recent replacement of a smaller John Deere tractor with a larger tractor with two (2) flail mowers has assumed much of the mowing duties, however there are many areas of the city including roadside ditches, utility easements, reservoirs, and treatment plants that still require annual mowing that can only be done with a boom mower. Replacement of the 25-year-old tractor and boom mower with an articulating boom mower attachment matched to the wheeled loader platform will provide safer operation with the boom

mower in front of the vehicle and operator instead beside and behind them. This will enable it to be used off hard and level surfaces, increase mowing capabilities of more remote areas by increasing its reach by 8 feet, meet the city's annual mowing requirements, and provide equipment that has multipurpose capabilities that can be utilized throughout the year by both the Maintenance and Operations Division of Public Works.

The articulating boom mower attachment on the wheeled loader can easily be removed and stored, allowing the wheeled loader to be used for other maintenance and operation needs outside of the short mowing season. Providing a multi-use piece of equipment that can be used year-round will reduce equipment rental costs for both the Maintenance and Operations Divisions of the Public Works Department. The rental of a wheeled loader by the Maintenance Division is often done during the year for construction projects, or by the Operations Division to keep the WWTP Composting Facility in operation when their wheel loader is down for repairs or maintenance. These individual rentals often exceed \$5,000 to \$8,000 each occurrence in minimum rental charges and transportation costs from the rental company. The proposed XCMG Model XC948U wheeled loader meets the minimum size requirements for the WWTP Composting Facility operations, providing a backup for the required WWTP loader.

Fiscal Impact:

Funding for the replacement of the 25-year-old New Holland tractor and 17-foot boom flail mower at a cost of \$302,428.00, is an anticipated and scheduled equipment replacement that is included in the approved FY2025-2027 budget. When replaced, the current 2000 New Holland T/S100 tractor and mower will be sold to recover the maximum value and reduce overall replacement costs.

Council Goals:

Goal 1 – Exceptional Customer Service:

Replacement of the 2000 New Holland T/S100 tractor with a mid-mount boom mower will allow for Public Works Staff to continue to meet citizens requests for the mowing and removal of overgrown vegetation adjacent to their properties on Public Right-of-Way roadsides, storm water ditches, easements, and city properties and facilities, that cannot be controlled with conventional mowers. Controlling vegetation overgrowth by mowing prevents stormwater runoff backups and area flooding due to blockages caused by overgrown vegetation, improves vision clearance for vehicle operators at intersections, and reduces increased fire hazards due to dried vegetation that cannot be done by conventional mowing equipment.

Goal 3 – Enhance Community Safety:

Replacement of the 2000 New Holland T/S100 tractor and mid-mount boom mower with an articulating boom mower attachment on the front of a wheeled loader will improve overall visibility and operational safety of both the mower and loader by the operator. Removing, controlling, and maintaining vegetation overgrowth with an articulating boom mower that can reach areas that cannot be mowed by conventional equipment will prevent stormwater runoff backups and area flooding due to blockages caused by overgrown vegetation, improve vehicle operators' visibility at intersections, and reduce increased fire hazards due to dried vegetation.

Goal 5 – Implement a Careful and Prudent Fiscal Policy:

Replacement of the 25-year-old tractor and boom mower that is limited to a specific, specialized, and short seasonal use with a wheeled loader and articulating boom mower attachment will provide a multipurpose piece of equipment that can be used year-round by the Public Works Maintenance and Operations Divisions, while meeting the specialized mowing requirements of the city. This will reduce the costs for equipment rentals that can be needed multiple times a year that often exceed \$5,000 to \$8,000 for each occurrence in minimum rental charges and transportation costs from the rental company. Replaced vehicles and equipment are sold to recover their maximum value, with the proceeds returned to city vehicle and equipment funds to reduce the long-term cost of their replacement.

RESOLUTION No. 2025-3987

A Resolution Authorizing the City Manager to purchase one (1) XCMG wheeled loader, Model XC948U, and one (1) new Diamond self-contained wheel loader boom flail mower, model DBF050-H, from Forest Glen Equipment (FGR Equipment) in the amount of \$302,428.00.

Recitals:

1. The City of Newberg has numerous Public Right-of-Way roadsides, storm water ditches, easements, and city properties and facilities, where vegetation must be controlled and maintained annually to prevent vegetation overgrowth and fire hazards by mowing with an articulating boom mower that cannot be controlled with conventional mowing equipment.
2. The existing 25-year-old 2000 New Holland T/S100 tractor with a mid-mount 17-foot boom flail mower used for mowing and vegetation in areas that cannot be done with conventional mowing equipment has reached the end of its serviceable life due to repeated weld failures of the mower mounting system caused by metal fatigue due to its age and use.
3. Replacement of the 2000 New Holland T/S100 tractor with a mid-mount 17-foot boom flail mower with a wheeled loader with an articulating boom mower attachment was anticipated and planned for in the 2025, allowing the city to continue to meet the specialized mowing needs of the city, and provide a multi-use vehicle that can be used year-round by the public works department.
4. City of Newberg entered into an Interagency Cooperative Purchasing Agreement with Sourcewell (formally the National Joint Powers Alliance -NJPA) effective March 20, 2012. The Sourcewell cooperative agreement complies with the State of Oregon Public Contracts and Purchasing Rules per ORS Chapter 279A and the City of Newberg Municipal Code Chapter 3.25 regarding Public Contracts and Purchasing.
5. The agreement with Sourcewell provides for competitive state bid prices to purchase items such as the XCMG wheeled loader, Model XC948U, and Diamond model DBF050-H self-contained wheel loader boom flail mower attachment. The City of Newberg received the Sourcewell competitive bid from Forest Glen Equipment in the amount of \$302,428.00. Funding for this purchase is in the approved FY 2025-2027 budget.

The City of Newberg Resolves as Follows:

1. The City of Newberg entered into an Interagency Cooperative Purchasing Agreement with Sourcewell (formally the National Joint Powers Alliance - NJPA) effective March 20, 2012. The Sourcewell cooperative agreement complies with the State of Oregon Public Contracts and Purchasing Rules per ORS Chapter 279A and the City of Newberg Municipal Code Chapter 3.25 regarding Public Contracts and Purchasing.

2. Sourcewell developed specifications and documents for a request for proposals (RFP) for Medium Duty Construction Equipment, solicited bids, and awarded XCMG Canada Ltd a purchase contract for Medium Duty and Compact Construction Equipment with Related Attachments.
3. Sourcewell developed specifications and documents for a request for proposals (RFP) for Road Right-of-Way Maintenance Equipment, solicited bids, and awarded Diamond Mowers a purchase contract for Boom Mowers Equipment Attachments and Accessories.
4. Forest Glen Equipment is the authorized XCMG Canada Ltd, and Diamond Mowers, LLC local manufacturer's representative, providing a purchase quote of \$302,428.00 for (1) new XCMG wheeled loader, Model XC948U, and one (1) new Diamond self-contained wheel loader boom flail mower, model DBF050-H.
5. The city manager is authorized and empowered to sign all necessary documents, do all necessary acts, and enter into all necessary contracts or agreements for the purchase of (1) new XCMG wheeled loader, Model XC948U, and one (1) new Diamond self-contained wheel loader boom flail mower, model DBF050-H, from Forest Glen Equipment (FGR Equipment) in the amount of \$302,428.00.

Effective Date of this resolution is the day after the adoption date, which is: September 16, 2025.

Adopted by the City Council of Newberg, Oregon, this 15th day of September, 2025.

Rachel Thomas, City Recorder

Attest by the Mayor this _____ day of _____, 2025.

Bill Rosacker, Mayor



Proposal

INVOICE #: FGR-2025-001

DATE: 8-5-2025

BILL TO:		SHIP TO:	
CUSTOMER: City Of Newberg		RECIPIENT:	
ADDRESS:		ADDRESS:	
PHONE:		PHONE:	
PAYMENT DUE:		DELIVERY DATE:	
SALESPERSON: Dean Klugh		SHIPPING METHOD:	
PAYMENT TERMS:		SHIPPING TERMS:	

QTY	ITEM#	DESCRIPTION	UNIT PRICE	ADDITIONS	TOTAL
1	XCMG	2025 XE948U Wheel loader 3 year 3000 Hour Warranty Standard Lift "Sourcewell"	\$183,852		\$183,852
1	LBM-C-EE	2025 Loader Boom Mower with Power Pack and 25' Boom "Sourcewell"	\$93,456		\$93,456
1	JRB416	Quick Coupler Mount "Sourcewell"	\$5,920		\$5,920
1	DBR-50-H	50" Rotary Mower "Sourcewell"	\$13,484		\$13,484
1	DBR060-H	60" Rotary Mower "Sourcewell"	\$14,306		\$14,306
1	103	Hydraulic Trap Door For 50" & 60" Rotary Heads "Sourcewell"	\$1,131		\$1,131
1	DBF050-H	50" Flail Mower "Sourcewell"	\$17,270		\$17,270
1		Labor for install "Sourcewell"		\$1,930	

Diamond Mowers Sourcewell contract 070821-DMM
XCMG Sourcewell contract 020223-XCMG
Prices are valid through 11-1-2025

SUBTOTAL	\$302,428
SALES TAX	
TOTAL	



**YOUR FULL FLEET, DIESEL & EQUIPMENT REPAIR SHOP IN THE
WILLAMETTE VALLEY**

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OUR PARTNERS



AUTHORIZED DEALER
ENGINES | GENERATORS | PARTS

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EQUIPMENT SALES





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RELIABLE REPAIRS, TRUSTED TEAM – KEEPING YOU MOVING!

At Forest Glen Repair, LLC, our team of highly skilled technicians are dedicated to providing top-notch truck repair services to our clients. Our state-of-the-art facility is equipped with the latest tools and technology to diagnose and repair any issues your truck may be experiencing. We offer a range of services including engine repair, brake repair, transmission repair, and more. Our goal is to get your truck back on the road as quickly and safely as possible.

No project is too big or too small for us—we're ready to tackle whatever you need. And if it's not something we handle, chances are we know the right people who can. Reach out today and let us help you get the job done!

REQUEST SERVICE

FOREST GLEN REPAIR, LLC

2305 Northeast Cumulus Avenue, McMinnville, Oregon 97128, United States

503.687.5805

PO Box 1528

McMinnville, Oregon 97128

info@forestglenrepair.com

HOURS

Open today 08:00 am – 05:00 pm ▼



SOLID TO SUCCEED.



XC948U

► Highlight:

The XC948U delivers superior operator visibility with its intelligently designed cab, featuring optimally positioned columns that provide an unobstructed 316° viewing radius. Safety is built in as standard equipment, including a ROPS (Rollover Protective System) and FOPS (Falling Object Protective Structure) to ensure maximum operator protection in all working conditions.

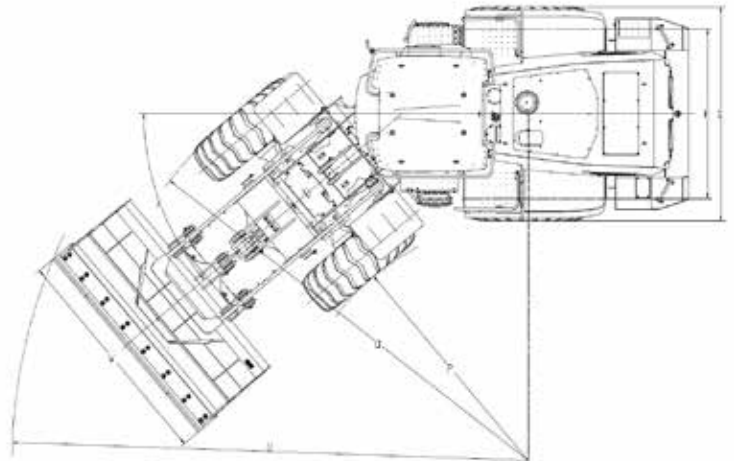
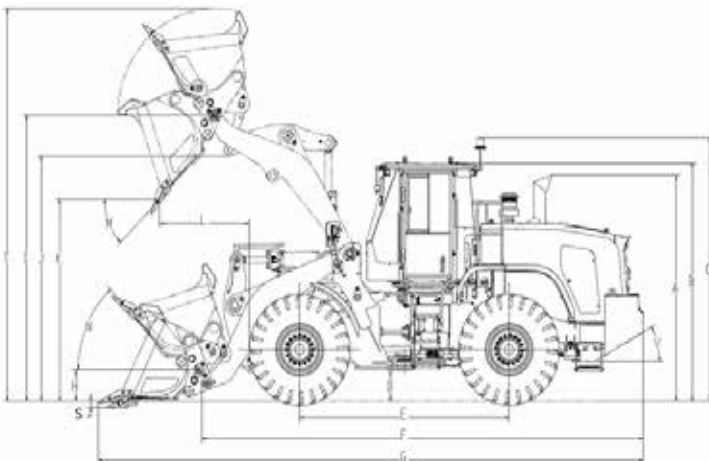
For maintenance efficiency, the excavator's manual hydraulic system enables effortless cab tilting, while strategically placed key components underneath the cab allow technicians quick access for servicing and replacements - minimizing downtime and maximizing productivity.

XCMG North America Corporation
305 Equipment Ct. Suite A
Lawrenceville, GA 30043
+1 725-605-2777
letsgo@xcmgusa.com
xcmg-usa.com



TECHNICAL SPECIFICATIONS

DIMENSIONS & SPECIFICATIONS		GENERAL PURPOSE <small>QUICK CHANGE</small>				HIGH LIFT <small>QUICK CHANGE</small>			
	Bucket capacity	2.4m ³	3.15 yd ³	2.6m ³	3.41 yd ³	2.4m ³	3.15 yd ³	2.6m ³	3.41 yd ³
A	Height to Top of Exhaust Pipe	3,190 mm	10.46 ft ³	3,190 mm	10.46 ft	3,190 mm	10.46 ft	3,190 mm	10.46 ft
B	Height to Top of Cabin	3,405 mm	11.17 ft ³	3,405 mm	11.17 ft	3,405 mm	11.17 ft	3,405 mm	11.17 ft
C	Height to Top of Warning Beacon	3,640 mm	11.94 ft	3,640 mm	11.94 ft	3,640 mm	11.94 ft	3,640 mm	11.94 ft
D	Ground clearance	410 mm	1.34 ft	410 mm	1.34 ft	410 mm	1.34 ft	410 mm	1.34 ft
E	Wheelbase	3,050 mm	10 ft	3,050 mm	10 ft	3,050 mm	10 ft	3,050 mm	10 ft
F	Overall Length (without bucket)	6,536 mm	21.44 ft	6,536 mm	21.44 ft	6,935 mm	22.7 ft	6,935 mm	22.7 ft
G	Shipping length (with bucket level on ground)	7,882 mm	25.85 ft	7,947 mm	26.06 ft	8,280 mm	27.2 ft	8,345 mm	27.37 ft
H	Hinge Pin Height at Carry Position	520 mm	1.71 ft	520 mm	1.71 ft	573 mm	1.88 ft	573 mm	1.88 ft
I	Hinge Pin Height at Maximum Lift	3,969 mm	13.02 ft	3,969 mm	13.02 ft	4,402 mm	14.44 ft	4,402 mm	14.44 ft
J	Lift Arm Clearance at Maximum lift	3,356 mm	11.01 ft	3,356 mm	11.01 ft	3,688 mm	12.10 ft	3,688 mm	12.10 ft
K	Dump Clearance at Maximum lift and 45° Discharge	2,769 mm	9.08 ft	2,723 mm	8.93 ft	3,195 mm	10.48 ft	3,154 mm	10.34 ft
L	Reach at Maximum Lift and 45° Discharge	1,282 mm	4.20 ft	1,328 mm	4.36 ft	1,280 mm	4.20 ft	1,322 mm	4.34 ft
M	Dump Angle at Maximum Lift and Dump (on stops)	45°	45°	45°	45°	45°	45°	45°	45°
N	Roll back	42°	42°	42°	42°	43°	43°	43°	43°
	Angle	46°	46°	46°	46°	50°	50°	50°	50°
O	Turning Radius Outside of Tires	5,458 mm	17.90 ft	5,458 mm	17.90 ft	5,458 mm	17.9 ft	5,458 mm	17.9 ft
P	Turning Radius Inside of Tires	2,913 mm	9.55 ft	2,913 mm	9.55 ft	2,913 mm	9.55 ft	2,913 mm	9.55 ft
Q	Width over Tires (unloaded)	2,545 mm	8.35 ft	2,545 mm	8.35 ft	2,545 mm	8.35 ft	2,545 mm	8.35 ft
R	Tread Width	2,020 mm	6.62 ft	2,020 mm	6.62 ft	2,020 mm	6.62 ft	2,020 mm	6.62 ft
S	Dig Depth	60 mm	0.2 ft	60 mm	0.2 ft	145 mm	0.48 ft	145 mm	0.48 ft
T	Overall Height	5,498 mm	18.03 ft	5,560 mm	18.23 ft	5,930 mm	19.48 ft	5,990 mm	19.64 ft
U	Turning Radius Over bucket	5,845 mm	19.17 ft	5,867 mm	19.24 ft	6,337 mm	20.78 ft	6,359 mm	20.86 ft
V	Gradeability	30°		30°		30°		30°	
W	Bucket Width	2,535 mm	8.31 ft	2,535 mm	8.31 ft	2,535 mm	8.31 ft	2,535 mm	8.31 ft
X	Articulation Angle	40°		40°		40°		40°	
Tipping load	Static tipping load: straight	10,050 kg	22,156 lb	10,005 kg	22,058 lb	9,091 kg	20,042 lb	9,050 kg	19,952 lb
	40° full turn	9,180 kg	20,239 lb	9,135 kg	20,140 lb	8,304 kg	18,307 lb	8,260 kg	18,210 lb
	Breakout force	125 kN	28,101 lbf	120 kN	26,977 lbf	123 kN	27,652 lbf	117 kN	26,303 lbf
	Operating weight	16,500 kg	36,376 lb	16,545 kg	36,476 lb	16,622 kg	36,646 lb	16,668 kg	36,747 lb



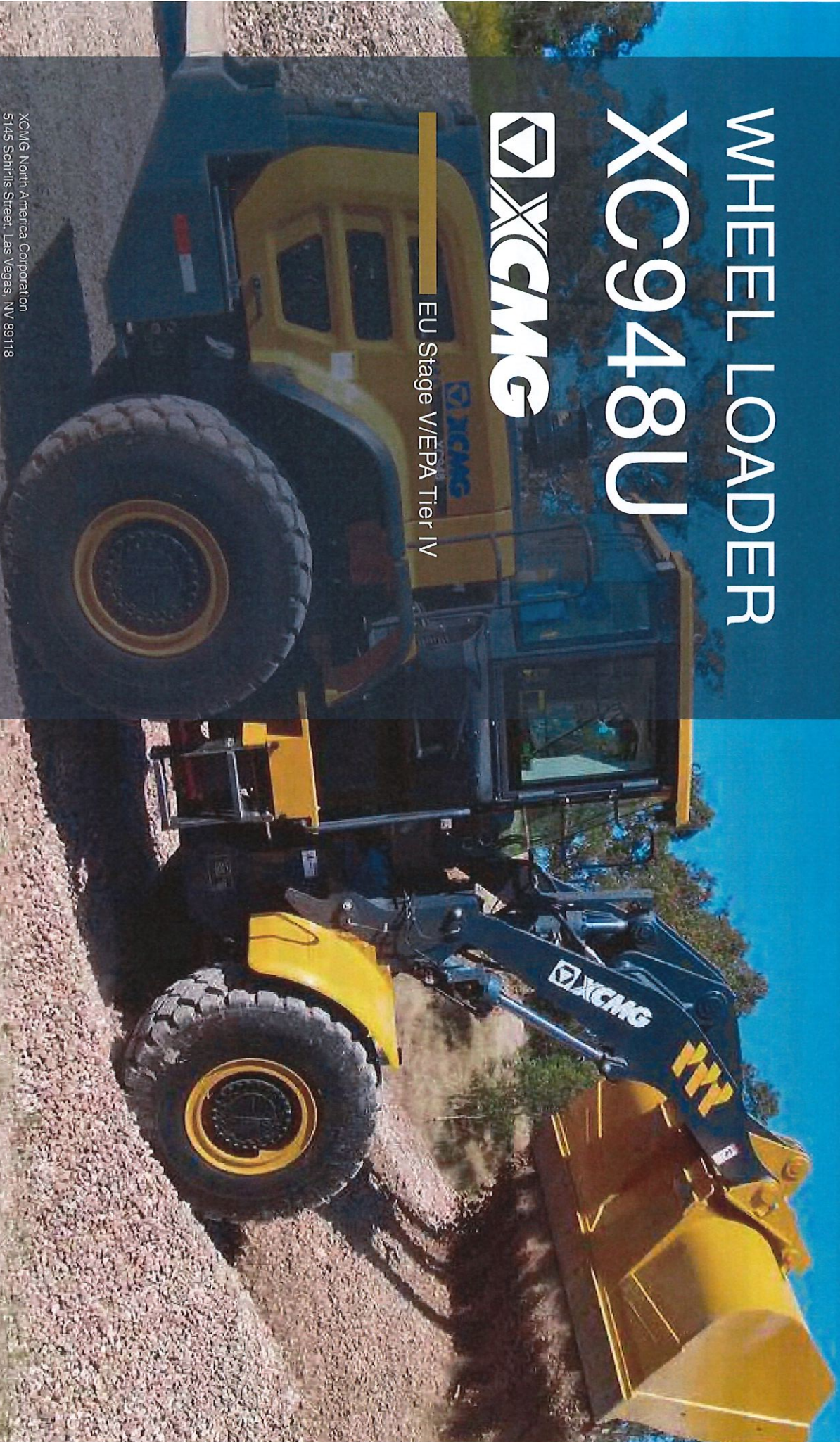
WHEEL LOADER

XC948U



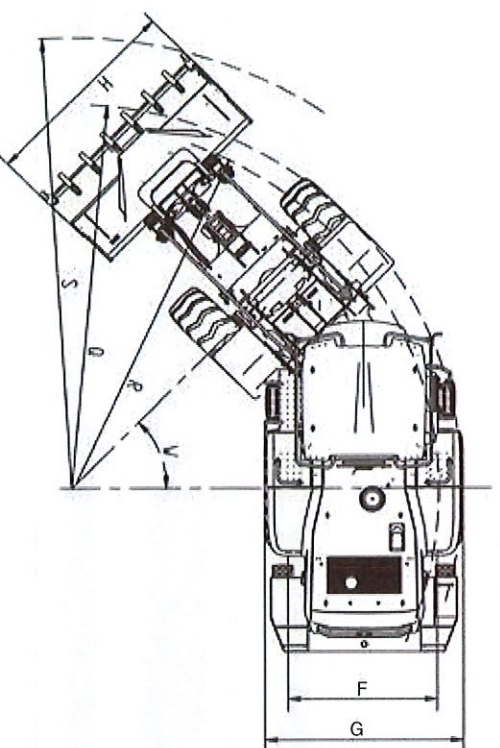
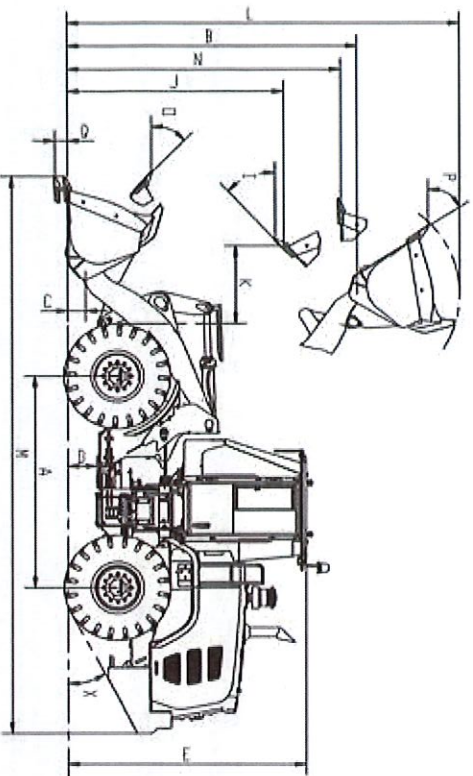
EU Stage V/EPA Tier IV

XCMG North America Corporation
5145 Schirlis Street, Las Vegas, NV 89118
Email: info@xcmgusa.com
Phone: (Las Vegas) 725-605-2777
(Houston) 346-409-2855
Web: www.xcmg-usa.com



DIMENSIONS

Technical Specifications



F Tread	6.33ft	
G Width over tires	8.04ft	
A Wheelbase	9.34ft	
B Hinge pin height	12.02ft	
D Ground clearance	1.35ft	
C Hitch height	1.31ft	
E Overall height, ROPS cab	10.89ft	
Z-Bar		
Bucket capacity	84.76m³	91.82ft³
H Bucket width	8.37ft	8.7ft
I Maximum dump angle at full height		
J Dump clearance, max height and 45° dump angle	9.35ft	9.30ft
K Reach at max height and 45° dump angle	4.03ft	4.05ft
L Operating height(fully raised)	17.77ft	17.77ft
M Overall length(bucket on ground)	26.30ft	26.64ft
N Maximum digging depth	0.2ft	0.2ft
O Bucket rollback at ground level		
Bucket rollback at carry		
P Bucket rollback at maximum height		
Q Turning radius, outside of tire	18.42ft	18.42ft
R Turning radius, center of tire	17.85ft	17.85ft
S Turning radius, bucket carry	21.01ft	21.18ft
Static tipping load:straight	22481lbf	22481lbf
38° full turn	20233lbf	20233lbf
Breakout force	28101lbf	28101lbf
Operating weight	36376lb	36376lb

Technical Specifications

ENGINE

Cummins EU Stage V/ Tier 4 Final emissions certified		
Model	B6.7	
Type	Water-cooled, 4-cycle	
Aspiration	Turbocharged & air-to-air intercooled	
Number of cylinders	6	
Displacement	408 in³	
SAE J1995	Gross power	149kW
Peak torque	990Nm	
Fuel system	Direct Injection	
Air cleaner	Pre-cleaner and dry type with double elements	

TRANSMISSION

ZF counter-shaft transmission, Automatic Power Shift, integrated joystick with FNR and KD(kick-down)		
Torque converter	Single-stage, three-element	
Transmission type	Counter-shaft, Power shift	
Travel speed	Forward	Reverse
1st	4.35 mi/h	4.97 mi/h
2nd	8.08 mi/h	8.08 mi/h
3rd	14.91 mi/h	14.91 mi/h
4th	23.61 mi/h	
Measured with 23.5R25 tires		

AXLES AND FINAL DRIVES

Model	XCMG Wet Axle	
Drive system	Four-wheel drive	
Front	Fixed, Full-Floating	
Rear	"Fixed on Swing frame, Full-Floating 22° total oscillation"	
Reduction gear	Spiral bevel gear	
Differential gear	Conventional type	
Final reduction gear	Planetary gear, Single reduction	

HYDRAULIC SYSTEM

Steering system	
Hydraulic pump	Piston type
Relief valve setting	16 MPa
Number of cylinders	2
Loader system	
Hydraulic pump	Piston type
Relief valve setting	23MPa
Number of boom cylinders	2
Number of bucket cylinders	1
Raise time	5.5s
Dump time	3.2s
Lower time(empty)	1.5s
Total cycle time	10.2s
Controls	Joystick

STEERING SYSTEM

Load-sensing hydraulic articulated steering, the steering system has priority feed from a load-sensing piston pump with variable displacement.	
Type	Articulated type
Steering angle	38°

BRAKES

Service brakes	Wet discs actuate on four wheels
Service brake actuation	Hydraulic
Parking brake type	Manual electrical control
Parking brake actuation	Hydraulic
Cooling	
Fan drive	Hydraulically driven, Automatic reversing

Technical Specifications

CAB

The cab is ROPS & FOPS certified, ROPS/FOPS meet ISO 3471 and ISO 3449
Pressurized cab with lower interior sound level
Adjustable steering column, heated air suspension seat, AM/FM radio, armrest box, and AC with optimized air outlets
Large heated rearview external mirrors with integrated spot mirrors, rear-view camera and mirrors ensure great visibility
High resolution larger color LCD panel, all important informations are located in the panel.

SOUND

The sound values indicated below are for specific operating conditions only. Machine and operator sound levels will vary at different engine and/or cooling fan speeds. Hearing protection may be needed when the machine is operated with a cab that is not properly maintained, or when the doors and/or windows are open for extended periods or in a noisy environment	
Operator Sound Pressure level according to ISO 6396-2008	72db
Exterior Sound Power level according to ISO 6395-2008	104db
Heating capacity	>6500W
Air conditioning	>5000W

SERVICE REFILL CAPACITIES

Fuel Tank	58.13gal
DEF Tank	4.76gal
Cooling System	7.93gal
Crankcase	5.28gal
Transmission	7.93gal
Differentials and Final Drives-Front	14.51gal
Differentials and Final Drives-Rear	15.51 gal
Hydraulic Tank	42.27gal

ELECTRICAL SYSTEM

Voltage	24V
Batteries	6-QAW-180D
Battery capacity	180Ah
Cold cranking capacity	-32 C
Alternator rating	2.2KW
Starter motor output	4.5KW

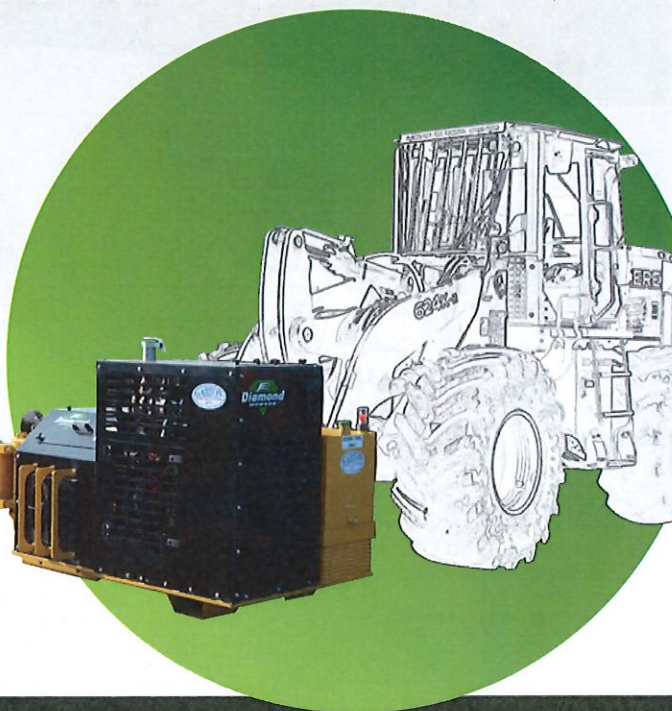
POWER AT YOUR FINGERTIPS



SELF CONTAINED WHEEL LOADER BOOM MOWER

At Diamond, we find the smartest ways to enhance the resources you already own.

Our Wheel Loader Booms are the perfect example of how we construct a powerful addition for your fleet. With a variety of available attachments, we're certain you will find a configuration to maximize your machine's potential.



SPECIFICATIONS



AVAILABLE BOOM LENGTHS 23' | 25'



6 CUTTING HEAD OPTIONS

IDEAL APPLICATIONS



ROADSIDE MAINTENANCE



DITCH & FENCE LINE CLEARING



TREE TRIMMING



SELF CONTAINED WHEEL LOADER

Fully self-contained with independent power, electrical and hydraulic systems, trim trees branches, cut brush or grass.

- Featuring a John Deere, Stage 5, 74 hp engine for efficient operation without DEF
- Elevated operator platform for improved visibility
- Attaches to 25,000 LB and larger wheel loaders



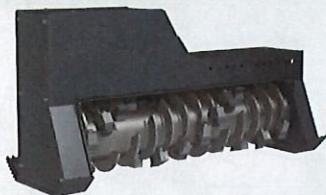
GEN 3 JOYSTICK

Enhanced control and comfort

- **Improved Ergonomics** - Improved ergonomics make operation more comfortable and enjoyable.
- **Fast Response** - Increased mowing speed in tough terrain because of shorter operator reaction time.
- **Ease of Use** - Ease of use decreases operator fatigue, ensuring longer operation periods.

BOOM CUTTING HEADS

VERSATILE CUTTING SOLUTIONS FOR EVERY JOB

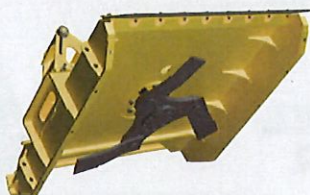


WL DRUM DC
BOOM MULCHER

Cut, process, and clear trees & brush

- Available cut widths: 30" | 50"
- Mulches up to 8" diameter brush/trees
- Standard Twin Chisel® Planer Teeth can be easily sharpened

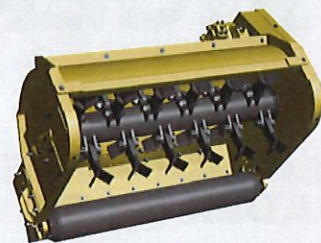
**May require compatibility kit*



WL ROTARY
BOOM MOWER

Shreds thick brush and trees

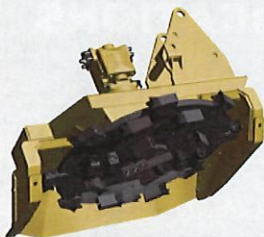
- Available cut widths: 50" | 60"
- Cuts up to 4" material continuously & 8" intermittently
- Spindle only requires an annual oil change
- Standard Proprietary Tri-Hex
- 5 YEAR WARRANTY



WL FLAIL
BOOM MOWER

Perfect for removing grass and brush

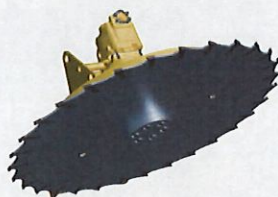
- Available cut widths: 44" | 50" | 79"
- Select models are capable of cutting up to 6" material
- Ideal for a finished look
- Ground rollers require no daily maintenance (44" & 50" models only)



WL DISC
BOOM MULCHER GEAR MOTOR

Ideal for mulching and cutting

- Available cut widths: 36"
- Cuts up to 8" material; mulches up to 5"
- Mulches material with Four Point Hardened Steel Teeth
- 10x faster than brush cutter



WL SAW
BOOM BLADE

Saws tree limbs with ease

- Available cut widths: 48"
- Cuts up to 10" diameter brush/trees
- Slices material with replaceable carbide teeth
- Delivers a clean, finished cut



WL DITCHER
BOOM

Clears culverts and ditches

- Available cut widths: 22"
- Uses three 3/8" thick replaceable knives
- Equipped with hydraulic chute to direct exhausted material

**May require compatibility kit*

Optional Accessory:

- Hydraulic Trap Door
 - Available for additional cost
 - ▷ 50" | 60" Rotary & 50" Flail Only



For more information about our limited warranty, call 888.960.0364 or visit our website DiamondMowers.com



**MINIMUM 1/2" THICK POLYCARBONATE OPERATOR PROTECTION REQUIRED. SOME APPLICATIONS MAY REQUIRE ADDITIONAL PROTECTION.*

LEARN MORE



WL-BOOM-SELF-ATTACHMENTS
R2-V4-10/29/24

CONTACT US



email hello@diamondmowers.com



web diamondmowers.com



main office 605.977.3300

City of Newberg
PO Box 970
500 W 3rd Street
Newberg, OR 97132-0970

ID# 64098

Is this your organization?

Great news—your organization is already a Sourcewell member! Using the ID number provided on this page, you can immediately utilize Sourcewell awarded contracts by providing this number to the vendor you wish to purchase from.

Update your organization's information

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Need help?

Contact our dedicated Membership Team at membership@sourcewell-mn.gov or 877-585-9706.



[Sourcewell for Vendors →](#)

Oregon Legal References

Or. Rev. Stat. § 279A.205. Authorization of cooperative procurements.

(1) A contracting agency may participate in, sponsor, conduct or administer a joint cooperative procurement for the procurement of any goods, services or public improvements.

(2) A contracting agency may participate in, sponsor, conduct or administer a permissive or interstate cooperative procurement for the procurement of any goods or services, but not public improvements.

Or. Rev. Stat. § 279A.220. Interstate cooperative procurements.

(1) A contracting agency may establish a contract or price agreement through an interstate cooperative procurement only if:

(a) The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The administering contracting agency's solicitation and the original contract allows other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract; and

(c) The administering contracting agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the purchasing contracting agency.

(2) In addition to the requirements in subsection (1) of this section:

(a) The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions and prices of the original contract, and the solicitation must be advertised in Oregon; or

(b)(A) The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, shall advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.

About Sourcewell:

Sourcewell is a service cooperative created by the Minnesota legislature as a local unit of government. Minn. Const. art. XII, sec. 3. As a public corporation and agency, Sourcewell is governed by local elected municipal officials and school board members. Minn. Stat. § 123A.21 Subd. 4 (2017). Under its enabling statute, Sourcewell is explicitly authorized to provide cooperative purchasing services to eligible members. Id. at Subd. 7(23).

Sourcewell follows the competitive contracting law process to solicit, evaluate and award cooperative purchasing contracts for goods and services. Sourcewell cooperative purchasing contracts are made available through the joint exercise of powers law to member agencies. Minn. Stat. § 471.59 (2017). Membership in Sourcewell is available for all eligible state and local governments, education, higher education and nonprofit entities across North America. § 123A.21 at Subd. 3.

Disclaimer:

The information found on the Sourcewell website is provided for educational and informational purposes only. This information contained on the Sourcewell website, including any printed material derived from the website, is not legal advice and no attorney-client or other contractual relationship is formed by access to this information. Information here may be out of date, obsolete, or otherwise inaccurate. [202 12th Street NE | P.O. Box 219 | Staples, MN 56479](mailto:202.12th.Street.NE@sourcewell-mn.gov) [888-894-1930](tel:888-894-1930) | www.sourcewell-mn.gov
Please consult with a qualified attorney regarding any questions.

Information current as of: 2025-01-01

**Solicitation Number: RFP #020223****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and XCMG Canada Ltd., 8 Boulder Blvd., Stony Plain AB T7Z 1V7 Canada (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Medium Duty and Compact Construction Equipment with Related Attachments from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires April 17, 2027, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively “Permitted Sublicensees”) in advertising and promotional materials for the purpose of marketing the Parties’ relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party’s trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party’s trademarks only in good faith and in a dignified manner consistent with such party’s use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party’s name or logo (excepting Sourcewell’s pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell’s written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for products liability-completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other

insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcwell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcwell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcwell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcwell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all

references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of

not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any

person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

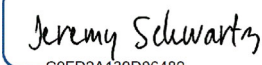
22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's

Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

XCMG Canada Ltd.

DocuSigned by:

C0FD2A139D06489...
By: _____
Jeremy Schwartz
Title: Chief Procurement Officer
4/6/2023 | 3:39 PM CDT
Date: _____

DocuSigned by:

FD78D73FA72B4D0...
By: _____
Shizhan (Victor) Jiang
Title: CEO of XCMG Canada Ltd.
4/6/2023 | 3:41 PM CDT
Date: _____

Approved:

DocuSigned by:

7E42B8F817A64CC...
By: _____
Chad Coauette
Title: Executive Director/CEO
4/6/2023 | 3:45 PM CDT
Date: _____

RFP 020223 - Medium Duty and Compact Construction Equipment with Related Attachments

Vendor Details

Company Name: XCMG NORTH AMERICA CORPORATION
5145 Schrills St
Address: Las Vegas, Nevada 89118
Contact: Xiaoyu Jia
Email: jay@xcmgusa.com
Phone: 702-715-9100
HST#:

Submission Details

Created On: Tuesday December 06, 2022 19:22:46
Submitted On: Thursday February 02, 2023 15:47:31
Submitted By: Xiaoyu Jia
Email: jay@xcmgusa.com
Transaction #: 79d9dc25-9695-46ba-a527-11671be7b853
Submitter's IP Address: 75.159.84.231

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	XCMG	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	XCMG CANADA LTD.	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Xuzhou Construction Machinery Group XCMG CANADA LTD.	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	N/A	*
5	Proposer Physical Address:	8 Boulder Blvd, Stony Plain, AB T7Z 1V7, Canada	*
6	Proposer website address (or addresses):	www.xcmg.com	*
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Name: Shizhan(Victor) Jiang; Title: Country Manager of XCMG CANADA LTD. Address: 8 boulder boulevard, Stony Plain, AB T7Z 1V7, Canada; Email Address: jiangshizhan@xcmg.com; victorj@xcmgca.com; Phone: +1 587-357-7497.	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Name: Shizhan(Victor) Jiang; Title: Country Manager of XCMG CANADA LTD. Address: 8 boulder boulevard, Stony Plain, AB T7Z 1V7, Canada; Email Address: jiangshizhan@xcmg.com; victorj@xcmgca.com; Phone: +1 587-357-7497.	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Name: Tao(Chris) Li; Title: Eastern Canadian Business Manager of XCMG CANADA LTD. Address: 8 boulder boulevard, Stony Plain, AB T7Z 1V7, Canada; Email Address: ltiao@xcmg.com	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
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10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>XCMG was founded in 1943. Since then, XCMG has stood at the forefront of the Chinese construction machinery industry and developed into the domestic industry's largest, most influential, and most competitive enterprise groups with the most complete product varieties and series. It covers business sectors in construction machinery, mining machinery, heavy-duty trucks, sanitation equipment, core Parts and components, fabricated buildings, financial services and information technology, etc.</p> <p>XCMG is the 3rd largest construction machinery company in the world published by KHL group. With over 23000 employees, including 6000 plus engineers worldwide, XCMG now has established an overseas marketing network covering 187 countries and regions.</p> <p>XCMG Canada Ltd. is an overseas subsidiary of XCMG. Based in Canada, we provide world-class construction machinery to the Canadian market, as well as Canadian-standard service support and parts supply. Our company is involved in a number of diverse projects with partners in the national operation network. A wide range of products are available, and have been well-received by Canadian customers, including earth-moving machinery (ex. excavators and wheel loaders), road-building machinery (ex. vibratory rollers), and hoisting machinery (ex. rough terrain cranes). We are, and always will be, committed to product improvement and technological innovation to further meet the needs of our customers in the Canadian markets.</p>	*
11	What are your company's expectations in the event of an award?	To offer all sourcewell participating entities the opportunity to purchase the full line of XCMG products through our dealer networks throughout Canada. In addition to supplying equipment, XCMG and its dealers will supply parts through our parts distribution centers as well as our dealer network. Our dealers will supply full service and warranty coverage on all new XCMG equipment.	*
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	<p>XCMG Group's subsidiary, XCMG Construction Machinery Co. Ltd., was listed on the Shenzhen Stock Exchange SZSE: 000425 in 1996. With the largest scale, highest technical level and largest export volume in the Chinese construction machinery industry, XCMG Group is a competitive and influential hundred billion enterprise.</p> <p>XCMG Canada Ltd. Is a newly established company as of Jan., 2023, and as such is in the process of establishing lines of credit with various financial institutions within Canada. The XCMG dealers in Canada are all financially sound and economically viable and have the full ability to provide equipment, and service that equipment as required.</p>	*
13	What is your US market share for the solutions that you are proposing?	Our dealers spread across the states and the market share is approx. +/- 5% of the product lines covered.	*
14	What is your Canadian market share for the solutions that you are proposing?	Our dealer network covers BC, AB, SK, ON, QC, NWT and Yukon, with a market share of +/- 7% of the product lines covered.	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No.	*
16	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	XCMG is a manufacturer of construction equipment who supplies new equipment as quoted to their dealer network who supply sales, service and parts support to Sourcewell participating entities.	*
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	<p>XCMG equipment in Canada are all North American certified, and acquired the EPA certificates.</p> <p>Dealer's appropriate training and certificates to be fully certified and in pursuit of the business contemplated by this RFP.</p>	*
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	No.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
19	Describe any relevant industry awards or recognition that your company has received in the past five years	XCMG won the industry's only, and the Chinese industrial sectors', top awards: the Grand Award for Industrial Enterprises of China and the National May 1st Labor Certificate. It also won the Achievement Award for National Accredited Technical Center, National Award for Progress in Science and Technology, and the 14th National Quality Award, as well as honorary titles including the National Exemplary Enterprise in Technological Innovation (the first batch in China and the first one in Jiangsu Province), National Advance Grassroots CPC Organization, and Meritorious Enterprise in Equipping China.	*
20	What percentage of your sales are to the governmental sector in the past three years	+/- 10% of XCMG and its dealers sales in the past three years went to the governmental sector.	*
21	What percentage of your sales are to the education sector in the past three years	None of XCMG and its dealers sales in the past three years went to the education sector.	*
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Through XCMG's Dealer Japa Machinery Group in Alberta, Canada. 5.8M dollar over the next four years to the City of Edmonton.	*
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	N/A	*

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Camrose County; 3755 - 43 Ave, Camrose, Alberta, Canada	Darren King	+1 780-679-6519	*
City of Edmonton; Site 320, 250 Aurum Road NE Edmonton, Alberta, Canada	Peter Nowak	+1 780-496-5447	*
MD of Greenview NO 16., 4806 36 Avenue, Valleyview, Alberta, Canada	Gord Meaney	+1 780-524-7600	*

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Edmonton	Government	AB - Alberta	Purchase of wheel loaders and excavators	Three XCMG wheel loaders, one XCMG excavator	\$1.4 Million Dollars	*
Government of Yukon	Government	AB - Alberta	Purchase of Compactors	Seven XCMG Soil Compactors	\$1.1Million Dollars	*
MD of Wainwright	Government	AB - Alberta	Purchase of Compactors	Two XCMG Soil Compactors	\$ 320 Thousand Dollars	*
The Department of National Defense of Canada	Government	SK - Saskatchewan	Purchase of Compactor	One XCMG Soil Compactor	\$ 210 Thousand Dollars	*
The County of Camrose	Government	AB - Alberta	Purchase of Excavators, compactors, and service.	One XCMG Excavator, one XCMG Soil Compactor	\$ 500 Thousand Dollars	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
26	Sales force.	<p>XCMG uses a combination of its subsidiary companies and its dealer network as well as its strategic co-operations to enhance sales and service force: XCMG CANADA LTD. Add: 8 Boulder Boulevard, Stony Plain, AB T7Z 1V7 This location functions as sales and service support center, as well as parts and logistical supply center, with a local sales and service team, including Canada-based service & support technicians and factory service technicians from China to provide service, technical support and training for dealers and customers. This location sells and services the full North-American line-up of XCMG machinery.</p> <p>XCMG's Canadian dealers:</p> <p>JAPA Machinery Group Ltd. Two branches dealership located in Edmonton and Calgary, Alberta;</p> <p>North West Crane Enterprises Ltd. Two branches dealership located in Edmonton and Grande Prairie, AB;</p> <p>Artic Machinery Ltd. Two branches dealership located in Chilliwack and Prince George, BC;</p> <p>Certified Equipment Rentals Four branches dealership located in Saskatoon and Regina, SK;</p> <p>CanLift Equipment Ltd. Two branches dealership located in Burlington and London, On;</p> <p>Equipements Plannord Two branches dealership located in Quebec City and Beloeil, QC;</p> <p>Mécanique EDF Two branches dealership located in Terrebonne and Quebec City, QC;</p> <p>XCMG's US dealers:</p> <p>National Equipment Dealers (NED) More than 30 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 18 outlets in total, mainly in North Carolina, South Carolina, Georgia, Florida and eastern Texas.</p> <p>Cisco Equipment A well-known earth-moving machinery dealer in Texas, with 44 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 7 outlets in total, covering West Texas.</p> <p>Mid-South Machinery A well-known equipment dealer in Mississippi, with 35 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 4 outlets in total, covering Mississippi.</p> <p>River Valley Tractor A well-known construction machinery dealer in Arkansas, with more than 30 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 7 outlets in total, covering Arkansas and Texas.</p> <p>Sterett Crane and Rigging Founded in 1949; Business location: The outlets cover the eastern part of the United States, with a total of 12 outlets.</p> <p>Team Boone A well-known construction machinery dealer in Kentucky, with nearly 30 years of experience in the construction machinery industry</p>

		<p>Locations: 2 locations in Kentucky</p> <p>Three C's Properties A well-known Truck and Construction dealer/lease in Louisiana and New Orleans, with 28 years of experience in the construction machinery industry Where it operates: Louisiana and New Orleans</p> <p>Morin Diesel A well-known distributor of forest machinery and earthmoving machinery in the northern New England region, with more than 30 years of experience in the construction machinery industry Locations: 1 location in Connecticut</p> <p>Trinity; Construction machinery sales and service for more than 20 years; Business location: 1 branch in California</p> <p>MTC Established in 2020, with 2 outlets in Colorado, and plans to expand to 12 outlets within 3-5 years</p> <p>Power Pro Location: Pennsylvania</p> <p>Diamond Equipment Nearly 30 years of experience in the industry, covering Utah, Colorado, Tennessee, and Illinois, with 5 outlets.</p> <p>ACME Nearly 40 years of industry experience Business location: There are outlets in Arizona, New Mexico, Utah, Nevada, Colorado, and Wyoming</p>
27	Dealer network or other distribution methods.	<p>XCMG uses a combination of its subsidiary companies and its dealer network as well as its strategic co-operations to enhance sales and service force: XCMG CANADA LTD. Add: 8 Boulder Boulevard, Stony Plain, AB T7Z 1V7 This location functions as sales and service support center, as well as parts and logistical supply center, with a local sales and service team, including Canada-based service & support technicians and factory service technicians from China to provide service, technical support and training for dealers and customers. This location sells and services the full North-American line-up of XCMG machinery.</p> <p>XCMG's Canadian dealers:</p> <p>JAPA Machinery Group Ltd. Two branches dealership located in Edmonton and Calgary, Alberta;</p> <p>North West Crane Enterprises Ltd. Two branches dealership located in Edmonton and Grande Prairie, AB;</p> <p>Artic Machinery Ltd. Two branches dealership located in Chilliwack and Prince George, BC;</p> <p>Certified Equipment Rentals Four branches dealership located in Saskatoon and Regina, SK;</p> <p>CanLift Equipment Ltd. Two branches dealership located in Burlington and London, On;</p> <p>Equipements Plannord Two branches dealership located in Quebec City and Beloeil, QC;</p> <p>Mécanique EDF Two branches dealership located in Terrebonne and Quebec City, QC;</p> <p>XCMG's US dealers:</p> <p>National Equipment Dealers (NED) More than 30 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 18 outlets in total, mainly in North Carolina, South Carolina, Georgia, Florida and eastern Texas.</p> <p>Cisco Equipment A well-known earth-moving machinery dealer in Texas, with 44 years of experience in</p>

		<p>construction machinery sales, leasing, and after-sales service support Business locations: There are 7 outlets in total, covering West Texas.</p> <p>Mid-South Machinery A well-known equipment dealer in Mississippi, with 35 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 4 outlets in total, covering Mississippi.</p> <p>River Valley Tractor A well-known construction machinery dealer in Arkansas, with more than 30 years of experience in construction machinery sales, leasing, and after-sales service support Business locations: There are 7 outlets in total, covering Arkansas and Texas.</p> <p>Sterett Crane and Rigging Founded in 1949; Business location: The outlets cover the eastern part of the United States, with a total of 12 outlets.</p> <p>Team Boone A well-known construction machinery dealer in Kentucky, with nearly 30 years of experience in the construction machinery industry Locations: 2 locations in Kentucky</p> <p>Three C's Properties A well-known Truck and Construction dealer/lease in Louisiana and New Orleans, with 28 years of experience in the construction machinery industry Where it operates: Louisiana and New Orleans</p> <p>Morin Diesel A well-known distributor of forest machinery and earthmoving machinery in the northern New England region, with more than 30 years of experience in the construction machinery industry Locations: 1 location in Connecticut</p> <p>Trinity; Construction machinery sales and service for more than 20 years; Business location: 1 branch in California</p> <p>MTC Established in 2020, with 2 outlets in Colorado, and plans to expand to 12 outlets within 3-5 years</p> <p>Power Pro Location: Pennsylvania</p> <p>Diamond Equipment Nearly 30 years of experience in the industry, covering Utah, Colorado, Tennessee, and Illinois, with 5 outlets.</p> <p>ACME Nearly 40 years of industry experience Business location: There are outlets in Arizona, New Mexico, Utah, Nevada, Colorado, and Wyoming</p>	*
28	Service force.	Same as above	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	Sourcewell participating entities will contact XCMG local dealers with their request and the dealer will provide pricing and availability. If successful, dealer will order machine from XCMG or supply a suitable machine from inventory. If ordered from XCMG, delivery time will vary from 3-6 months. If there is a suitable machine in inventory, the XCMG dealer will quote delivery based on any customization required. Dealers will work together to supply a suitable machine as quickly and efficiently as possible, which may include dealer transfers.	*

30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	XCMG Canada Ltd.'s service department has the ability to provide diagnostic and parts support via electronic communications (email, phone, etc..) as well as on-site diagnostic and repair support. The type and nature of the support provided is dependent on what the customer is requesting and the severity of the issue with the machine. For example, a simple electrical issue (ex. failed starter) might be diagnosed with the customers technician via electronic communications, whereas a major malfunction (ex. failed engine) would have XCMG technicians on-site for diagnostic and repair support. In the event that the customer does not have organic service capabilities, XCMG Canada Ltd. is capable of providing regular maintenance, as well as diagnostic and repair support to said customer. The response-time capabilities from XCMG service department is entirely dependent on the nature of the customer's request. If a customer is simply requesting diagnostic support via electronic communications, we can respond almost instantaneously. If a customer is requesting on-site support, the location of the customer falls into play.	*
31	Describe your ability and willingness to provide your products and services to Sourcwell participating entities in the United States.	XCMG and its dealers in the US are more than willing to provide products, parts, and services to Sourcwell participating entities in the US. As being witnessed and proved by various job applications, as well as governmental and non-governmental customers, we are confident the XCMG products and services we deliver will be beneficial for all Sourcwell participating entities.	*
32	Describe your ability and willingness to provide your products and services to Sourcwell participating entities in Canada.	XCMG and its dealers in Canada are more than willing to provide products, parts, and services to Sourcwell participating entities in Canada. As being witnessed and proved by various job applications, as well as governmental and non-governmental customers, we are confident the XCMG products and services we deliver will be beneficial for all Sourcwell participating entities.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	XCMG and its dealers have the ability to service all geographic areas of both the US and Canada.	*
34	Identify any Sourcwell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	No.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	No.	*

Table 7: Marketing Plan

Line Item	Question	Response *	
36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Focus on local tradeshow, Conexpo, Canada National Equipment Show, RMA, Bauma, ARHCA, North BC North Resources Show; Mining Show, ARA, World of Concrete, AEM member, Canadian Concrete Show, GP Oil Field Show, etc. XCMG and its dealers advertise on social Media like Youtube, Instagram, LinkedIn. We also sponsor golf tournaments and hockey games.	*
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	YouTube, Instagram, Twitter, LinkedIn and Facebook advertisement and promotion (XCMG products introduction and brand promotion). Put specific products introduction on both E-magazine and Paper version. (for example: Crane Trader). Attend public welfare activities.	*
38	In your view, what is Sourcwell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcwell-awarded contract into your sales process?	Sourcwell will play a very important role and allows us to start the sales process and bid for governmental and educational projects that we would not be able to access, and the opportunity to supply goods we currently have available to fill these requests.	*
39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	Our dealers have equipment inventory and pricing listed online at various E-commerce sources. Our dealers also submit RFPs through e-procurement portal, such as Bonfire, Bids and tenders, Ariba, and Daily Bids and govbids.com to name a few.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *	
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	All products, equipment and maintenance training are included and provided at no additional charge to any Sourcewell members if required. Training is provided by training personnel from XCMG local dealers. Standard training for XCMG equipment includes full day Operator/Maintenance training.	*
41	Describe any technological advances that your proposed products or services offer.	Where applicable, XCMG will provide alternative power options(XC918EV, XC968EV wheel loaders, and in the future there will be electric excavators from 3.5ton to15 ton)	*
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>Since the start of 21st century, XCMG has attached great importance to sustainable development. Over the last decade of engineering and technology developping, XCMG launched and showcased the latest display with the theme "Innovation for Green" at 2022 Bauma Munich in Germany. More than ten XCMG "green" products with leading technology in energy saving, environmental protection, zero emission and no pollution were released in a concentrated manner. XCMG firmly takes the road of green development and is a leading enterprise in low-carbon emission reduction.</p> <p>Also, XCMG products have lower fuel-consumption than market average under the same power level. Full product line with Tier IV engines certified by the EPA and CPA. GPS systems available for machines are also able to track machine idle times, which can help reduce unnecessary idling.</p>	*
43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Certificate of electric(Lithium Battery) products.	*
44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	XCMG believes in supporting women and minorities in business, and its dealer network of small businesses are all companies who believe that a heterogeneous workplace, with a mix of genders and ethnicities helps to build stronger businesses. For example, JAPA Machinery Group's part owner is a woman who recently won the Alberta Roadbuilders and Heavy Construction Association's Rising Star award, and their head of accounting is an immigrant woman. XCMG's Canadian dealer network is not eligible for WMBE or SBE certifications, but it still very important to XCMG North America to be partnered with companies that share our beliefs in lifting women and minorities in business.	*
45	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	<p>Safety standards – Zero lost-time to injuries in our North American offices, and zero jobsite injuries on the US models listed in the Proposal.</p> <p>Price Performance – much more competitive pricing under the same configuration and performance</p>	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	The warranty offered from XCMG and its dealers cover all products, parts, and labor, with the exception of: Glass Lights Radios Wear & Tear (Regular maintenance items) / undercarriage Customer damage	*
47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	XCMG warranties do not cover: Attachments/Accessories not sold by XCMG Aftermarket attachments/accessories installed by XCMG and/or one of its dealers are excluded Accidents, abuse, neglect, and/or improper repair.	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	This shall be decided case-by-case.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	If dealer coverage is not available, XCMG Canada Ltd. can provide a certified technician to perform warranty repairs in all geographic regions in the US and Canada.	*
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	XCMG will cover warranty service for items made by other manufacturers that are installed onto the machine before delivered to the customer(ex. quick coupler installed at dealer prior to delivery). Severe engine warranty issues may be passed on to the original equipment manufacturer (ex. Cummins), this is determined on a case-by-case basis.	*
51	What are your proposed exchange and return programs and policies?	Dealers will provide equipment as quoted, and the machine is not meeting the expectations of the Sourcewell participating entities in the first three months, or three hundred hours, whichever occurs first, XCMG will provide a suitable replacement machine.	*
52	Describe any service contract options for the items included in your proposal.	All XCMG dealers have the ability to provide full maintenance/service contract on a case-by-case, or a machine-by-machine basis, at an additional cost.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	Acceptable payment terms will be 30 to 60days after machine delivery. XCMG dealers will accept wire, check and/or EFT for payment.	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	XCMG dealers have access to financial institutions to supply suitable leasing and financing options as required.	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	XCMG dealers will provide a sales order with details of the deal including pricing, warranty, delivery etc. To be signed by the customers, and when the machine is delivered, dealer will provide a sales invoice for payment and appropriate warranty document with start date once machine is delivered.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Payment terms will be dealer specific but acceptable terms would be 30 to 60 days. Dealers payment processes will vary, however most accept wire, check, and/or EFT.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcwell Price and Product Change Request Form.

Line Item	Question	Response *	
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcwell discounted price) on all of the items that you want Sourcwell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Generally, dealers will supply equipment at a 5% discount from listed price. Listed price will include dealers' normal profit on a standard configuration machine.	*
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Generally, dealers will supply equipment at a 5% discount from listed price. Listed price will include dealers' normal profit on a standard configuration machine.	*
59	Describe any quantity or volume discounts or rebate programs that you offer.	Additional rebates maybe available for large volume purchases, but this will be a case-by-case negotiation with dealers.	*
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Quoted purchase price includes standard configurations and any additional options will be quoted with cost plus percentage. Dealers will supply quote for each sourced product beyond standard configuration when they receive a request from Sourcwell participating entities.	*
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	All pricing will be CIF North American ports including Port of New Westminster, Port of Vancouver, Port of Baltimore, and Port of Tacoma. Freight to dealers will be added to purchase price. Extended warranties beyond XCMG standard will be at additional cost. Any customization, modification, or installation beyond standard configuration will be an additional cost.	*
62	If freight, delivery, or shipping is an additional cost to the Sourcwell participating entity, describe in detail the complete freight, shipping, and delivery program.	The submitted Sourcwell price does not include delivery to the dealer or to customer site. It can be arranged through our dealers on a case to case basis.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	XCMG will be delivering products to port listed above, and freight to dealer and/or customer will be determined by machine type.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	We will assist as required in booking transportation for the Sourcwell participating entities.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	The final price to the customer will be available to confirm that compliant Sourcewell pricing was used. XCMG will have designated personnel available to monitor, audit, and report all Sourcewell related sales. They will work with all XCMG dealers across Canada to ensure the proper accounting and reporting of all sourcewell sales. Quarterly reports will be supplied as required. We will use the technology within the company including Fishbowl inventory tracking and accounting systems to ensure Sourcewell participating entities receive the correct pricing, completed reporting and that Sourcewell is paid appropriately.	*
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	XCMG will monitor the number of units sold and will work with dealers on their pricing to ensure profitability. XCMG will also look at lead-to-opportunity conversion rate, repeat customer rate, and total revenues.	*
68	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	An administrative fee shall be paid to Sourcewell for any awarded contract through Sourcewell with the below percentage: Under CAD 100,000, 3% of transaction price; Between CAD 100,000-200,000, 2% of transaction price Over CAD 200,000, 1.5% of transaction price The administrative fee shall be paid to Sourcewell quarterly.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	XCMG have quoted all the products and models they have for North America that fall under the proposed category in this tender. XCMG dealers all have the appropriate information and tools to support all of the quoted equipment.	*
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	XCMG and their dealers will provide options and attachments as required by Sourcewell participating entities. These attachments and options may not be specified in the tender.	*

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
71	Wheeled, tracked, and backhoe loaders;	<input checked="" type="radio"/> Yes <input type="radio"/> No	XCMG is providing four models of wheel loaders, one model of backhoe loader that fall under this category.	*
72	Skidsteers;	<input checked="" type="radio"/> Yes <input type="radio"/> No	XCMG is providing three models of skid steer that fall under this category.	*
73	Mini excavators;	<input checked="" type="radio"/> Yes <input type="radio"/> No	XCMG is providing six models of mini excavators that fall under this category.	*
74	Telehandlers;	<input checked="" type="radio"/> Yes <input type="radio"/> No	XCMG is providing two models of telehandlers that fall under this category.	*
75	Soil compaction and site preparation equipment	<input checked="" type="radio"/> Yes <input type="radio"/> No	XCMG is providing three models of Soil compactors that fall under this category.	*

Table 15: Exceptions to Terms, Conditions, or Specifications Form

Line Item 76. NOTICE: To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 2. Documents should NOT have a security password, as Sourcwell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcwell.
 3. Sourcwell may reject any response where any document(s) cannot be opened and viewed by Sourcwell.
 4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - XCMG Price Sheet.pdf - Wednesday February 01, 2023 16:01:55
 - [Financial Strength and Stability](#) - Balance sheet.png - Thursday February 02, 2023 15:46:54
 - [Marketing Plan/Samples](#) - ARHCA Heavy -JAPA Ad - XCMG Updated January 2022 (copy).pdf - Wednesday February 01, 2023 16:04:43
 - [WMBE/MBE/SBE or Related Certificates](#) - XS125PD Soil Compactor TUV Cert Sample.pdf - Wednesday February 01, 2023 16:07:01
 - [Warranty Information](#) - XCMG New Equipment Warranty.pdf - Thursday February 02, 2023 15:08:20
 - Standard Transaction Document Samples (optional)
 - [Upload Additional Document](#) - World Top 500 Enterprise.jpg - Wednesday February 01, 2023 16:09:36

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Shizhan Jiang, Country Manager , XCMG Canada Ltd.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_4_Medium_Duty_and_Compact_Construction_Eqpt_RFP_020223 Tue January 24 2023 02:56 PM	<input checked="" type="checkbox"/>	2
Addendum_3_Medium_Duty_and_Compact_Construction_Eqpt_RFP_020223 Tue January 3 2023 11:29 AM	<input checked="" type="checkbox"/>	1
Addendum_2_Medium_Duty_and_Compact_Construction_Eqpt_RFP_020223 Tue December 27 2022 03:08 PM	<input checked="" type="checkbox"/>	1
Addendum_1_Medium_Duty_and_Compact_Construction_Eqpt_RFP_020223 Mon December 12 2022 04:08 PM	<input checked="" type="checkbox"/>	1



ASSIGNMENT OF

CONTRACT #020223-XCM

THIS ASSIGNMENT AGREEMENT is effective upon the date of the last signature below by and among **Sourcewell; XCMG Canada Ltd., and XCMG North America Corporation.**

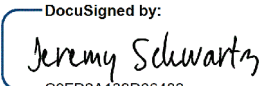
Sourcewell awarded a contract to XCMG Canada, Ltd. to provide Medium Duty and Compact Construction Equipment with Related Attachments to Sourcewell and its Participating Entities, effective April 6, 2023, through April 17, 2027 (Contract).

XCMG Canada Ltd. wishes to assign the Contract to XCMG North America Corporation; and Section 10.B. of the Contract requires assignment only upon prior written consent of the parties and a fully executed assignment agreement.

XCMG North America Corporation is ready, willing, and able to perform all the obligations and responsibilities of the Contract and Sourcewell consents to the assignment. Therefore, as of the effective date of this Assignment, all rights, and obligations of XCMG Canada Ltd. are assigned to XCMG North America Corporation.

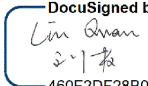
Except as described above, the Contract remains in full force and effect.

Sourcewell

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer

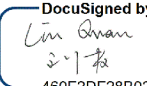
Date: 7/9/2024 | 12:58 PM CDT

XCMG Canada Ltd.

DocuSigned by:

By: 460F2DF28B02431...
Liu Quan
Title: CEO/President, XCMG North American Region and XCMG America Inc.

Date: 7/16/2024 | 10:45 上午 PDT

XCMG North America Corporation

DocuSigned by:

By: 460F2DF28B02431...
Liu Quan
Title: CEO/President, XCMG North American Region and XCMG America Inc.

Date: _____

XCMG #020223-XCM

Pricing for contract #020223-XCM offers Sourcewell participating agencies the following discounts:

- 5% off standard MSRP for Sourcewell members

**MASTER AGREEMENT #032525****CATEGORY: Road Right-of-Way Maintenance Equipment****SUPPLIER: Diamond Mowers, LLC**

This Master Agreement (Agreement) is between Sourcewell, a Minnesota service cooperative located at 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Diamond Mowers, LLC, 350 E. 60th St. N., Sioux Falls, SD 57104 (Supplier).

Sourcewell is a local government and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) offering a Cooperative Purchasing Program to eligible participating government entities.

Under this Master Agreement entered with Sourcewell, Supplier will provide Included Solutions to Participating Entities through Sourcewell's Cooperative Purchasing Program.

**Article 1:
General Terms**

The General Terms in this Article 1 control the operation of this Master Agreement between Sourcewell and Supplier and apply to all transactions entered by Supplier and Participating Entities. Subsequent Articles to this Master Agreement control the rights and obligations directly between Sourcewell and Supplier (Article 2), and between Supplier and Participating Entity (Article 3), respectively. These Article 1 General Terms control over any conflicting terms. Where this Master Agreement is silent on any subject, Participating Entity and Supplier retain the ability to negotiate mutually acceptable terms.

- 1) **Purpose.** Pursuant to Minnesota law, the Sourcewell Board of Directors has authorized a Cooperative Purchasing Program designed to provide Participating Entities with access to competitively awarded cooperative purchasing agreements. To facilitate the Program, Sourcewell has awarded Supplier this cooperative purchasing Master Agreement following a competitive procurement process intended to meet compliance standards in accordance with Minnesota law and the requirements contained herein.
- 2) **Intent.** The intent of this Master Agreement is to define the roles of Sourcewell, Supplier, and Participating Entity as it relates to Sourcewell's Cooperative Purchasing Program.
- 3) **Participating Entity Access.** Sourcewell's Cooperative Purchasing Program Master Agreements are available to eligible public agencies (Participating Entities). A Participating Entity's authority to access Sourcewell's Cooperative Purchasing Program is determined through the laws of its respective jurisdiction.
- 4) **Supplier Access.** The Included Solutions offered under this Agreement may be made available to any Participating Entity. Supplier understands that a Participating Entity's use of this Agreement is at the Participating Entity's sole convenience. Supplier will educate its sales and service forces about Sourcewell eligibility requirements and required documentation. Supplier will be responsible for ensuring sales are with Participating Entities.

- 5) **Term.** This Agreement is effective upon the date of the final signature below. The term of this Agreement is four (4) years from the effective date. The Agreement expires at 11:59 P.M. Central Time on May 15, 2029, unless it is cancelled or extended as defined in this Agreement.
- a) **Extensions.** Sourcewell and Supplier may agree to up to three (3) additional one-year extensions beyond the original four-year term. The total possible length of this Agreement will be seven (7) years from the effective date.
- b) **Exceptional Circumstances.** Sourcewell retains the right to consider additional extensions as required under exceptional circumstances.
- 6) **Survival of Terms.** Notwithstanding the termination of this Agreement, the obligations of this Agreement will continue through the performance period of any transaction entered between Supplier and any Participating Entity before the termination date.
1. **Scope.** Supplier is awarded a Master Agreement to provide the solutions identified in RFP #032525 to Participating Entities. In Scope solutions include: manned, robotic, or remote Road Right-of-Way Maintenance Equipment, including equipment, attachments, and accessories designed or primarily intended for use in the maintenance of road and highway rights-of-way, including but not limited to:
- a. Flail, boom, rotary, wing, sickle, and slope mowers;
 - b. Brush cutters;
 - c. Seeders, tillers, mulchers, and sprayers;
 - d. Erosion stabilization and prevention products;
 - e. Ditch maintenance equipment; and
 - f. Dust abatement water trucks.
- 7) **Included Solutions.** Supplier's Proposal to the above referenced RFP is incorporated into this Master Agreement. Only those Solutions included within Supplier's Proposal and within Scope (Included Solutions) are included within the Agreement and may be offered to Participating Entities.
- 8) **Indefinite Quantity.** This Master Agreement defines an indefinite quantity of sales to eligible Participating Entities.
- 9) **Pricing.** Pricing information (including Pricing and Delivery and Pricing Offered tables) for all Included Solutions within Supplier's Proposal is incorporated into this Master Agreement.
- 10) **Not to Exceed Pricing.** Suppliers may not exceed the prices listed in the current Pricing List on file with Sourcewell when offering Included Solutions to Participating Entities. Participating Entities may request adjustments to pricing directly from Supplier during the negotiation and execution of any transaction.
- 11) **Open Market.** Supplier's open market pricing process is included within its Proposal.

12) Supplier Representations:

- i) **Compliance.** Supplier represents and warrants it will provide all Included Solutions under this Agreement in full compliance with applicable federal, state, and local laws and regulations.
 - ii) **Licenses.** As applicable, Supplier will maintain a valid status on all required federal, state, and local licenses, bonds, and permits required for the operation of Supplier's business with Participating Entities. Participating Entities may request all relevant documentation directly from Supplier.
 - iii) **Supplier Warrants.** Supplier warrants that all Included Solutions furnished under this Agreement are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Solutions are suitable for and will perform in accordance with the ordinary use for which they are intended.
- 13) **Bankruptcy Notices.** Supplier certifies and warrants it is not currently in a bankruptcy proceeding. Supplier has disclosed all current and completed bankruptcy proceedings within the past seven years within its Proposal. Supplier must provide notice in writing to Sourcewell if it enters a bankruptcy proceeding at any time during the term of this Agreement.
- 14) **Debarment and Suspension.** Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Agreement. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time during the term of this Agreement.
- 15) **Provisions for non-United States federal entity procurements under United States federal awards or other awards (Appendix II to 2 C.F.R. § 200).** Participating Entities that use United States federal grant or other federal funding to purchase solutions from this Agreement may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Section, all references to "federal" should be interpreted to mean the United States federal government. The following list applies when a Participating Entity accesses Supplier's Included Solutions with United States federal funds.
- i) **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all agreements that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

ii) **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must comply with all applicable Davis-Bacon Act provisions.

iii) **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Agreement. Supplier certifies that during the term of an award for all Agreements by Sourcwell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

iv) **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier

certifies that during the term of an award for all Agreements by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

v) **CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387).** Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Agreement it will comply with applicable requirements as referenced above.

vi) **DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689).** A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

vii) **BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352).** Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

viii) **RECORD RETENTION REQUIREMENTS.** To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

ix) **ENERGY POLICY AND CONSERVATION ACT COMPLIANCE.** To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

x) **BUY AMERICAN PROVISIONS COMPLIANCE.** To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

xi) **ACCESS TO RECORDS (2 C.F.R. § 200.336).** Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

xii) **PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322).** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

xiii) **FEDERAL SEAL(S), LOGOS, AND FLAGS.** The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

xiv) **NO OBLIGATION BY FEDERAL GOVERNMENT.** The U.S. federal government is not a party to this Agreement or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Agreement or any purchase by an authorized user.

xv) **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** The Contractor acknowledges that 31 U.S.C. § 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Agreement or any purchase by a Participating Entity.

xvi) **FEDERAL DEBT.** The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

xvii) **CONFLICTS OF INTEREST.** The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

xviii) **U.S. EXECUTIVE ORDER 13224.** The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

xix) **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** To the extent applicable, Supplier certifies that during the term of this Agreement it will comply with applicable requirements of 2 C.F.R. § 200.216.

xx) **DOMESTIC PREFERENCES FOR PROCUREMENTS.** To the extent applicable, Supplier certifies that during the term of this Agreement, Supplier will comply with applicable requirements of 2 C.F.R. § 200.322.

Article 2: Sourcewell and Supplier Obligations

The Terms in this Article 2 relate specifically to Sourcewell and its administration of this Master Agreement with Supplier and Supplier's obligations thereunder.

- 1) **Authorized Sellers.** Supplier must provide Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers which may complete transactions of Included Solutions offered under this Agreement. Sourcewell may request updated information in its discretion, and Supplier agrees to provide requested information within a reasonable time.
- 2) **Product and Price Changes Requirements.** Supplier may request Included Solutions changes, additions, or deletions at any time. All requests must be made in writing by submitting a Sourcewell Price and Product Change Request Form to Sourcewell. At a minimum, the request must:
 - Identify the applicable Sourcewell Agreement number;
 - Clearly specify the requested change;
 - Provide sufficient detail to justify the requested change;
 - Individually list all Included Solutions affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
 - Include a complete restatement of Pricing List with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Included Solutions offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Agreement and will be incorporated by reference.

- 3) **Authorized Representative.** Supplier will assign an Authorized Representative to Sourcewell for this Agreement and must provide prompt notice to Sourcewell if that person is changed. The Authorized Representative will be responsible for:
 - Maintenance and management of this Agreement;
 - Timely response to all Sourcewell and Participating Entity inquiries; and
 - Participation in reviews with Sourcewell.

Sourcewell's Authorized Representative is its Chief Procurement Officer.

- 4) **Performance Reviews.** Supplier will perform a minimum of one review with Sourcewell per agreement year. The review will cover transactions to Participating Entities, pricing and terms,

administrative fees, sales data reports, performance issues, supply chain issues, customer issues, and any other necessary information.

- 5) **Sales Reporting Required.** Supplier is required as a material element to this Master Agreement to report all completed transactions with Participating Entities utilizing this Agreement. Failure to provide complete and accurate reports as defined herein will be a material breach of the Agreement and Sourcewell reserves the right to pursue all remedies available at law including cancellation of this Agreement.
- 6) **Reporting Requirements.** Supplier must provide Sourcewell an activity report of all transactions completed utilizing this Agreement. Reports are due at least once each calendar quarter (Reporting Period). Reports must be received no later than 45 calendar days after the end of each calendar quarter. Supplier may report on a more frequent basis in its discretion. Reports must be provided regardless of the amount of completed transactions during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Sourcewell Participating Entity Account Number;
- Transaction Description;
- Transaction Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Transaction was invoiced/sale was recognized as revenue by Supplier.

If collected by Supplier, the Report may include the following fields as available:

- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;

- 7) **Administrative Fee.** In consideration for the support and services provided by Sourcewell, Supplier will pay an Administrative Fee to Sourcewell on all completed transactions to Participating Entities utilizing this Agreement. Supplier will include its Administrative Fee within its proposed pricing. Supplier may not directly charge Participating Entities to offset the Administrative Fee.
- 8) **Fee Calculation.** Supplier's Administrative Fee payable to Sourcewell will be calculated as a stated percentage (listed in Supplier's Proposal) of all completed transactions utilizing this Master Agreement within the preceding Reporting Period. For certain categories, a flat fee may be proposed. The Administrative Fee will be stated in Supplier's Proposal.
- 9) **Fee Remittance.** Supplier will remit fee to Sourcewell no later than 45 calendar days after the close of the preceding calendar quarter in conjunction with Supplier's Reporting Period obligations defined herein. Payments should note the Supplier's name and Sourcewell-assigned Agreement number in the memo; and must be either mailed to Sourcewell above "Attn: Accounts Receivable" or

remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions.

- 10) **Noncompliance.** Sourcewell reserves the right to seek all remedies available at law for unpaid or underpaid Administrative Fees due under this Agreement. Failure to remit payment, delinquent payments, underpayments, or other deviations from the requirements of this Agreement may be deemed a material breach and may result in cancellation of this Agreement and disbarment from future Agreements.
- 11) **Audit Requirements.** Pursuant to Minn. Stat. § 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell and the Minnesota State Auditor for a minimum of six years from the end of this Agreement. Supplier agrees to fully cooperate with Sourcewell in auditing transactions under this Agreement to ensure compliance with pricing terms, correct calculation and remittance of Administrative Fees, and verification of transactions as may be requested by a Participating Entity or Sourcewell.
- 12) **Assignment, Transfer, and Administrative Changes.** Supplier may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Sourcewell. Such consent will not be unreasonably withheld. Sourcewell reserves the right to unilaterally assign all or portions of this Agreement within its sole discretion to address corporate restructurings, mergers, acquisitions, or other changes to the Responsible Party and named in the Agreement. Any prohibited assignment is invalid. Upon request Sourcewell may make administrative changes to agreement documentation such as name changes, address changes, and other non-material updates as determined within its sole discretion.
- 13) **Amendments.** Any material change to this Agreement must be executed in writing through an amendment and will not be effective until it has been duly executed by the parties.
- 14) **Waiver.** Failure by Sourcewell to enforce any right under this Agreement will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- 15) **Complete Agreement.** This Agreement represents the complete agreement between the parties for the scope as defined herein. Supplier and Sourcewell may enter into separate written agreements relating specifically to transactions outside of the scope of this Agreement.
- 16) **Relationship of Sourcewell and Supplier.** This Agreement does not create a partnership, joint venture, or any other relationship such as employee, independent contractor, master-servant, or principal-agent.
- 17) **Indemnification.** Supplier must indemnify, defend, save, and hold Sourcewell, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell, arising out of any act or omission in the performance of this Agreement by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in design, condition, or performance of Included Solutions under this Agreement. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

18) **Data Practices.** Supplier and Sourcewell acknowledge Sourcewell is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. As it applies to all data created and maintained in performance of this Agreement, Supplier may be subject to the requirements of this chapter.

19) **Grant of License.**

a) **During the term of this Agreement:**

i) **Supplier Promotion.** Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising, promotional materials, and informational sites for the purpose of marketing Sourcewell's Agreement with Supplier.

ii) **Sourcewell Promotion.** Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising, promotional materials, and informational sites for the purpose of marketing Supplier's Agreement with Sourcewell.

b) **Limited Right of Sublicense.** The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, partners, or agents (collectively "Permitted Sublicensees") in advertising, promotional, or informational materials for the purpose of marketing the Parties' relationship. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this section by any of their respective sublicensees.

c) **Use; Quality Control.**

i) Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.

ii) Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Each party may make written notice to the other regarding misuse under this section. The offending party will have 30 days of the date of the written notice to cure the issue or the license/sublicense will be terminated.

d) **Termination.** Upon the termination of this Agreement for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

20) **Venue and Governing law between Sourcewell and Supplier Only.** The substantive and procedural laws of the State of Minnesota will govern this Agreement between Sourcewell and Supplier. Venue for all legal proceedings arising out of this Agreement between Sourcewell and Supplier will be in court of competent jurisdiction within the State of Minnesota. This section does not apply to any dispute between Supplier and Participating Entity. This Agreement reserves the right for Supplier and

Participating Entity to negotiate this term to within any transaction documents.

- 21) **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Agreement is capable of being performed, it will not be affected by such determination or finding and must be fully performed.
- 22) **Insurance Coverage.** At its own expense, Supplier must maintain valid insurance policy(ies) during the performance of this Agreement with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:
- a) **Commercial General Liability Insurance.** Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Agreement.
 - \$1,500,000 each occurrence Bodily Injury and Property Damage
 - \$1,500,000 Personal and Advertising Injury
 - \$2,000,000 aggregate for products liability-completed operations
 - \$2,000,000 general aggregate
 - b) **Certificates of Insurance.** Prior to execution of this Agreement, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Agreement. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or provided to in an alternative manner as directed by Sourcewell. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf. Failure of Supplier to maintain the required insurance and documentation may constitute a material breach.
 - c) **Additional Insured Endorsement and Primary and Non-contributory Insurance Clause.** Supplier agrees to list Sourcewell, including its officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.
 - d) **Waiver of Subrogation.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Agreement or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

- e) **Umbrella/Excess Liability/SELF-INSURED RETENTION.** The limits required by this Agreement can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

- 23) **Termination for Convenience.** Sourcewell or Supplier may terminate this Agreement upon 60 calendar days' written notice to the other Party. Termination pursuant to this section will not relieve the Supplier's obligations under this Agreement for any transactions entered with Participating Entities through the date of termination, including reporting and payment of applicable Administrative Fees.
- 24) **Termination for Cause.** Sourcewell may terminate this Agreement upon providing written notice of material breach to Supplier. Notice must describe the breach in reasonable detail and state the intent to terminate the Agreement. Upon receipt of Notice, the Supplier will have 30 calendar days in which it must cure the breach. Termination pursuant to this section will not relieve the Supplier's obligations under this Agreement for any transactions entered with Participating Entities through the date of termination, including reporting and payment of applicable Administrative Fees.

Article 3: Supplier Obligations to Participating Entities

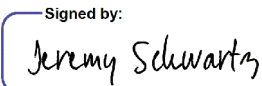
The Terms in this Article 3 relate specifically to Supplier and a Participating Entity when entering transactions utilizing the General Terms established in this Master Agreement. Article 1 General Terms control over any conflict with this Article 3. Where this Master Agreement is silent on any subject, Participating Entity and Supplier retain the ability to negotiate mutually acceptable terms.

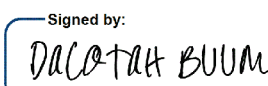
- 1) **Quotes to Participating Entities.** Suppliers are encouraged to provide all pricing information regarding the total cost of acquisition when quoting to a Participating Entity. Suppliers and Participating Entities are encouraged to include all cost specifically associated with or included within the Suppliers proposal and Included Solutions within transaction documents.
- 2) **Shipping, Delivery, Acceptance, Rejection, and Warranty.** Supplier's proposal may include proposed terms relating to shipping, delivery, inspection, and acceptance/rejection and other relevant terms of tendered Solutions. Supplier and Participating Entity may negotiate final terms appropriate for the specific transaction relating to non-appropriation, shipping, delivery, inspection, acceptance/rejection of tendered Solutions, and warranty coverage for Included Solutions. Such terms may include, but are not limited to, costs, risk of loss, proper packaging, inspection rights and timelines, acceptance or rejection procedures, and remedies as mutually agreed include notice requirements, replacement, return or exchange procedures, and associated costs.
- 3) **Applicable Taxes.** Participating Entity is responsible for notifying supplier of its tax-exempt status and for providing Supplier with any valid tax-exemption certification(s) or related documentation.
- 4) **Ordering Process and Payment.** Supplier's ordering process and acceptable forms of payment are included within its Proposal. Participating Entities will be solely responsible for payment to Supplier and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

- 5) **Transaction Documents.** Participating Entity may require the use of its own forms to complete transactions directly with Supplier utilizing the terms established in this Agreement. Supplier’s standard form agreements may be offered as part of its Proposal. Supplier and Participating Entity may complete and document transactions utilizing any type of transaction documents as mutually agreed. In any transaction document entered utilizing this Agreement, Supplier and Participating Entity must include specific reference to this Master Agreement by number and to Participating Entity’s unique Sourcewell account number.
- 6) **Additional Terms and Conditions Permitted.** Participating Entity and Supplier may negotiate and include additional terms and conditions within transaction documentation as mutually agreed. Such terms may supplant or supersede this Master Agreement when necessary and as solely determined by Participating Entity. Sourcewell has expressly reserved the right for Supplier and Participating Entity to address any necessary provisions within transaction documents not expressly included within this Master Agreement, including but not limited to transaction cancellation, dispute resolution, governing law and venue, non-appropriation, insurance, defense and indemnity, force majeure, and other material terms as mutually agreed.
- 7) **Subsequent Agreements and Survival.** Supplier and Participating Entity may enter into a separate agreement to facilitate long-term performance obligations utilizing the terms of this Master Agreement as mutually agreed. Such agreements may provide for a performance period extending beyond the full term of this Master Agreement as determined in the discretion of Participating Entity.
- 8) **Participating Addendums.** Supplier and Participating Entity may enter a Participating Addendum or similar document extending and supplementing the terms of this Master Agreement to facilitate adoption as may be required by a Participating Entity.

Sourcewell

Diamond Mowers, LLC

Signed by:

C0FD2A139D06489...
By: _____
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 5/13/2025 | 12:01 PM CDT

Signed by:

715AFBF655D2486...
By: _____
Dacotah Buum
Title: Sales Project Manager
Date: 5/13/2025 | 7:23 AM PDT

RFP 032525 - Road Right-of-Way Maintenance Equipment

Vendor Details

Company Name: Diamond Mowers

Does your company conduct business under any other name? If yes, please state: SD

Address: 350 E 60TH Street North
Sioux Falls, sd 57104

Contact: dacotah buum

Email: DBuum@diamondmowers.com

Phone: 605-977-3352

Fax: 888-960-0364

HST#: 46-0457129

Submission Details

Created On: Thursday March 13, 2025 09:16:21

Submitted On: Monday March 24, 2025 10:18:00

Submitted By: dacotah buum

Email: DBuum@diamondmowers.com

Transaction #: 737d5600-766f-4550-80b9-b1c8d2e236e7

Submitter's IP Address: 147.243.203.247

Specifications

Table 1: Proposer Identity & Authorized Representatives (Not Scored)

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Table 1 Specific Instructions. Sourcewell requires identification of all parties responsible for providing Solutions under a resulting master agreement(s) (Responsible Supplier). Proposers are strongly encouraged to include all potential Responsible Suppliers including any corporate affiliates, subsidiaries, D.B.A., and any other authorized entities within a singular proposal. All information required under this RFP must be included for each Responsible Supplier as instructed. Proposers with multiple Responsible Supplier options may choose to respond individually as distinct entities, however each response will be evaluated individually and only those proposals recommended for award may result in a master agreement award. Unawarded entities will not be permitted to later be added to an existing master agreement through operation of Proposer's corporate organization affiliation.

Line Item	Question	Response *	
1	Provide the legal name of the Proposer authorized to submit this Proposal.	Diamond Mowers, LLC	*
2	In the event of award, is this entity the Responsible Supplier that will execute the master agreement with Sourcewell? Y or N.	Yes	*
3	Identify all subsidiaries, D.B.A., authorized affiliates, and any other entity that will be responsible for offering and performing delivery of Solutions within this Proposal (i.e. Responsible Supplier(s) that will execute a master agreement with Sourcewell).	N/A	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	CAGE code 37UQ4 SAM UEID XM54HUWL3DU6	*
5	Provide your NAICS code applicable to Solutions proposed.	333	
6	Proposer Physical Address:	Diamond Mowers, LLC 350 E 60th St. N Sioux Falls, SD 57104	*
7	Proposer website address (or addresses):	www.diamondmowers.com	*
8	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer):	Dacotah Buum - Sales Project Manager - 350 E. 60th St. N. Sioux Falls, SD 57104 - dbuum@diamondmowers.com - 605-679-0567	*
9	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Dacotah Buum - Sales Project Manager - 350 E. 60th St. N. Sioux Falls, SD 57104 - dbuum@diamondmowers.com - 605-679-0567	*
10	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Aaron Boyd - National Sales Director - 350 E. 60th St. N. Sioux Falls, SD 57104 - aboyd@diamondmowers.com - 605-977-3304	*

Table 2A: Financial Viability and Marketplace Success (50 Points, applies to Table 2A and 2B)

Line Item	Question	Response *
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11	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested Solutions.	Founded in 2000, Sioux Falls, South Dakota, USA based Diamond Mowers is the leading manufacturer of industrial mowing, mulching and brush cutting equipment for the municipal, skid-steer, and excavator markets. Our mission, we will field the best team, we will be the best managed business in our industry, we will excel at driving our dealer's success and we will become the most desired brand in the markets we serve. All employees know, embrace and live our core values, everyone we interact with from vendors, dealers and customers are impacted by our five core values, Customer Focused, Accountability, Grit, Safety and Team Player. Our products are designed and engineered for quality and performance. They're checked repeatedly in a battery of quality assurance tests and performance tests. As a result, they're strong, durable and they work the way they're supposed to. "Demand the Best" has been our philosophy and our purpose. From engineers to fabricators, from accountants to customer service representatives, from assembly workers to HR, the people of Diamond understand the meaning of "Demand the Best" and embrace its application to their specific role. This June, Diamond will celebrate its 25th anniversary and we couldn't be any prouder.	*
12	What are your company's expectations in the event of an award?	Since our first awarded contract with Sourcwell, we have seen our Municipal business grow each year and we expect to continue this growth pattern. Our relationship has allowed us to work with states and municipalities that do not have a contract or have a complicated purchasing method. We have seen much growth and awareness in Canada, and we are excited to see Canoe excel. We have grown with Sourcwell throughout the years and will continue to promote, educate and utilize the full benefits with our staff, customers and our network of over 1,000+ dealer locations.	*
13	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response. DO NOT PROVIDE ANY TAX INFORMATION OR PERSONALLY IDENTIFIABLE INFORMATION.	Diamond Mowers has been with Sourcwell (formerly NJPA) since 2013. Our relationship with Sourcwell helped us to have a record year in 2013 of 17 million dollars in sales. Today, Diamond has continued that relationship and has grown to 95 million dollars in sales in 2024 and is on track for 100 million in 2025. See attached Financial Strength and Stability Document.	*
14	What is your US market share for the Solutions that you are proposing?	Diamond currently has 35-40% of the market share in the US.	*
15	What is your Canadian market share for the Solutions that you are proposing?	Diamond currently has 40-45% of the market in Canada.	*
16	Disclose all current and completed bankruptcy proceedings for Proposer and any included possible Responsible Party within the past seven years. Proposer must provide notice in writing to Sourcwell if it enters a bankruptcy proceeding at any time during the pendency of this RFP evaluation.	Diamond has never petitioned for bankruptcy or been involved in any bankruptcy action.	*
17	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer the question that best applies to your organization, either a) or b). a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Diamond Mowers is a Manufacturer of industrial roadside mowing and land clearing equipment. Diamond primarily sells through our Authorized Dealers, we currently have over 1,000 dealer locations throughout the US and Canada. Diamond also has the option to sell direct. Lead by our Executive Vice President, National Sales Director, Sales Project Manager and Sales Operations Manager, Diamond Mowers has a team of eight Regional Sales Managers (RSM) across the US and Canada, each with an internal Sales Support Specialist (FSS) that works together as a team to manage sales territories. Diamond also has a designated Parts Team, Customer Service Team, Marketing Team, Shipping and Receiving Team, Accounting Team, Engineering Team including our Application Engineers that work directly with our Sales Team and specialize in working with customers to pair the right equipment to fit a variety of carriers, solve problems and find the right solutions to all mowing and land clearing needs. Diamond has partnered with dealers throughout the US and Canada to sell/demo/promote Diamond products. We have a variety of signed dealers ranging from Bobcat, John Deere, Case, New Holland, Massey Ferguson, ASV, Kubota, CAT and many others to promote and sell our products. These dealers must meet a strict criteria to become an authorized Diamond Mowers dealer, this includes but is not limited to, stock inventory, full sales training, product installation, servicing, stocking, promoting and demonstrating our product line. We have a variety of dealers, some specialize in our Municipal line and have designated Government Sales Reps, other specialize in our Skid Steer and Excavator line with designated Sales Reps, others support our full line of products.	*

18	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	<p>Diamond Mowers has tested and complied with the following: SAE J115, J208, J232, J517, J898, J909, J920, J1001, J1150, J1170, J898, J909, J1150, J1500 and ANSI/ASAE: EP363, EP363.1, S203.13, S217.10, S217.11, S278.6, S318.7, S318.14, S390.1, S441, S443 and ASTM A370.</p> <p>The two most regulate standards in our industry are SAE J1001 and SAE J232:</p> <p>SAE J1001: Personal Protection - This establishes guidelines for operator and bystander protection from flail mowers and flail power rakes whose intended use falls within the scope of this document. The guidelines for operator and bystander protection in this recommended practice apply to towed, semi-mounted or mounted flail mowers and flail power rakes when powered by a propelling tractor or machine of at least 15 kw (20 HP), intended for marketing as industrial mowing equipment and designed for cutting grass and other growth in public use areas such as parks, cemeteries and along roadways and highways. SAE J232: Industrial Protection - This SAE standard established performance criteria is towed, semi mounted or mounted, and arm type rotary mowers with one or more blade assemblies of 77.5cm blade tip circle diameter or over, mounted on propelling tractor or machine of at least 15 kw (20HP), intended for marketing as industrial mowing equipment and designed for cutting grass and other growth in public use areas such as parks, cemeteries, and along roadways and highways.</p>	*
19	Disclose all current and past debarments or suspensions for Proposer and any included possible Responsible Party within the past seven years. Proposer must provide notice in writing to Sourcwell if it enters a debarment or suspension status any time during the pendency of this RFP evaluation.	Diamond Mowers has not had any Suspensions or Debarments.	*
20	Describe any relevant industry awards or recognition that your company has received in the past five years.	In 2017, Diamond was named one of the fastest growing companies in America by Fortune 5000. In 2019, Diamond was given the Editor's Choice award by Rental Magazine. In 2021, Diamond was honored with the Rich Garry Rookie of the Year award by the Sioux Empire United Way. 2019 Rental Editor's Choice Awards for Diamonds Skid Steer Drum Mulcher. 2022 Rental Editor's Choice Awards for Diamond's Drum Mulcher OD Pro X. 2023 Green Industry Editor's Choice Award for Dimond's TR Boom Drum Mulcher. 2024 Rental Editor's Choice Awards for Diamond's Drum Mulcher DC. 2024 Green Industry Pros Editor's Choice Award for Diamond's disc Mulcher Belt Drive Pro X.	*
21	What percentage of your sales are to the governmental sector in the past three years?	Diamond has averaged 47% of our total sales in the governmental sector. The remaining portion in large is to farmers, landowners and contractors.	*
22	What percentage of your sales are to the education sector in the past three years?	Diamond does not primarily market to the Education Sector, however, we have had some colleges and school's purchase our mowing and mulching equipment, but this would be less than 1%.	*
23	List all state, cooperative purchasing agreements that you hold. What is the annual sales volume for each of these agreement over the past three years?	<p>Sourcwell 070821-DMM \$16,917,793</p> <p>Arizona 4705000848 \$0 - *NEW</p> <p>California 4-22-06-1052 \$0 - *NEW</p> <p>Iowa PA 070821-DMM- \$101,071</p> <p>Kentucky 2300001369 \$0 - *NEW</p> <p>Louisiana 4400027628 \$1,602,338</p> <p>Minnesota 246980 \$1,255,146</p> <p>Mississippi 8200073315 \$991,117</p> <p>Missouri CC221934002 \$167,973</p> <p>Nebraska 16049-OC \$0 - *NEW</p> <p>New York PC69840 \$10,246,835</p> <p>Ohio STS012702 \$1,982,871</p> <p>Oklahoma SW0196DM \$125,336</p> <p>Pennsylvania 4400028122 \$1,306,590</p> <p>Texas TXMAS-25-02001 \$38,539</p> <p>Washington 5218 \$130,061</p> <p>Federal GS-03F-113DA \$145,234</p> <p>Buyboard 706-23 \$3,612,510</p> <p>Equalis R10-1165 \$0 - *NEW</p> <p>Diamond Mowers products are also listed on a large number of state contracts that are held by our authorized dealers in states such as Alaska, Alabama, Georgia, Florida, Pennsylvania, Massachusetts, North Carolina, New Mexico, and others.</p>	*
24	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Diamond has been partnered with our dealer, Federal Contract Corps (FCC) who holds our GSA contract and has dedicated staff that specialize in promoting and bidding Diamonds full product line. Diamonds GSA sales have grown tremendously year after year with FCC. Diamonds previously held GSA contract #47QMCA19D000M, has been terminated on good terms by Diamond Mowers.	*

Table 2B: References/Testimonials

Line Item 25. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Sioux Falls, Sioux Falls, SD.	Scott Rust srust@siouxfalls.org Sourcwell ID# 72248 Testimonial: "Diamond Mowers salesman Paul Schreurs is very customer focused and helps customers purchase the right mower and tractor for their application. He puts the customer first and makes sure they are happy with equipment upon delivery and after it has been put into service! Diamond Mower's dedication to innovation, quality and customer service sets them apart from the competition!"	605-367-8836 Office 605-321-5501 Mobile	*
St. Louis County Highway, Duluth, MN.	Chad Skelton skeltonc@co.st-louis.mn.us Sourcwell ID# 59548	218-290-6397 Mobile 218-742-9804 Office	*
Lincoln County, Canton, SD.	Terry Fluit tfluit@lincolncountysd.org Sourcwell ID# 119303	605-764-5841 Office	*

Table 3: Ability to Sell and Deliver Solutions (150 Points)

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
26	Sales force.	Diamond Mowers directly employs a Sales staff consisting of the below. Executive Vice President Sales & Marketing Vice President of Parts Business National Sales Director Director of Marketing Director of Municipal Business Business Development Manager Sales Project Manager Sales Operations Manager Regional Sales Manager - Qty 8 Sales Operations Specialist - Qty 4 Application Engineer Parts Sales Associate - Qty 5 All of the above-mentioned positions are direct Diamond Mowers employees. The 8 Regional Sales Managers (RSM) are based strategically around the US and Canada to cover their specific territories. Our RSM's live and work in their specific territories to stay in tune with the market, customers and our dealer network of over 1,000+ locations. Remaining staff are based at either of our plants/offices, located in Sioux Falls, SD.	*
27	Describe the network of Authorized Sellers who will deliver Solutions, including dealers, distributors, resellers, and other distribution methods.	Diamond Mowers has an extensive network of over 1,000+ authorized dealer locations throughout the US and Canada. Our dealers are fully trained to install, troubleshoot, service and repair our products. Our dealer's stock both inventory and parts and have dedicated sales representatives trained on Diamond products. Diamond has our dealer locator on our website allowing customers to find their closest Diamond Mowers dealer with ease. Diamond also has the option to sell direct. See the attached Diamond Mowers Dealer Network.	*

28	Service force.	<p>Diamond Mowers directly employs a Customer Service staff consisting of the below:</p> <p>Director of Customer Care Customer Service Manager Customer Service Lead Customer Service Support Tech - Qty 4 Customer Service Administrator</p> <p>Our Customer Service team is equipped to handle all technical and service-related questions that our customers have. This team handles all warranty cases and most trouble shooting and product repair questions over the phone or email. This is a full-time team dedicated to taking care of our customer needs. We are staffed from 7:00AM CST to 5:00PM CST Monday through Friday. Diamonds call answer rate in 2024 was 99% of the 1% that didn't get answered, 98% were called back within 1 hour.</p>	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	Diamond orders will either be processed by a Diamond Regional Sales Manager (RSM) or directly through any of our Diamond Mowers Dealers. Our Application Engineers, RSM's and dealer sales reps will work directly with customers to find the solution that best fits their needs based on their specific application. After qualifying and making a recommendation, a firm quote is given to the customer based on the Sourcewell contracted price. The customer would then issue a purchase order to Diamond Mowers or to the Dealer listing the corresponding Sourcewell contract number. Internally, Diamond verifies Sourcewell membership prior to processing the order, this is recorded on the sales order and the order is flagged for quarterly reporting. If a Dealer sells a Diamond Mowers unit out of their inventory, a purchase or sales order is provided to Diamond with the Sourcewell member number, these are then added to the quarterly reporting and submitted to Sourcewell in their Excel format template.	*
30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Diamond Mowers prides itself in Customer Responsiveness and with that we have two main metrics in place: 1) 90% of all inbound calls are answered and 2) 90% of all voicemails are returned within 60 mins or less. In 2024 we were at 99% of all calls being answered and 98% of unanswered calls were returned within 1 hour! We view our nationwide network of over 1,000+ authorized service dealers as our 1st line of support for our customers however, we have customers that prefer to contact and work with Diamond directly vs. the dealer. We will support those customers with the same urgency and responsiveness as our dealers with the ultimate goal of the Diamond Mowers Customer Care team being to minimize unit downtime. Our Customer Care team can be reached directly via phone, email, text, or an online support submission. Our team of experienced techs will work directly with our case contact to identify the issue, diagnose a solution, and provide parts as needed. All support cases are logged into our CRM to best understand and manage our products including training opportunities, quality updates, enhancements, and documentation needs.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities.	Diamond has eight Regional Sales Managers dedicate to the US and Canada along with four Sales Operations Specialists. We have an extensive dealer network of over 1,000+ dealer locations in the US and Canada. Sourcewell customers can purchase directly through the factory or through any of our authorized dealers. We have a fully staffed sales team located at our plant in Sioux Falls, South Dakota dedicated to helping our customers from assisting with application specifics, quoting, ordering, manufacturing, shipping, training, service and parts.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We have seen tremendous growth and awareness of Canoe. Diamond actively attends tradeshow in the US and Canada and promotes our Canoe and Sourcewell banners. Diamond has two designated Regional Sales Manager and two Sales Operations Specialists for all of Canada. We also have an established network of dealers throughout Canada that stock our products and are fully trained to install, troubleshoot, and repair our products. Diamond is currently working with many new potential dealers to grow this market. Canadian customer can also purchase direct through Diamond. We have also partnered with brokers and shipping companies to deliver into Canada.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed agreement.	There are not any geographical areas of the US or Canada we will not be serving.	*
34	Identify any account type of Participating Entity which will not have full access to your Solutions if awarded an agreement, and the reasoning for this.	There are no Participating Entities which will not have full access.	*
35	Define any specific requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	There are not specific contract requirements or restrictions that apply to Hawaii, Alaska or US Territories.	*
36	Will Proposer extend terms of any awarded master agreement to nonprofit entities?	Diamond will extend terms to all eligible Sourcewell members, including nonprofit members.	*

Table 4: Marketing Plan (100 Points)

Line Item	Question	Response *	
37	Describe your marketing strategy for promoting this opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Diamond provides our contracted dealers with a wide variety of marketing assets and resources across all product lines. These materials include sales collateral such as sell sheets and brochures, turnkey social media content, showroom-ready videos, website landing page kits, and more. Our goal is to set our dealers up for success by providing marketing resources that are ready to use and easy to implement. Dealers have access to these materials anytime through Diamond on Demand – Dealer Portal, which is available 24/7/365 to all contracted dealers. Additionally, we provide our dealers with access to Diamond Price Lists, which include Sourcewell pricing when applicable, allowing us to deliver added value to both our dealers and their customers.	*
38	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Diamond Mowers leverages digital platforms and social media to enhance our marketing effectiveness. As a thought leader in the industry, we feature and promote educational content to drive engagement and position ourselves as a trusted resource. With a growing and engaged audience, we are able to highlight the unique attributes of our broad product offering. Our Marketing program utilizes a multi-channel approach—including social media, e-commerce, paid advertising, SEO, and more—to build awareness and drive traffic to our website. Current strategies include: Google Ads – Enhancing discoverability and SEO through Google advertising and targeted campaigns. Facebook – With over 90K followers, we post daily content and stories and run targeted paid advertising campaigns. Instagram – Reaching more than 6K followers with regular posts, stories, and targeted ads. Blog & Testimonial Content – Focused on industry-relevant topics to educate our audience and position Diamond as an expert, while amplifying the voice of the customer and showcasing their experiences. E-commerce Parts Website – Offers an easy-to-use online ordering experience for dealers and customers. Targeted Email Communications – Tailored messaging for current and prospective customers based on their interests and needs, along with regular communications to dealers on new products, pricing, programs, and company updates.	*
39	In your view, what is Sourcewell's role in promoting agreements arising out of this RFP? How will you integrate a Sourcewell-awarded agreement into your sales process?	In our view, Sourcewell's role is to create awareness through marketing the value and services provided. Sourcewell has consistently kept us stocked up on tradeshow flags and magnets to promote our contract and we would expect this to continue. We would like to see the continued H2O and Sourcewell Academy trainings being offered as our teams find much value in attending these. Our Sourcewell representatives have consistently been readily available and have assisted when issues arise or when data is needed, and we expect that to continue. In addition to Sourcewell, we would expect to see efforts to create awareness of Canoe in Canada. Diamond has continued to bring Sourcewell into the conversation early on at the beginning of the sales process, giving our customers an effortless way to purchase. Diamond identifies opportunities and merges them into an existing sales funnel supported by our sales team. Our goal is to ensure the entire sales process remains consistent for all Diamond Mowers customers.	*
40	Are your Solutions available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	Diamonds products are not available through an e-procurement process. Our products including boom mowers, side fold mowers, drum mulchers, disc mulchers etc. require a thorough technical review and are tailored to each customer's needs and carrier information such as the make/model of tractor/skid steer/excavator our attachment will be mounting to. Being a more custom process to meet customers specific needs, an e-procurement process does not fit this method	*

Table 5A: Value-Added Attributes (100 Points, applies to Table 5A and 5B)

Line Item	Question	Response *	
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41	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Diamond offers hard copy or digital operators guides on all of our products. These manuals give specific information about the product, parts, maintenance and best practices. Diamond also offers walk around training videos known as "Inservice Guides" online and also "Operator Techniques" videos that demonstrate techniques and proper methods to work safer, faster and more efficient. Additional onsite training is often available through our authorized Diamond Mowers dealers upon request, but this is not a standard practice.	*
42	Describe any technological advances that your proposed Solutions offer.	Diamond is currently the only manufacturer to offer the Integrated Boom Control system on all mid mount booms. This system was created to give the operator single hand control, enhanced safety features, and an industry leading Smart Screen. The joystick is built into the armrest attaching to the tractors seat and gives five different adjustment locations. It also enhanced safety with an emergency stop button. The Smart Screen allows you to customize boom speeds and joystick sensitivity, tracks and feeds data back to you and offers a detailed diagnostics for troubleshooting in the field.	*
43	Describe any "green" initiatives that relate to your company or to your Solutions, and include a list of the certifying agency for each.	Diamond does not currently hold any green certificates; however, we do have policies in place for eliminating waste and increasing efficiency. We have a full recycling program in place for our office, materials handling, factory and shipping departments.	*
44	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the Solutions included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Diamond does not have any 3rd party labels.	*
45	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	<p>Diamond offers a 72-hour parts shipping guarantee on our most common replacement parts. We understand that our products need to be up and running as much as possible, this ensures the customers highest possible uptime. Our customers parts ship within 72 hours or the parts and shipping is free! We also offer a best price guarantee on all of our parts. If you find a better price, Diamond will match it.</p> <p>Diamond offers the most advanced spindle design in the industry. Most spindles require daily greasing while ours is required annually or once every 500 hours.</p> <p>With an industry leading 5-year warranty, Diamonds proprietary blade carriers are the most advanced in the industry.</p> <p>Diamonds hydraulic actuators on our boom mowers offer a greater range of motion vs the competition and are less maintenance compared to the traditional hydraulic swing cylinder design. This design also offers full break away protection!</p> <p>Diamonds boom mowers offer greater stability and visibility from the tractor resulting in a better operator experience.</p> <p>Diamonds Integrated Boom Controls provides the most ergonomic joystick available in the industry. This can be paired with our digital smart screen which allows the operator to monitor, adjust, diagnose and troubleshoot the equipment in real time.</p>	*
46	Describe any safety features your equipment and products offer such as emergency or auto-shut off capability and roll-over protection systems (ROPS) or stability enhancements, slip resistant grips and surfaces, blade guards and throttle lockouts.	Safety is as at the forefront of Diamond Mowers. Diamond offers many safety features such as 1/2" Polycarbonate Safety Glass to protect operators. Chain guards and rubber flaps to deflect and control debris. Hydraulic trap doors on drum mulchers to direct debris. Brake options on boom mower heads. New for 2025, 10 second hydraulic brakes are now available on skid steer drum mulchers. Ridged steps and slip resistant surfaces that are strategically placed to prevent slips and falls. Travel locks on rotary and flail mowers for transportation safety. We provide emergency stop buttons, allowing the operator to shut down immediately. Diamond also applies safety decals indicating moving parts, pinch points, stay back indicators and much more.	
47	Describe any ergonomic features your products offer such as adjustable operator controls, suspension seats, vibration dampening systems, enhanced visibility cab designs, assistive mechanisms for lifting heavy components, and anti-glare interfaces to reduce eye strain.	<p>Diamonds Boom Mowers include our Integrated Boom Controls (IBC) which provides the most ergonomic joystick available in the industry. This joystick is built into the armrest attaching to the tractors seat and gives five different adjustment locations. It also enhanced safety with an emergency stop button.</p> <p>Diamonds Miller Stump Grinder includes an ergonomic control that allows the operator to control the grinder from the cab.</p>	

48	Describe the serviceability of the products included in your proposal (parts availability, warranty, and technical support, etc.).	All Diamond products come standard with a full 1-year warranty! In addition, all of our Drum Mulchers come standard with an industry leading full 2-year warranty! Diamond offers a 72-hour parts guarantee for our most common replacement parts, if it doesn't ship within 72 hours, the part and the freight is free! Diamond has over 1,000 authorized dealers throughout every state in the US and dealer locations in Canada! Our dealers are authorized to diagnose and repair our equipment, they also stock common replacement parts. Diamond has a dedicated service team available to diagnose and troubleshoot all issues. Diamond Engineering has put much thought into the serviceability of our products, this includes easy access points to daily maintenance items and also annual maintenance points. Accessibility to common items such as blade and tooth replacement, belt tensions, oil changes and greasing are all pre planned, identified in manuals and clearly labeled as needed.
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Table 5B: Value-Added Attributes

Line Item	Question	Certification	Offered	Comment
49	Select any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation and a listing of dealerships, HUB partners or re-sellers if available. Select all that apply.		<input type="radio"/> Yes <input checked="" type="radio"/> No	Double not qualify for any of the below.
50		Minority Business Enterprise (MBE)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Minority Business Enterprise
51		Women Business Enterprise (WBE)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Women Business Enterprise
52		Disabled-Owned Business Enterprise (DOBE)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Disabled-Owned Business Enterprise
53		Veteran-Owned Business Enterprise (VBE)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Veteran-Owned Business Enterprise
54		Service-Disabled Veteran-Owned Business (SDVOB)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Service-Disabled Veteran Owned Business
55		Small Business Enterprise (SBE)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Small Business Enterprise
56		Small Disadvantaged Business (SDB)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Small Disadvantaged Business
57		Women-Owned Small Business (WOSB)	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not qualify as a Women-Owned Small Business

Table 6A: Pricing (400 Points, applies to Table 6A and 6B)

Provide detailed pricing information in the questions that follow below.

Line Item	Question	Response *
58	Describe your payment terms and accepted payment methods.	Diamond Mowers payment terms are Net-30. Accepted payment methods include ACH/Wire Transfer/Check/Cash/Credit Card (up to \$15,000.00 with no fee).
59	Describe any leasing or financing options available for use by educational or governmental entities.	Diamond has partnered with NCL Government Capital who is also an awarded Sourcwell 092424-NCL contract holder to offer financing and leasing options. NCL specializes in this competitively bid financing. Our sales staff is fully trained and works with NCL regularly to provide these services.

60	Describe any standard transaction documents that you propose to use in connection with an awarded agreement (order forms, terms and conditions, service level agreements, etc.). Upload all template agreements or transaction documents which may be proposed to Participating Entities.	Diamond uses Salesforce as our CRM for producing requested quotes/orders. Diamonds accounting team invoices directly. Sourcewell quotes and orders are clearly labeled to indicate this. See attached Diamond Mowers Quote Sample for reference.	*
61	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Diamond does not currently accept the P-card procurement and payment process.	*
62	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Sourcewell pricing will be offered as a percent discount off of our List Price and is applied to all items on our price list. Please see the attached Diamond Mowers Price List for reference, this shows all line items offered by Diamond including part code, description and our List Price and proposed Sourcewell price!	*
63	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Diamond has presented a 20% discount off of List Price on all tractor attachments. 15% discount off of List Price on all skid steer attachments and 10% discount off of List Price on all excavator attachments. These % discounts are the minimum and some items may receive an even higher % discount. See attached Diamond Mowers Price List document.	*
64	Describe any quantity or volume discounts or rebate programs that you offer.	Multiple unit sales are rare in our industry, but we do look at these on a case-by-case basis. Our Sourcewell pricing is a max contract price to allow competitive pricing on larger multi-unit orders. Diamond does not offer a rebate program.	*
65	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "non-contracted items". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	While it is not common at Diamond to be asked to source product or equipment for customer, we do occasionally get asked to design/modify product for a specific solution. In this instance, Diamond would honor the same Sourcewell % discount as agreed upon and establish a list price, the same as all other products. Sourced items will be specifically called out/identified on the initial upfront quote and order.	*
66	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	All total cost of acquisition are clearly stated on our price list (see the attached Diamond Mowers Price List for reference). This includes a mounting or installation fees when necessary. Customers should not incur any other costs that are not clearly identified on the invoice. In the instance of special requests such as on-site training or sourced items, this will be clearly identified on the quote/order.	*
67	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Diamond calculates freight charges at the time of the quote. We work with a variety of providers to provide cost-conscious solutions for all shipments. Actual freight/shipping costs are marked up 10% to cover Diamonds overhead costs related to shipments. These include but are not limited to, labor, materials and packaging. Diamonds freight costs are set and do not vary to customers based on any additional incurred charges at time of shipment. The customer pays the original quoted freight price.	*
68	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Diamond calculates freight for Alaska, Hawaii, Canada and all other offshore deliveries using the same shipping method. We partner with our variety of providers to find the best possible freight solution. Shipping costs are marked up 10% to cover overhead costs. Factory direct pickup options are also available from our plant in Sioux Falls, SD.	*
69	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Sourcewell customers will have access to dealer stock inventory through any of our 1,000+ dealer locations across the US and Canada. In some cases, they could see faster lead times to get the products they need vs ordering direct from Diamond!	*
70	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed agreement with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing.	Diamond's Accounting team performs monthly financial reviews to ensure all sales for state and national contracts are reported correctly and fees are calculated appropriately. Each Sourcewell sale is clearly marked with our contract number and each sale is recorded. Direct dealer sales are recorded as well and reported by Diamond. Sourcewell quotes are generated by Diamond directly which ensures current price levels are always accurate. This is monitored by our Sales Operations team.	*

71	If you are awarded an agreement, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the agreement.	State and National contract sales to total sales volume will be tracked routinely as well as looking at monthly, quarterly, and annual state contract sales growth. We will continue to work with our Sourcewell representatives to provide quarterly reporting. Diamond has also set a Sourcewell growth goal of 5% annually over the term of the contract. Our goal for 2025 is 6,300,000.00.	*
72	Provide a proposed Administration Fee payable to Sourcewell. The Fee is in consideration for the support and services provided by Sourcewell. The propose an Administrative Fee will be payable to Sourcewell on all completed transactions to Participating Entities utilizing this Agreement. The Administrative Fee will be calculated as a stated percentage, or flat fee as may be applicable, of all completed transactions utilizing this Master Agreement within the preceding Reporting Period defined in the agreement.	Diamond Mowers proposes a 1% administrative fee to Sourcewell.	*

Table 6B: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments	
73	The pricing offered is as good as or better than pricing typically offered through existing cooperative contracts, state contracts, or agencies.	Diamonds pricing offering is consistent with our current/previous Sourcewell 070821-DMM contract as well as other awarded state and national contracts.	*

Table 7A: Depth and Breadth of Offered Solutions (200 Points, applies to Table 7A and 7B)

Line Item	Question	Response *	
74	Provide a detailed description of all the Solutions offered, including used Solutions if applicable, offered in the proposal.	<p>Diamond Mowers manufactures and sells industrial grade mowing and mulching equipment to municipalities, landowners, contractors and a variety of other customers with mowing, mulching and land clearing needs. We manufacture Rotary Mowers, Flail Mowers, Disc Mulchers, Drum Mulchers, Stump Grinders and Road Reclaimers in a variety of configurations, flow rates and PSI to fit the greater majority of Tractors, Skid Steer, Excavators, Wheel Loaders and Motor Graders. Diamond also offers a line up of used/demo units which are fully inspected/repared by the factory and include a factory warranty unless otherwise stated.</p> <p>Diamond Mowers offering to Sourcewell is our full product line of tractor, excavator, wheel loader, motor grader and skid steer attachments. This includes (but not limited to) Drum Mulcher, Disc Mulcher, Stump Grinder, Rear Cradle Boom Mowers, Side Fold Boom Mowers, 3-Point Boom Mowers, Wheel Loader Boom Mowers, Rotary Mowers, Flail Mowers, and Road Reclaimers, all available options including factory mounting, and a variety of other attachment product related to road right-of-way maintenance.</p> <p>Diamond offers a variety of used and demo equipment for resale. All units come with a factory warranty unless otherwise stated. All are factory inspected to ensure they work as intended.</p>	*
75	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Diamond Mowers falls under subcategory Road Right-of-Way Maintenance Equipment.	*

Table 7B: Depth and Breadth of Offered Solutions

Indicate below if the listed types or classes of Solutions are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
76	Flail, boom, rotary, wing, sickle, and slope mowers	<input checked="" type="radio"/> Yes <input type="radio"/> No	Diamond offers multiple Flail, Boom and Rotary mowers for many carriers.	*
77	Brush cutters	<input checked="" type="radio"/> Yes <input type="radio"/> No	Diamond offers multiple Brush Cutters for multiple carriers.	*
78	Seeders, tillers, mulchers, and sprayers	<input checked="" type="radio"/> Yes <input type="radio"/> No	Diamond offers mulchers for multiple carriers.	*
79	Erosion stabilization and prevention products	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not offer stabilization and prevention products.	*
80	Ditch maintenance equipment	<input checked="" type="radio"/> Yes <input type="radio"/> No	Diamond offers ditch maintenance equipment.	*
81	Dust abatement water trucks	<input type="radio"/> Yes <input checked="" type="radio"/> No	Diamond does not offer abatement water trucks.	

Table 8: Exceptions to Terms, Conditions, or Specifications Form

Line Item 82. NOTICE: To identify any exception, or to request any modification, to Sourcewell standard Master Agreement terms, conditions, or specifications, a Proposer must submit the proposed exception(s) or requested modification(s) via redline in the Master Agreement Template provided in the “Bid Documents” section. Proposer must upload the redline in the “Requested Exceptions” upload field. All exceptions and/or proposed modifications are subject to review and approval by Sourcewell and will not automatically be included in the Master Agreement.

Do you have exceptions or modifications to propose?	Acknowledgement *
	<input type="radio"/> Yes <input checked="" type="radio"/> No

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as “Marketing Plan.”

- [Pricing](#) - 2025 Diamond Mowers Price List - Sourcewell.pdf - Thursday March 13, 2025 11:28:12
- [Financial Strength and Stability](#) - Diamond Mowers 2024-12 Final Financial Statement.pdf - Friday March 21, 2025 13:44:46
- [Marketing Plan/Samples](#) - Diamond Mowers Marketing Samples.pdf - Monday March 24, 2025 10:08:26
- WMBE/MBE/SBE or Related Certificates (optional)
- [Standard Transaction Document Samples](#) - Sourcewell Quote Sample.pdf - Thursday March 13, 2025 11:29:39
- Requested Exceptions (optional)
- [Upload Additional Document](#) - Diamond Mowers Dealer Network .pdf - Monday March 24, 2025 09:36:42

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT OF COMPLIANCE

I certify that I am an authorized representative of Proposer and have authority to submit the foregoing Proposal:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.

2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for award.

3. The Proposer certifies that:

(1) The prices in this Proposal have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Proposer or competitor relating to-

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this Proposal have not been and will not be knowingly disclosed by the Proposer, directly or indirectly, to any other Proposer or competitor before award unless otherwise required by law; and

(3) No attempt has been made or will be made by Proposer to induce any other concern to submit or not to submit a Proposal for the purpose of restricting competition.

4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest is created when a current or prospective supplier is unable to render impartial service to Sourcewell due to the supplier's: a. creation of evaluation criteria during performance of a prior agreement which potentially influences future competitive opportunities to its favor; b. access to nonpublic and material information that may provide for a competitive advantage in a later procurement competition; c. impaired objectivity in providing advice to Sourcewell.

5. Proposer will provide to Sourcewell Participating Entities Solutions in accordance with the terms, conditions, and scope of a resulting master agreement.

6. The Proposer possesses, or will possess all applicable licenses or certifications necessary to deliver Solutions under any resulting master agreement.

7. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

8. Proposer its employees, agents, and subcontractors are not:

1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Dacotah Boom, Sales Project Manager, Diamond Mowers, LLC

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the obligations contemplated in the solicitation proposal.

☐ Yes ☒ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
There have not been any addenda issued for this bid.		



Diamond Mowers

Pricing for contract 032525-DMM is provided at the below discount percent off of List Price to Sourcewell participating agencies.

- Tractor/Wheel Loader Products 20% off of published List Price
- Skid-Steer Products 15% off of published List Price
- Excavator Products 10% off of published List Price



REQUEST FOR COUNCIL ACTION



Date Action Requested: September 15, 2025

Order ☐ Ordinance ☐ Resolution ☒ Motion ☐ Information ☐ Proclamation ☐

No. 2025-3988

Subject: To allow for the Master Fee Schedule effective date to change from April 1st to July 1st.

Staff: Kady Strode
Department: Finance

Business Session

Order On Agenda:

Hearing Type: Administrative

Is this item state mandated? Yes ☐ No ☒

If yes, please cite the state house bill or order that necessitated this action: N/A

Recommendation: In order to better align with our new biennial budgeting as well as our fiscal year the effective date of the Master Fee Schedule will need to be updated from April 1st to July 1st annually. This will have an impact on when certain fees change and will align with the start of our fiscal/budgeting year instead of mid-budget cycle.

Executive Summary: This item requires Council's action to change the effective date of the Master Fee Schedule per NMC 14.05.270(a).

Fiscal Impact: N/A.

Council Goals: This aligns with Council Goal 4 – to create and maintain a high level of transparency with our residents in order to build trust. Aligning the Master Fee schedule effective date to our fiscal year and with our biennial budget will help streamline deadlines and make it easier for residents to understand when to expect fees to change.



RESOLUTION No. 2025-3988

A Resolution to allow for the Master Fee Schedule effective date to change from April 1st to July 1st.

Recitals:

1. WHEREAS, the Master Fee Schedule currently has an effective date of April 1st annually.
2. WHEREAS, this resolution will make the change from April 1st to July 1st annually to align with fiscal and biennial budget years.

The City of Newberg Resolves as Follows:

1. The Master Fee Schedule will be published with an effective date of July 1st annually.

Effective Date of this resolution is the day after the adoption date, which is: September 16, 2025.

Adopted by the City Council of Newberg, Oregon, this 15th day of September, 2025.

Rachel Thomas, City Recorder

Attest by the Mayor this _____ day of _____, 2025.

Bill Rosacker, Mayor

**CITY OF NEWBERG
GRANT AGREEMENT**

This Grant Agreement (this “**Agreement**”) is entered into by and between the City of Newberg, a municipal corporation of the State of Oregon (the “**City**”), and SPARK Newberg, an Oregon non-profit corporation (the “**Grantee**”), each a “**Party**” and collectively the “**Parties**.”

RECITALS

- A. Pursuant to Oregon Senate Bill 1533 from the 2016 Oregon Legislative session (“SB 1533”), the City instituted a Construction Excise Tax (“CET”) on November 16, 2020, under Ordinance No. 2020-2860, which was later codified as Newberg Municipal Code Section 3.60 (the “CET Ordinance”). SB 1533 requires that revenue generated from CET be used for specific purposes including to fund programs and incentives related to affordable housing as defined by the City.
- B. The CET Ordinance expired on July 1, 2023, but the City still holds CET revenues.
- C. The City published a Notice of Funding Availability (the “NOFA”) on November 14, 2024, advising of CET funds available for affordable housing programs. The deadline for responding to the NOFA was April 1, 2025.
- D. Responding to the NOFA, Grantee submitted to the City an application (the “**Application**” attached to this Agreement as **Exhibit A**) requesting \$1 million of CET funds to be used for particular aspects of the SPARK Program (the “**Program**”), which seeks to construct 20 affordable dwelling units (the “**Housing**”) to house program participants while providing them with a 48 month educational curriculum (the “**Educational Programming**”). Participants will make a monthly financial contribution in exchange for the Educational Programming and living in the Housing, and upon successful completion of the Educational Programming, participants may apply for a grant (equal to half of their cumulative financial contributions) to be used toward the down payment on a home. Specifically, the Application requests funding for the purchase of real property upon which to construct Phase 1 (defined below) of the Housing.
- E. The Housing will be constructed in two phases. Phase 1 will consist of constructing 10 of the 20 dwelling units. Phase 2 will consist of constructing the remaining 10 dwelling units.
- F. On June 16, 2025, City Council voted to award Grantee CET funds in the amount of \$[663,514.25] (the “**Grant**”), subject to terms and conditions of a Grant Agreement that is acceptable to the City.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. **GRANT.** The City shall provide CET grant funding to Grantee in the amount of \$[663,514.25] to be used as set forth in Section 3.

2. GRANTEE RESPONSIBILITIES.

- a. Grantee will execute the Program as described in Application subject to the terms of this Agreement and all applicable laws. Grantee will use Grant funds only for the purposes specified in this Agreement and in case of conflict among or between the Application and this Agreement, the terms of this Agreement will govern.
- b. Grantee is responsible for performing the necessary due diligence to assess, determine, and ensure that all occupants of the Housing meet the definition of Qualifying Participants (as defined below) at the time they commence occupancy of the Housing. Grantee is also responsible for ensuring that each dwelling unit within the Housing meets the definition of Affordable Housing Unit (as defined below).

3. DISBURSEMENT AND USE OF FUNDS.

- a. The City will disburse the full amount of the Grant within 30 days after execution of this Agreement or upon City's receipt of a copy of Grantee's IRS Determination Letter, whichever is later. Receipt of the IRS Determination Letter is a condition precedent to City's obligation to disburse any and all Grant funds. For purposes of this Section 3.a., the IRS Determination Letter is a letter issued to Grantee by the Internal Revenue Service ("IRS") confirming that Grantee is a tax-exempt nonprofit organization under Section 501(c)(3) of the Internal Revenue Code.
- b. Grantee will use the Grant funds to purchase real property suitable for Phase 1 construction of the Housing, subject to the terms of this Agreement.
- c. Any interest earned by Grantee on Grant funds may be retained by Grantee and used for purposes consistent with its mission.

4. PROGRAM.

- a. Grantee will utilize Grant funds to purchase real property suitable for Phase 1 construction of the Housing. Each dwelling unit within the Housing must be an Affordable Housing Unit (defined below). Program participants, and all persons living or otherwise dwelling in the Housing, must be Qualifying Participants.

- b. **“Qualifying Participants”** are households that (1) are located within Newberg-Dundee School District 29J, and (2) earn 80% or less of the Area Median Income.
- c. **“Affordable Housing Unit”** means a housing unit for which a person earning eighty percent (80%) or less of the Area Median Income would not pay more than thirty percent (30%) of their gross income for housing payments.
- d. **“Area Median Income”** means the Yamhill County median household income by household size as defined by the United States Department of Housing and Urban Development and published periodically.

5. DOCUMENTATION; REPORTING.

- a. Grantee agrees to prepare and maintain documentation for the Program consistent with industry standards. The Program documentation will include, at a minimum, documentation substantiating the basis of eligibility for Qualifying Participants and the Housing as consisting of Affordable Housing Units, sufficient documentation to establish proper use of Grant funds, and other documentation as needed to demonstrate Grant funds were utilized as required and intended under the terms of this Agreement, the Program, and applicable laws. Grantee agrees to maintain such records during the term of this Agreement and as required by law after termination of this Agreement, but in any event no less than 3 years after improvements relating to the Housing funded by the Grant are complete.
- b. Starting one year from the Effective Date of this Agreement, and continuing on an annual basis, Grantee agrees to prepare and provide the City with detailed reporting on the number of Program participants over the preceding 12 months and occupancy rates of the Housing. Grantee must also provide certification that the Housing consists only of Affordable Housing Units.

6. MONITORING. The City may monitor the Grantee’s execution of the Program as the City deems necessary or appropriate to ensure Grantee complies with the terms of this Agreement and the proper use of Grant funds.

- a. The appropriate monitoring activities will be determined by the City and may include but are not limited to requesting and reviewing Grantee’s documentation required under Section 5 of this Agreement, conducting on-site visits and inspections, and requesting and reviewing Grantee’s reports and financials, among other activities. The City will make reasonable efforts to provide advance notice of any monitoring activities.

- b. Grantee agrees to cooperate with the City's monitoring activities and respond in a timely manner to any requests for documentation.
- c. The City reserves the right to request assistance from outside parties to monitor Grantee, including but not limited to the Oregon Secretary of State, the Oregon Attorney General, and law enforcement agencies.

7. TERM; TERMINATION.

- a. This Agreement shall be effective upon execution by both Parties (the "**Effective Date**") and, except for Sections 5, 8, and 10, which shall survive termination or expiration of this Agreement, shall be in effect for three years after the Effective Date unless terminated sooner.
- b. The City may terminate this Agreement in whole or in part upon 30 days' prior written notice to Grantee.
- c. The City may, upon 30 days' prior written notice to Grantee, terminate this Agreement in whole or in part, in the Event of Default.
- d. An "**Event of Default**" includes, but is not limited to:
 - i. Grantee's misrepresentation of any material fact related to this Agreement;
 - ii. Grantee's failure to timely fulfill any of its obligations under this Agreement, Grantee's improper use of Grant funds, Grantee's failure to cooperate or comply with the City's monitoring activities or requests, or Grantee's failure to provide the City with the reporting and certification required under Section 5;
 - iii. Grantee's (A) application for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator, (B) inability to pay its obligations as they become due, (C) general assignment for the benefit of its creditors, (D) commencement of a voluntary case under the federal bankruptcy code, (E) adjudication as bankrupt or insolvent, or (F) failure to controvert in a timely or appropriate manner, or agreement to an involuntary petition for bankruptcy; or
 - iv. Grantee's, its principals, officers, or agent's suspension or exclusion from participating in agreements or contracts with any federal or state department or agency.

- e. Upon issuance of any notice to terminate this Agreement and prior to the effective date of termination, the City may, in its sole discretion, require that Grantee obtain prior City approval for any expenditures of Grant funds.
- f. Upon termination of this Agreement, Grantee will deliver to the City any unexpended Grant funds within 10 days of the date of termination or upon such date as requested by the City.

8. REMEDIES.

- a. If the City determines, in its sole discretion, that Grantee has failed to comply with any material obligation under this Agreement, the City may exercise any and all remedies available to it under this Agreement, applicable law, or otherwise. Such remedies may include but are not limited to: (i) terminating this Agreement; (ii) recouping Grant funds, regardless of whether Grantee has expended the Grant funds or any portion thereof; (iii) requiring corrective action as the City may determine to be appropriate; (iv) bringing suit or action in an appropriate forum for the enforcement of this Agreement and any remedy, as well as the recovery of damages, including by temporary restraining order, injunction, specific performance, or otherwise; (v) debarring or otherwise limiting Grantee's eligibility for other funding from City; (vi) instituting criminal action for misstatements or fraud; or (vii) requesting investigation, audit, and/or sanction by other governmental bodies.
- b. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided under this Agreement, by law, or otherwise.
- c. No failure or delay by the City to enforce any provision of this Agreement shall constitute a waiver by the City of any provision under this Agreement, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
- d. Remedies provided under this Agreement shall survive termination of this Agreement.

9. INDEPENDENT PARTIES. Neither Grantee, nor any of its officers, agents, and employees, is an officer, employee, or agent of the City.

10. LIABILITY; INDEMNITY. Grantee agrees to indemnify, hold harmless, and defend the City, its officials, employees, or agents from, for, and against any and all liability, demands, claims, cause of action, suits, or judgments (collectively, "**Claim**"), including costs, attorney fees and

expert fees, and expenses incurred in connection therewith, of whatsoever kind or nature to the extent arising out of, or in connection with, or incident to, action(s) or lack of action(s) of Grantee, its officers, employees, agents, or vendors related to this Agreement. Without limiting the generality of the foregoing, Grantee's obligations under this Section are applicable to any claim, dispute, suit, action or judgment against the City arising from or related to the use of Grant funds, the Program's qualification as an affordable housing program, the eligibility of Qualified Recipients, or any other matter related to the use of CET funds.

11. MISCELLANEOUS.

- a. Governing law; Venue; Consent to Jurisdiction. 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 involving the City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon or, if necessary, the United States District Court for the District of Oregon. Grantee expressly consents to the jurisdiction of such courts.
- b. Compliance with applicable law. Grantee shall comply with all federal, state, and local laws, regulations, and ordinances applicable to this Agreement. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to this Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated.
- c. No third-party beneficiaries. The City and Grantee are the only parties to this Agreement and the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

- d. Severability. If any term or provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Agreement.
- e. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- f. Amendments. All changes to this Agreement must be made by written amendment and signed by the Parties.
- g. Scope of Agreement. This Agreement incorporates all the agreements, covenants, and understanding between the Parties and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless set forth in this Agreement.

12. NOTICES. Except as otherwise provided in this Agreement, any notices shall be in writing and delivered via U.S. postal service to the addresses indicated below. Notices are effective when the sender receives confirmation of delivery.

- a. To the City:

City of Newberg
414 E. First Street
Newberg, OR 97132
Attn: City Manager

- b. To Grantee:

[Address]
[City, State, Zip]
Attn: [Contact]

-Signature Page Follows-

CITY OF NEWBERG

By: _____

Name: Will Worthey

Title: City Manager

Date: _____

GRANTEE

SPARK Newberg, an Oregon nonprofit corporation

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
Application

Attached

DRAFT

EXHIBIT B
Funding Request

Attached

DRAFT

REQUEST FOR COUNCIL ACTION



Date Action Requested: September 15, 2025

Order <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Information <input type="checkbox"/> Proclamation <input type="checkbox"/>	
No. 2025-2938	
Subject: An ordinance amending Newberg Municipal Code sections 5.20, 5.25, and 5.30.330 regarding dancing, cigarette vending machines, and the Cable Commission.	Staff: Rachel Thomas Department: Administration
Business Session	Order On Agenda: Continued Business
Hearing Type: Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Administrative <input type="checkbox"/> Not Applicable <input type="checkbox"/>	

Is this item state mandated? Yes ☐ No ☒

If yes, please cite the state house bill or order that necessitated this action:

Recommendation: Approve Ordinance 2025-2938 amending Newberg Municipal Code sections 5.20, 5.25, and 5.30 regarding dancing, cigarette vending machines, and the Cable Commission.

Executive Summary:

Staff have identified several sections of the Newberg Municipal Code that are no longer of value to the city. These include:

NMC 5.20 Cigarette Vending Machines

NMC 5.25 Public Dancing

NMC 5.30.330 Cable Communications Commission

Fiscal Impact: Budgeted costs for code update publishing will be accrued, estimated to be around \$500.

Council Goals: N/A

Exhibit A: Clean Copy of New Code NMC 5.20 NMC 5:25, NMC 5.30.010-020 and 5.30.330-430

Exhibit B: Red Line Version of Code NMC 5.20 NMC 5:25, NMC 5.30.010-020 and 5.30.330-430



ORDINANCE NO. 2025-2938

An Ordinance repealing Newberg Municipal Code sections NMC 5.20 NMC 5:25, NMC 5.30.010-020 and 5.30.330-430 regarding dancing, cigarette vending machines, and the Cable Commission.

Recitals:

1. In 1943, Ordinance 959 passed setting license requirements for Cigarette Vending Machines, this was further updated in 1985 by Ordinance 2163 which added further penalties and requirements for the operation of these machines.
2. Cigarette vending machines are now licensed and controlled by the Oregon Liquor and Cannabis Commission.
3. In 1940, Ordinance 910 passed setting licensing requirements and limiting public dancing. This was followed by Ordinances 1362, 2234, 2251, and 2258 which clarified various requirements of the license, insurance requirements, and the attendance of minors.
4. The various terms set by the public dance licensing requirements are no longer deemed necessary by this City Council or are covered by other sections of the Newberg Municipal Code.
5. In 1982, Ordinance 2106 established a Cable Communications Commission to promote the use of cable communications, promote a local cable access channel, and provide public education on the use of cable technology. Later Ordinance 2109 and 2464 were adopted to make revisions to the membership of said commission.
6. There is no longer in existence a Cable Commission or a need for such an organization in the City of Newberg and City Council desires to sunset this commission.

The City of Newberg Ordains as Follows:

1. Repeal Ordinances 959, 2163, 910, 1362, 2234, 2251, 2258, 2106, 2109, and 2464.
2. Redact the following portions of the Newberg Municipal Code as shown in Exhibits A and B. NMC 5.20 NMC 5:25, NMC 5.30.010-020 and 5.30.330-430.

Effective Date of this ordinance is thirty days after the adoption date, which is October 15, 2025.

Adopted by the City Council of Newberg, Oregon, this _____ day of September , 2025, by the following
votes: **AYE:** **NAY:** **ABSTAIN:**

Rachel Thomas, City Recorder

Attest by the Mayor this _____ day of _____, 2025.

Bill Rosacker, Mayor

Chapter 5.20

CIGARETTE VENDING MACHINES

Sections:

- ~~5.20.010 — Definitions.~~
- ~~5.20.020 — Operation by minors prohibited.~~
- ~~5.20.030 — License application.~~
- ~~5.20.040 — License term and fee.~~
- ~~5.20.050 — Tags.~~
- ~~5.20.060 — Regulations for display and operation.~~
- ~~5.20.070 — License revocation — Designation of places for machines.~~
- ~~5.20.080 — Penalty.~~

5.20.010 — Definitions.

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~“Automatic cigarette vending machines” or “machines” means any and all machines, devices and/or apparatus of whatsoever kind, nature or description that are designed, operated, used and/or displayed for the vending of cigarettes.~~

~~“Person” means a natural person, firm, corporation or copartnership. [Ord. 959, 7-6-43. Code 2001 § 115.01.]~~

5.20.020 — Operation by minors prohibited.

~~It shall be unlawful for any person to permit or allow any automatic cigarette vending machine then in that person’s possession or under that person’s control to be played or operated by any minor under the age of 21 years; provided, that every proprietor, employee and person in charge of any place of business wherein any automatic cigarette vending machine is being operated or displayed shall be conclusively presumed to be in possession and control of such machine. [Ord. 959, 7-6-43. Code 2001 § 115.02.]~~

Penalty: See NMC 5.20.080.

5.20.030 — License application.

~~A. Any person desiring to maintain, keep and/or display any such automatic cigarette vending machine shall first make and file with the city a written application for a license so to do the same.~~

~~B. Such application shall provide:~~

- ~~1. The name, address and place of business of the applicant; and~~
- ~~2. A description of the machine or machines, by serial number if possible.~~

~~C. The application shall be accompanied by an annual license fee.~~

~~D. Whereupon, the city shall issue the license as herein provided, if the application otherwise complies with the requirements of this chapter. [Ord. 959, 7-6-43. Code 2001 § 115.03.]~~

Penalty: See NMC 5.20.080.

5.20.040 — License term and fee.

~~Each license shall be issued for not less than one year, and the fee shall be the sum of \$12.00 per year for each machine. [Ord. 1135, 6-1-53; Ord. 959, 7-6-43. Code 2001 § 115.04.]~~

5.20.050 — Tags.

~~A. When issuing the license, the recorder shall also issue for each machine a separate tag bearing the license number, its date of expiration and the signature of the recorder.~~

~~B. It shall be unlawful to operate, maintain, keep and/or display any automatic cigarette vending machine unless one of said tags is then and there conspicuously displayed on the machine. [Ord. 959, 7-6-43; Code 2001 § 115.05.]~~

Penalty: See NMC 5.20.080.

5.20.060 — Regulations for display and operation.

~~It shall be unlawful to display or operate any such automatic cigarette vending machine unless it is suitably supplied with cigarettes and in good working order so as to properly vend such cigarettes. [Ord. 959, 7-6-43; Code 2001 § 115.06.]~~

Penalty: See NMC 5.20.080.

5.20.070 — License revocation — Designation of places for machines.

~~A. The city council shall have the right to revoke any and all licenses issued hereunder at its discretion, either with or without notice, to the licensee; provided, that the unexpired portion of the license fee, having been paid, tendered or deposited with the recorder, is refunded.~~

~~B. The city council shall have the further right to designate the place or places wherein any such machine may be operated, maintained and/or displayed. [Ord. 959, 7-6-43; Code 2001 § 115.07.]~~

5.20.080 — Penalty.

~~A. Any person violating any of the terms of this chapter shall have committed a Class 4 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Chapter 2.30 NMC.~~

~~B. Any such machine being operated, maintained, kept and/or displayed in violation of this chapter shall also, at the discretion of the municipal judge, be confiscated to the city. [Ord. 2163, 4-1-85; Ord. 959, 7-6-43; Code 2001 § 115.99.]~~

Chapter 5.25

DANCES

Sections:

~~5.25.010 — License.~~

~~5.25.020 — Minors.~~

~~5.25.030 — Closure time.~~

~~5.25.040 — Organizations exempt from regulations.~~

~~5.25.050 — Penalty.~~

5.25.010 — License.

~~A. Any person, corporation, organization or association, with certain exceptions hereinafter provided for, which shall conduct, give, sponsor or in any manner manage any public dance or any invitational dance in any building other than a private dwelling house within the city, whether or not an admission fee is charged for such dance, shall procure from the city in advance, a license to conduct such dance, and shall pay in advance a regulatory fee in the sum of \$10.00 for each dance so held. A written application for a dance permit shall be made to the city on forms provided by the city not less than 10 days before the date of such dance. Said written application shall contain the following information, to-wit:~~

~~1. Location of the proposed dance.~~

~~2. Date and hours of opening and closing said dance.~~

~~3. Provisions for liability insurance in the amount of at least \$300,000 with certificate of insurance or provisions for financial liability in a like amount shall be required when alcoholic beverages are being served.~~

~~4. Provisions for traffic control and coordination.~~

~~5. Compliance with applicable zoning restrictions.~~

~~6. If alcoholic beverages are being sold, provisions for the control and dispensing of alcoholic beverages to see that all applicable laws are obeyed.~~

~~7. Provisions for security and crowd control.~~

~~8. Such other information and requirements as shall be reasonably required to ensure the public's health, welfare and safety.~~

~~B. The city shall consider and, if necessary, investigate all such written applications for license. The city shall grant or reject such application. The city may require the applicant to furnish proof of all requirements.~~

~~C. The city shall advise the applicant of its decision relevant to said application not later than five days after receiving all relative information and proof of any provisions; provided, however, that in the event that after granting said license the city receives information which shall render it inadvisable to permit said dance to be conducted by reasons of consideration of public health, welfare and safety, the city shall have the right to revoke and cancel said dance license and shall forthwith give notice of such revocation to the sponsor of said dance, either by mail or telephone call at the address or telephone number set forth in the application for the dance license hereinabove mentioned.~~

~~D. Permits for use of the Newberg cultural district festival street for a public dance are issued under NMC-12.05.245. [Ord. 2779 § 4, 2-17-15; Ord. 2258, 2-6-89; Ord. 2251, 11-7-88; Ord. 2234, 6-14-88; Ord. 1362, 1-6-64; Ord. 910, 3-25-40. Code 2001 § 93.01.]~~

Penalty: See NMC 5.25.050.

~~5.25.020 — Minors.~~

~~Minor children under the age of 15 years, unaccompanied by a parent or legal guardian, are prohibited from attending, being present at or dancing at any dance given in a public dance hall within the city; and it shall be unlawful for any person or persons in charge of any public dance to permit or allow any such minor person to be within any public dance hall during such dance unaccompanied by a parent or guardian. [Ord. 1362, 1-6-64; Ord. 910, 3-25-40. Code 2001 § 93.02.]~~

~~**Penalty:** See NMC 5.25.050.~~

~~5.25.030 — Closure time.~~

~~All public dances given within the city shall be closed not later than 1:00 a.m. [Ord. 1880, 10-3-77; Ord. 910, 3-25-40. Code 2001 § 93.03.]~~

~~**Penalty:** See NMC 5.25.050.~~

~~5.25.040 — Organizations exempt from regulations.~~

~~The provisions of this chapter shall not apply to fraternal organizations, educational institutions, or religious organizations which shall sponsor or conduct dances for the entertainment of their members and guests. Further, the provisions of this chapter shall not apply to any business which conducts business on a daily basis within the city and has dances for their customers in the ordinary course of business. [Ord. 2244, 8-1-88; Ord. 1362, 1-6-64; Ord. 910, 3-25-40. Code 2001 § 93.04.]~~

~~5.25.050 — Penalty.~~

~~Any person violating any of the provisions of this chapter shall have committed a city Class 3 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Chapter 2.30 NMC. [Ord. 2163, 4-1-85; Ord. 910, 3-25-40. Code 2001 § 93.99.]~~

Chapter 5.30

CABLE COMMUNICATIONS

Sections:

Article I. General Provisions

- 5.30.010 Title.
- 5.30.020 Definitions.
- 5.30.030 Permits and construction.
- 5.30.040 Indemnifications.
- 5.30.050 Conditions on rights-of-way occupancy.
- 5.30.060 Rights reserved to city.
- 5.30.070 Equal opportunity employment and affirmative action plan.
- 5.30.080 Adoption of rules and regulations.
- 5.30.090 Amendments.
- 5.30.100 Miscellaneous provisions.
- 5.30.110 Violations.

Article II. Franchise Requirements

- 5.30.120 Franchise necessary to install and operate.
- 5.30.130 Term of franchise.
- 5.30.140 Limitations of franchise.
- 5.30.150 Franchise application procedures.
- 5.30.160 Applications for franchise renewal.
- 5.30.170 Acceptance of franchise.
- 5.30.180 Transfer or assignment of franchise.
- 5.30.190 Franchise fee.

Article III. System Services – Operating Regulations

- 5.30.200 Cable communications services.
- 5.30.210 Service area.
- 5.30.220 System extension.
- 5.30.230 Systems design, construction and technical performance standards.
- 5.30.240 Undergrounding of cable lines.
- 5.30.250 System maintenance.
- 5.30.260 Emergency power.
- 5.30.270 Rules and regulations for subscriber service standards.
- 5.30.280 Subscriber complaint service.
- 5.30.290 Rates and charges.
- 5.30.300 Local origination and access.
- 5.30.310 Emergency alert – Audio-video override.
- 5.30.320 Safety requirements.

~~Article IV. Cable Communications Commission~~

- ~~5.30.330 Establishment and purpose.~~
- ~~5.30.340 Membership.~~
- ~~5.30.350 Qualifications and appointment of members.~~
- ~~5.30.360 Term of office.~~
- ~~5.30.370 Vacancies and removal.~~
- ~~5.30.380 Officers.~~
- ~~5.30.390 Staff services.~~
- ~~5.30.400 Meetings.~~

~~5.30.410 Powers and duties.~~
~~5.30.420 Rules and regulations.~~
~~5.30.430 Funds, budget, and annual report.~~

Article I. General Provisions

5.30.010 Title.

This chapter shall be known and may be cited as the Newberg cable communications ordinance. [Ord. 2046, 2-26-81. Code 2001 § 111.01.]

5.30.020 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural number.

“**Applicant**” means any person or corporation submitting an application for a cable communications franchise.

“**Basic service**” means that service regularly provided to all subscribers at a basic monthly rate including, but not limited to, the retransmission of local and distant broadcast television signals, nonpremium satellite services, automated services, local origination and access services.

“**Cable communications system**” or “**CATV system**” means a system employing antennas, microwave, wire, waveguides, coaxial cables, or other conductors, equipment or facilities designed, constructed or used for the purpose of:

1. Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;
2. Transmitting original cablecast programming not received through television broadcast signals;
3. Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
4. Transmitting and receiving all other signals: digital, voice, audio-visual, or other forms of electronic or electrical signals.

“**Channel**” means a six megahertz (MHz) frequency band which is capable of carrying either one standard audio/video television signal, or a number of audio, digital or other nonvideo signals.

“**City**” means the City of Newberg, a municipal corporation of the State of Oregon, in its present incorporated form or in any later reorganized, consolidated enlarged or reincorporated form.

“**City council**” or “**council**” means the legislative body of the City of Newberg.

“**City manager**” means the city manager of the City of Newberg.

“**Community access channel**” or “**access channel**” means any channel or portion of a channel utilized for programming on a nonprofit basis.

“**Educational channel**” means any channel or portion of a channel on which educational institutions are the only designated programmers.

“**Entertainment services**” means television services provided on a one-way noninteractive basis including but not limited to broadcast channels, local origination channels, pay channels or any other channels supplied to subscribers at a basic or premium charge where the content of the transmitted signals is uniform to all subscribers or individual classes of subscribers and program selection is accomplished by operation of a tuner or converter under the sole control of the subscriber.

“Federal Communications Commission” or **“FCC”** means the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

“Franchise” means any authorization granted hereunder in terms of a franchise, privilege, permit or license to construct, operate and maintain a cable television system within the City of Newberg. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of this city.

“Government channel” means any channel or portion of a channel dedicated to the use of the municipal agencies.

“Grantee” or **“franchisee”** means a holder of a cable television franchise issued by the city.

“Grantor” means the City of Newberg acting through its city council.

“Gross revenues” means any and all compensation in whatever form, directly or indirectly received by grantee, from the source specified, not including any taxes on services furnished by the grantee, which taxes are imposed directly on a subscriber or user by a city, county, state or other governmental unit, and collected by the grantee for such entity.

“Institution” means a building or buildings where service may be utilized in connection with a business, trade, profession, public agency or service, or nonprofit organization.

“Institutional network” means a cable communications network designed principally for the provisions of nonentertainment interactive services to businesses, schools, public agencies or other nonprofit agencies for use in connection with the on-going operations of such institutions.

“Institutional services” means services delivered on the institutional subscriber network.

“Institutional subscriber” means a place of business, public agency, school or nonprofit corporation receiving institutional services on the institutional subscriber network.

“Interactive services” means services provided to subscribers where the subscriber either (1) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber’s control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.

“Leased channel” means any channel or portion of a channel where the grantee is the only designated programmer, and which is utilized to provide television programs to subscribers.

“Local origination channel” means any channel or portion of a channel where the grantee is the only designated programmer, and is utilized to provide television programs to subscribers.

“Nonbasic service” means any communications service in addition to “regular subscriber services” including but not limited to access channel carriage including origination programming, pay television, burglar alarm service, fire alarm service, data transmission, facsimile service, home shopping service, and the like.

“Pay channel” or **“premium channel”** means a channel on which television signals are delivered to subscribers for a special charge fee or charged to subscribers over and above the regular charges for basic subscriber service, on a per-program, per-channel, or other subscription basis.

“Person” means any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of Oregon.

“Premium service” means pay-per-program, pay-per-channel, or other subscription service, i.e., delivered to subscribers for a fee or charge over and above the regular charges for basic services.

“Public access channel” means any channel or portion of a channel where any member of the general public may be a programmer on a first-come, first-served basis, subject to appropriate rules formulated by the city and/or franchisee.

“Residential services” means services delivered on the residential subscriber network.

“Residential subscriber” means a subscriber who receives residential services on the residential subscriber network.

“Residential network” means a cable communications network designated principally for the delivery of entertainment, community access or interactive services to individual dwelling units.

“Streets,” “public ways” and “rights-of-way” mean the surface of and the space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, sidewalk, waterway, dock, pier, alley, right-of-way, public utility easement, and any other public ground or water, now or hereafter, within or belonging to the city.

“Subscriber” means any person or institution that elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable communications system, whether or not a fee is paid for such services.

“Tapping” means observing a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever. [Ord. 2046, 2-26-81. Code 2001 § 111.02.]

5.30.030 Permits and construction.

A. Obtaining Permits and Authorizations – Copies to Be Submitted.

1. Within 30 days after acceptance of a franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, encroachment permits, microwave carrier licenses, and any other permits, licenses and authorizations to be granted duly constituted regulatory agencies having jurisdiction over the operation of cable television/communications systems, or associated microwave transmission facilities.

2. In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the grantee’s cable communications operations shall also be submitted simultaneously to the city manager.

B. Within 60 days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, grantee shall commence construction and installation of the cable communications system.

C. Within 180 days after the commencement of construction and installation of the system, grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan of construction are made part of the franchise and shall be provided as set forth therein.

D. Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein shall be grounds for termination of such franchise. By resolution and order, the city council, in its discretion, may extend the time for the commencement and completion of installation and construction for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond the grantee’s control.

E. Poles, Conduits and Other Facilities.

1. The grantee shall utilize existing poles, conduits, and other facilities whenever possible and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public

property or on privately owned property unless and until first securing the written approval of the city's director of public works.

2. Whenever the grantee shall not utilize existing poles, conduits and other facilities, or whenever existing conduits and other facilities shall be located beneath the surface of the streets, or whenever the city shall undertake a program designated to cause all conduits and other facilities to be located beneath the surface of the streets in any area of the city, in the exercise of its police power or pursuant to the terms of this chapter, upon reasonable notice to the grantee, the city may require any such to be constructed, installed, placed, or replaced beneath the surface of the streets. Any construction, installation, placement, replacement, or changes which may be so required shall be made at the expense of the grantee, whose costs shall be determined as in the case of public utilities.

F. The city shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for the grantee in any street, provided such use by the city does not interfere with the use by the grantee.

G. Underground Facilities.

1. Per NMC 5.30.240, in those areas of the city where the transmission of distribution facilities of the respective public utilities providing telephone, communication and electric services are underground, or hereafter are placed underground, the grantee likewise shall construct, operate and maintain all of the grantee's transmission and distribution facilities underground. When directed by the city, previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with the utility companies involved pursuant to the general ordinances of the city or applicable state laws.

2. The term "**underground**" shall include a partial underground system; provided, that upon obtaining the written approval of the city, amplifiers in the grantee's transmission and distribution lines may be placed in appropriate housing upon the surface of the ground.

H. Property Removal, Relocation, Etc. – Property Abandonment.

1. The grantee at the grantee's expense shall protect, support, temporarily disconnect, relocate, or remove any property of the grantee when, in the opinion of the city manager, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction; change or establishment of street grade, installation of wastewater systems, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structures or improvements by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground.

2. The grantee may, at the sole option of the city, have the privilege, subject to the corresponding obligations, to abandon property of the grantee in place. A permit to abandon in place must first be obtained from the city director of public works. Nothing hereunder shall be deemed a taking of the property of the grantee, and the grantee shall be entitled to no surcharge by reason of anything hereunder.

I. Upon the failure, refusal, or neglect of the grantee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street within any time prescribed, or upon notice given, where no time is prescribed, the city manager may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to the grantee an itemized statement of the costs of the work. The grantee shall, within 30 days after receipt of such statement, pay to the city the entire amount.

J. Property Removal Ordered When.

1. In the event that:

- a. The use of any part of the system of the grantee is discontinued for any reason for a continuous period of 30 days, without prior written notice to and approval by the city; or
 - b. Any part of such system has been installed in any street or other area without complying with the requirements of this chapter and/or the franchise ordinance; or
 - c. Any franchise shall be terminated, cancelled or shall expire, then the grantee shall, at the option of the city, and at the expense of the grantee and at no expense to the city, and upon demand of the city, promptly remove from any streets or other area all property of the grantee, and the grantee shall promptly restore the street or other area from which such property has been removed to such condition as the city director of public works shall approve.
2. The city council may, at its sole option, upon written application by the grantee, approve the abandonment of any such property in place by the grantee. Upon abandonment of any such property in place, the grantee shall cause to be executed, acknowledged, and delivered to the city such instruments as the city attorney shall prescribe and approve, transferring and conveying the ownership of such property to the city. [Ord. 2046, 2-26-81. Code 2001 § 111.03.]

5.30.040 Indemnifications.

A. Upon being granted a franchise, and upon filing of the acceptance required, the grantee shall, at the grantee's sole expense, obtain, file with the city, and, unless otherwise authorized by the city council, thereafter maintain during the full term of such franchise or any renewal of the franchise plus an additional six months thereafter, a corporate surety bond or other adequate surety agreement in such form and amount, not to exceed the penal sum of \$100,000, as shall have been approved by the city attorney.

B. Within 30 days after the effective date of any franchise, unless otherwise authorized by the city council, the grantee shall deposit into a bank account, established by the city manager, and maintain on deposit through the term of the franchise, a security fund of not less than \$15,000, as security of faithful performance by it of all provisions of the franchise, and compliance with all provisions of the franchise, and compliance with all orders, permits and directions of any agency of the city having jurisdiction over its acts or defaults under the contract, and payment by the grantee of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system. The grantee shall be entitled to all interest earned on such account.

1. Within 30 days after notice to it that any amount has been withdrawn by the city from the security fund pursuant to subsection (B) of this section, the grantee shall deposit a sum of money sufficient to restore such security fund to the original amount of \$15,000.
2. If the grantee fails, after 10 days' notice, to pay to the city any taxes due and unpaid; or fails to repay to the city within such 10 days any damages, costs or expenses which the city shall be compelled to pay by reason of any act or default of the grantee in connection with the franchise; or, fails after 30 days' notice of such failure by the city to comply with any provision of the franchise which the city reasonably determines can be remedied by an expenditure of the security, the city manager may immediately withdraw the amount, with interest and any penalties, from the security fund. Upon such withdrawal, the city shall notify the grantee of the amount and date.
3. The security fund deposited pursuant to this section shall become the property of the city in the event that the franchise is cancelled by reason of default of the grantee or revoked for cause. The grantee, however, shall be entitled to the return of such security fund, or portion of the security fund, as to the franchise expiration or upon termination of the franchise at an earlier date; provided, that there is then no outstanding default on the part of the grantee.

C. By accepting a franchise, each grantee shall be deemed to have agreed to indemnify and hold harmless the city, its officers, boards, commissions, agents, consultants, and/or employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including, but not limited to, damages to city property and damages arising out of copyright infringements, and damages arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable communications system), costs or liabilities (including costs of the city with respect to its employees), of every

kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorneys' fees, accountants' fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the grantee, or the granting of a franchise by the city.

1. Alternatively, in the discretion of the city council, the city may, on behalf of itself, and/or any of its officers, agents, consultants, or employees, elect to employ, at the grantee's expense, attorneys to appear and defend such actions.
2. The grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against the grantee, the city, its officers, boards, commissions, agents, consultants, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, security deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither the grantee nor the city shall make or enter into any compromise or settlement of any claim, demand, cause of action, suit or other proceedings, without first obtaining the written consent of the other.

D. Upon being granted a franchise, and upon the filing of the acceptance required under NMC 5.30.170, the grantee shall file with the city recorder and shall thereafter, during the entire term of such franchise, maintain in full force and effect each of the following policies of insurance:

1. General comprehensive liability insurance in a form satisfactory to and an amount approved by the city manager, together with bodily injury and property damage liability insurance with such limits as may be required by the city council, but not less than \$500,000 for each person injured, and \$1,000,000 aggregate per single accident or occurrence, and \$500,000 for property damage. Such policies shall provide they cannot be cancelled unless at least 30 days' prior written notice of intent to terminate or cancel has been given to the city.
 - a. The city shall be named as an additional insured in any of said insurance policies.
 - b. Where such insurance is provided by a policy which also covers the grantee or any other entity or person, it shall contain the standard cross-liability endorsement.
2. Workers' compensation insurance coverage in at least the minimum amounts required by law. If a grantee fails to obtain or maintain such required insurance coverage, the city may, without notice to the grantee, obtain, at the grantee's sole expense, such coverage, or forthwith terminate, without prior notice, the franchise as granted.

E. Any of the indemnifications specified in this section may be reduced, in part or whole, in term or amount by the city council after three years from the date of award of the franchise if the purpose of the above required bond, security fund or insurance is deemed by the city council to have been served and no longer required. Once reduced, in part or whole, the full requirements, in term and amount, may be reimposed as indicated above at the city council's sole discretion and at the grantee's sole expense. [Ord. 2046, 2-26-81. Code 2001 § 111.04.]

5.30.050 Conditions on rights-of-way occupancy.

A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a grantee shall be done under permits issued for the work by the proper officials of the city, and under their supervision and direction, and shall be done in such manner as to give the least inconvenience to the inhabitants of the city. A grantee shall, at its own cost and expense, and in a manner approved by the proper city officials, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done and shall also make and keep full and complete plats, maps and records showing streets, rights-of-way, and easements of the city. These maps shall be available for inspection at any time during business hours by city officials.

B. A grantee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the city by reason of traffic conditions, public safety, road construction, change of street grade,

installation of wastewater systems, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal improvements; provided, however, that the grantee may, at the sole option of the city, have the privilege of abandoning property in place.

C. A grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

D. A grantee shall have authority to trim the trees upon and overhanging the public streets so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, under the same rules and regulations applied to public utilities within the city, except that, at the option of the city council, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

E. In all sections of the city where the cable, wires or other similar facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

F. In all sections of the city where wires, cables and other system appurtenances are mounted above ground, every reasonable effort shall be made to minimize obstruction of the view of residents, and every reasonable effort shall be made to preclude an unsightly system installation. [Ord. 2046, 2-26-81. Code 2001 § 111.05.]

5.30.060 Rights reserved to city.

A. Nothing herein and/or in the franchise shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted thereby, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the city's right of eminent domain.

B. There shall be reserved to the city every right and power which is required to be reserved or provided by law, and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or agreements of the city in its exercise of such rights of power, theretofore or thereafter enacted or established.

C. Neither the granting of the franchise nor any provision of the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

D. The city reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this chapter and/or the grantee's franchise. The city council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and/or the grantee's franchise, and may determine any question of fact which may arise during the existence of any franchise granted. The city council, with the approval of the city attorney, is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under the franchise, either on behalf of the city, the grantee, or any subscriber, in the best interest of the public.

E. The city, at its option, when for sufficient cause as deemed by the city manager, may require that the annual proof-of-performance test, addressed in NMC 5.30.230, be conducted or observed by a qualified member of the city's staff or its designated representative. The city reserves the right to have the measurements, associated with city-observed performance tests, conducted at city-selected test points and to a greater number of test points than the minimum required by Section 76.601, FCC Rules.

F. Any delegatable right, power or duty of the city council, the city or any officials of the city may be transferred or delegated to an appropriate officer, employee, or department of the city.

G. The city reserves the right to promulgate other reasonable technical and operational performance standards for system franchises granted pursuant to this chapter.

H. The city reserves the right to enact reasonable regulations pertaining to franchises granted pursuant to this chapter which may include, but are not limited to:

1. Construction and use of poles;
2. Use of poles and conduits by the city;
3. Common user;
4. Filing of pole user agreement;
5. Reservation of street rights;
6. Restoration of streets;
7. Movement of facilities; and
8. Trimming of trees.

I. The city reserves the right to further regulate the conduct of the grantee in regard to the privacy and property rights of private citizens. Such regulations may include but are not limited to the security of all records maintained by the practices relating to such records and any other matters related to privacy and individual rights.

J. The city reserves the right to establish a cable communications regulatory and advisory commission to assist the city council in regulating cable activity in the city. The members and duties of any such commission, if any, shall be established by the city council.

K. Should the State of Oregon or the federal government or agency of the State of Oregon or the federal government subsequently require the grantee to act in a manner which is inconsistent with any provisions of this chapter, franchise ordinance or associated resolutions and orders, the grantee shall so notify the city. Upon receipt of such notification, the city shall determine if a material provision of the franchise is affected. Upon such determination, the city shall have the right to modify or amend any of the sections of the franchise to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter or the franchise ordinance. The city may terminate the franchise in the event the city determines the substantial and material compliance with the original proposed terms of the franchise have been frustrated by such state or federal requirement.

L. No grantee nor any major stockholder of a grantee shall directly or indirectly with the city use the position as cable grantee to gain a competitive advantage in the business of selling, leasing, renting, servicing or repairing radio or television sets or other receivers or parts of radio or television sets or other receivers, or data access and transfer equipment which make use of entertainment and information signals; provided, that nothing therein shall prevent the grantee from making modifications to the tuner input circuit of the subscribers' communications transmitters and/or receivers, and the fine-tuning of the customers' operating controls only, to ensure proper operation under conditions of cable connection at the time of installation or in repairing receivers and other equipment belonging to other cable system operators for use in the conduct of their businesses.

M. The grantee shall permit the city to fasten signs, wires, and cables and stretch such wires and cables on any and all poles of the grantee; provided, that the grantee shall not be responsible for any damage without the grantee's fault resulting to the signs, wires, cables or property of the city resulting from such use of its poles by the city.

N. The grantee shall manage all of its operations in accordance with a policy of totally open books and records. The city shall have the right to inspect at any time during normal business hours, at the local and parent corporation offices of the grantee, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the grantee. Access to the aforementioned records shall not be denied by the grantee on the basis that said records contain proprietary information.

O. Communications with Regulatory Agencies. Copies of all petitions, applications, communications, and reports submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any

other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise, shall also be submitted simultaneously to the grantor. Copies of responses or any other communications from the regulatory agencies to the grantee shall likewise be furnished simultaneously to the grantor.

P. Any intrastate interconnection of interactive services between the system operated by the grantee and any other system shall be subject to the regulatory authority of the city.

Q. The reservation of any particular right shall not be construed to limit the promulgation of other reasonable rules and regulations. [Ord. 2046, 2-26-81. Code 2001 § 111.06.]

5.30.070 Equal opportunity employment and affirmative action plan.

A. In the carrying out of the construction, maintenance and operation of the cable television system, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin.

B. The grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other form of compensation, and selection for training, including apprenticeship.

C. The grantee shall post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

D. The grantee shall, in all solicitations or advertisements for employees placed by or on behalf of the grantee, state that all qualified applicants will receive compensation for employment without regard to race, creed, color, sex, or national origin.

E. The grantee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the cable television system, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work. [Ord. 2046, 2-26-81. Code 2001 § 111.07.]

5.30.080 Adoption of rules and regulations.

A. At any time, the city council may adopt reasonable rules, regulations and standards governing the operation of cable communications systems in the city, consistent with the provisions of this chapter and the franchise ordinance. Such rules, regulations and standards shall apply to and shall govern the operations of the grantee of any cable communications franchise, and are expressly declared to be a part of any such franchise.

B. Prior to adopting any such rule, regulation, or standard, the city council shall conduct a duly noticed hearing. At the time set for such hearing, or at any adjournment of the hearing, the city council shall proceed to hear any relevant evidence relating to the matter. Thereafter, the city council, by resolution, may adopt, amend or modify such rules and regulations.

C. The standards adopted may govern the engineering, construction, installation, service, and maintenance of all cable communications systems in the city, including but not limited to standards governing carrier levels, signal-to-noise ratios, hum modulation, distortion levels, channel interactions and interactions, and composite beat levels. [Ord. 2046, 2-26-81. Code 2001 § 111.08.]

5.30.090 Amendments.

The city council shall amend this chapter and any franchise issued thereunder, upon its own motion or the application of a grantee, whenever amendment is necessary to enable a grantee to utilize new developments in television or radio signal transmission which would improve and update cable communications service in the city, or to comply with any modifications in the Rules of the FCC. Amendments to Section 76.31 of the FCC Rules will be incorporated into this chapter within one year of their adoption or at the time of franchise renewal, whichever comes first. No amendment shall be adopted except after full, open public hearing affording due process, and no

amendment substantially amending the existing rights and obligations of the grantee shall be adopted without the grantee's consent. [Ord. 2046, 2-26-81. Code 2001 § 111.09.]

5.30.100 Miscellaneous provisions.

A. A franchise granted to provide service within the city shall authorize and permit the grantee to solicit, sell, distribute, and make a charge to subscribers within the city for connection to the cable communications system of the grantee and shall also authorize and permit the grantee to traverse any portion of the city in order to provide services outside the city.

B. A franchise, easement, license or other permit to anyone other than a grantee to traverse any portion of the city in order to provide service outside the city shall not authorize or permit said person to solicit, sell, distribute, or make any charge to subscribers within the city, nor to render any service or connect any subscriber within the city to the cable communications service system of the grantee.

C. When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the city manager. [Ord. 2046, 2-26-81. Code 2001 § 111.10.]

5.30.110 Violations.

A. It shall be unlawful for any person to construct, install or maintain within any public rights-of-way in the city or within any other public property of the city, or within any privately owned area within the city which has not yet become a public right-of-way but is designated or delineated as a proposed public right-of-way on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. It shall be unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of any cable communications system within this city for the purpose of enabling that person, firm or corporation or others to receive or use any television signal, radio signal, picture, program, sound, information, or other system service without payment to the owner of said system.

C. It shall be unlawful for any person, without the consent of the grantee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, information, data, or other system service. [Ord. 2046, 2-26-81. Code 2001 § 111.11.]

Penalty: See NMC 1.05.200.

Article II. Franchise Requirements

5.30.120 Franchise necessary to install and operate.

A. It shall be unlawful to commence or engage in the construction, operation or maintenance of a cable communications system without a franchise issued under this chapter. The city council may, by ordinance, award a franchise to construct, operate and maintain a cable communications system within all or any portion of the city to any person, whether operating under an existing franchise or not, who makes application for authority to furnish a cable communications system which complies with the terms and conditions of this chapter; provided, that this section shall not be deemed to require the grant of a franchise to any particular person or to prohibit the city council from restricting the number of grantees should it determine such a restriction would be in the public interest.

B. Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable communications system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across, and along any street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, and appliances, attachments, and other property as may be necessary and appurtenant to the cable communications system; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the city. [Ord. 2046, 2-26-81. Code 2001 § 111.20.]

Penalty: See NMC 1.05.200.

5.30.130 Term of franchise.

A. Any franchise granted by the city council shall be for a term of 15 years following the date such franchise is accepted by the grantee, and, upon application of the grantee and review of the performance of the grantee in a public proceeding, the city council may renew the franchise for a successive 15-year period, with such modification of the terms as the city council may determine in each instance.

B. The city council may terminate any franchise granted pursuant to the provisions of this chapter in the event of the willful failure, refusal or neglect by the grantee to do or comply with any material requirement or limitation contained in this chapter, or any other applicable rule or regulation of the city council or city manager validly adopted pursuant to this chapter.

1. The city manager may make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation. If the failure, refusal or neglect continues after notice for an unreasonable period of time, determined as such by the city manager, following such written demand, the city manager may place request for termination of the franchise upon the next regular city council meeting agenda. The city manager shall cause to be served upon such grantee, at least 20 days prior to the date of such city council meeting, a written notice of the city manager's intent to request such termination and the time and place of the meeting.

2. The city council shall consider the request of the city manager and shall hear any persons interested therein and shall determine, in its discretion, whether or not any failure, refusal or neglect by the grantee was with just cause.

3. If such failure, refusal or neglect by the grantee was with just cause, the city council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the city council shall determine such failure, refusal or neglect by the grantee was without just cause, then the city council may, by ordinance, declare that the franchise with such grantee shall be terminated and forfeited, and the grantee shall be required to sell all interests, and title in all of its plants and systems operated under the franchise including any rights under the unexpired portion of the franchise.

C. In the event of termination, the city may purchase, or require any successor grantee to purchase, the grantee's facilities at a cost not to exceed its then fair market value, with a reduction for uncompensated damages incurred by the city in connection with the grantee's operation.

1. In order to determine the fair market value of the grantee's system as specified above, the following procedure will be followed. The grantee and the purchaser each shall select one qualified appraiser experienced in the evaluation of cable communications systems.

2. The two selected appraisers shall select a third appraiser. The three appraisers shall be employed to determine the fair market value of the grantee's system. The fair evaluation shall be the average of the three evaluations of the appraisers. The appraisers shall be directed to reach their determination within 30 days. The grantee and the purchaser shall each pay 50 percent of the costs of employing such appraisers.

3. Upon determination of the fair market value, and upon payment of such sum by the purchaser, the grantee shall transfer all rights, titles, and interests in the subject property to the purchaser within 30 days.

D. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the city to acquire the property of the grantee through the exercise of the right of eminent domain, nor any other of the rights of the city under the franchise or any other provision of the law.

E. In the event of any holding over after expiration or other termination of any franchise granted hereunder, without the prior consent of the city, expressed by resolutions, the grantee shall pay to the city reasonable compensation and damages of not less than 100 percent of its gross revenue derived from all sources within the city during said period. [Ord. 2046, 2-26-81. Code 2001 § 111.21.]

5.30.140 Limitations of franchise.

A. Unless an exclusive franchise shall be expressly granted, any franchise granted under this chapter shall be nonexclusive and nothing herein shall be construed to prevent the city from granting identical or similar franchises to more than one person, within all or any portion of the city.

B. A grantee shall, at all times during the life of its franchise, be subject to the lawful exercise of the city's police power and such reasonable regulations as the city council may subsequently promulgate thereunder.

C. Nothing contained in this chapter shall be deemed to prohibit in any way the right of the city to levy nondiscriminatory occupational license taxes on any activity conducted by the grantee.

D. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed herein, and/or in the ordinance granting the franchise.

E. Any privilege claimed by the grantee under its franchise, in any public way, shall be subordinate to the city's use of the public way, and to any other prior lawful occupancy of the public way. The city reserves the right to reasonably designate where a grantee's facilities are to be placed within the public ways.

F. Time shall be of the essence of any such franchise granted. The grantee shall not be relieved of the grantee's obligations to comply promptly with any of the provisions of this chapter, or the ordinance granting the franchise, by any failure of the city to enforce prompt compliance.

G. Pole or Conduit Use.

1. Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the city, utility company, or from others maintaining utilities in the public ways.

2. Whenever in the judgment of the grantor it is deemed impracticable to permit erection of poles or construction of underground conduit system by any other utility which may at the time have authority to construct or maintain a conduit or poles in street area, the grantor may require the grantee herein to afford to such utility the right to use such poles or facilities of the grantee as the grantor finds practicable in common with the grantee, both parties sharing the costs incident thereto and under such rules and regulations as they may agree upon, but in case they fail to agree within a reasonable time, then upon such terms, conditions and regulations governing the same as the grantor may determine to be just and reasonable.

H. Any franchise granted shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, or any successor to any interest of the grantee, of or pertaining to the construction, operation or maintenance of any cable communications system in the city; and the acceptance of any franchise shall operate as between the grantee and the city, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the city to the effect that, as between the grantee and the city, and all construction, operation and maintenance by any grantee of any cable communications system in the city shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

I. No franchise shall authorize the use of any public property other than public right-of-way and public utility easements owned by the city, unless such franchise or subsequent resolution of the city council expressly authorizes such other public property.

J. No franchise granted shall ever be given any value by any court or other authority, public or private, in any proceeding of any nature or character, wherein or whereby the city shall be a party or affected therein or thereby.

K. The grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the city heretofore or hereafter adopted, including but not limited to those pertaining to works and activities in, on, over, under and about public rights-of-way.

L. Any privilege claimed, under any such franchise granted, in any public right-of-way or other public property shall be subordinate to the public use and any other lawful use of the public right-of-way or other public property.

M. The grantee shall be subject to the provisions of the general laws of Yamhill County and the State of Oregon, or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted pursuant to this chapter, including but not limited to those pertaining to works and activities in and about state highways.

N. The grantee shall be prohibited from directly or indirectly doing any of the following:

1. Imposing a fee or charge for any service or repair to subscriber-owned receiving or transmitting devices except for the connection of its service or for the determination by the grantee of the quality of signal reception and/or transmission;
2. Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by the grantee;
3. Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose.

O. Preemption of City Jurisdiction.

1. If the Federal Communications Commission or the Public Utilities Commission of the State of Oregon or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the city, the jurisdiction of the city shall cease and no longer exist.
2. The preemption or preclusion of the exercise by the city of any of its police power shall not diminish, impair, or affect any other contractual benefit to the city of the grantee nor any other contractual obligation of the grantee under any franchise granted.

P. The form of the grantee's contract with the subscriber shall also be subject to the approval of the city.

Q. It is not necessarily the city's intention to prohibit the erection or controlled use of individual television antennas, and no one is or will be required to receive cable communications service or connect with a cable communications system.

R. Should the grantee ever fail to pay any sum of money to the city owing to the city under provisions of this chapter, or the franchise ordinance, when such sum becomes due and payable, the grantee shall pay interest to the city on the delinquent sum, until it is fully paid at two interest points above the prime rate of interest charged in the Newberg area as calculated by the city.

S. A franchise to proceed with construction or operation of a cable communications system shall not be construed as any limitation upon the right of the city to grant to other persons or corporations, rights, privileges or authority similar to or different from the rights of authority set forth herein or the franchise document itself, in the same or other street, alleys, public highways, public places, or other public rights-of-way by agreement, franchise, permit or otherwise.

T. Nothing in this chapter shall be construed to prohibit any person from constructing or operating any private noncommercial satellite receiving station to the extent permitted by city, county, state and federal law.

U. "The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by ordinance at the City of Newberg and no other purpose whatever." Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the city to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with the franchise pursuant to the authority conferred by provisions of this chapter. [Ord. 2046, 2-26-81. Code 2001 § 111.22.]

5.30.150 Franchise application procedures.

A. This chapter itself grants no authority to operate a cable communications system to any person(s). Such grants are only made by the adoption of a separate ordinance awarding a specific franchise to an applicant who has complied with the provisions of this chapter.

B. Each application for a franchise to construct, operate, or maintain any cable communications system(s) in this city shall be filed with the city recorder and shall contain or be accompanied by the following:

1. The name, address, and telephone number of the applicant;
2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the city:
 - a. The names, residences and business addresses of all officers, directors and associates of the applicant.
 - b. The names, residences and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control five percent or more of the ownership of the applicant and the respective ownership share of each such person or entity.
 - c. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part or owned and controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.
 - d. A detailed description of all previous experience of the applicant in providing cable television communications system service and in related or similar fields.
 - e. A detailed and complete financial statement of the applicant.
 - f. A statement identifying, by place and date, any and all cable television franchises awarded to the applicant, or its parent or subsidiary; the status of said franchises with respect to completion; the total cost of completion of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion of such systems.
3. A thorough, detailed description of the proposed cable communications system and plan of operation of the applicant which shall include, but not be limited to, the following:
 - a. A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.
 - b. A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those adopted by the Rules and Regulations of the Federal Communications Commission (contained in Title 47, Subpart K, Sections 76.601 et seq.), and as augmented and modified by the franchise awarded.
 - c. A detailed estimate of the cost of constructing the applicant's proposed system.
 - d. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber.
 - e. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation, which materially relate or pertain to or depend upon the application and the granting of the franchise.

f. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges.

4. A copy of any agreement existing between the applicant and any public utility subject to regulation by the Oregon Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines and conduits, within the city and/or adjacent areas.

5. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the city council, or by any provision of any other ordinance of the city.

6. An application fee in a sum to be set by the city which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration for the costs and not returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the city in studying, investigating and otherwise processing the application; provided, that any applicant who shall deliver to the city recorder a written withdrawal of or cancellation of any application within three business days following the day such application is received by the city recorder shall be entitled to have returned and refunded the sum of 50 percent of the fee less any actual costs or expenses incurred by the city by reason of such applications.

C. The city council may, by advertisement or otherwise, solicit for any other applications for cable communications system franchises and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications.

D. Upon receipt of any application for franchise, the city council shall refer the same to the ordinance committee which shall prepare a report and make its recommendations respecting such application and cause the same to be completed and filed with the city council within 90 days.

E. In making any determinations hereunder as to any application, the city council shall give due consideration to the character and quality of the service proposed, rates to subscriber, income to the city, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other consideration deemed pertinent by the city council for safeguarding the interest of the city and the public. The city council, in its discretion, shall determine the award of any franchise on the basis of such considerations and without competitive bidding.

F. If the city council, after public hearing, shall determine to reject such application, such determination shall be final and conclusive, and the same shall be deemed rejected.

G. If the city council shall determine to further consider the application, the following shall be done:

1. The city council shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.

2. The city council shall give notice of its intention to consider the granting of such a franchise, stating the name of the proposed grantee and that copies of the proposed franchise may be obtained at the office of the city recorder, fixing and setting forth a time and public place certain when and where interested parties may inspect all the bona fide applications, fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection to the granting of the franchise may file written protests and appear before the city council and be heard, and directing the city recorder to publish notice of said resolution's adoption at least once within 10 days of the passage of the resolution in a newspaper of general circulation within the city.

H. At the time set for the hearing, or at any adjournment of the hearing, the city council shall proceed to hear all written protests. Thereafter, the city council shall make one of the following determinations:

1. That such franchise be denied; or
2. That such franchise be granted upon such conditions as the city council deems appropriate, which conditions may include, on a not-to-exceed basis, where in accordance with applicable FCC regulations and state laws:
 - a. Charges for installation;
 - b. Subscriber rates;
 - c. Service rates for separate classifications of service such as additional connections.

I. If the city council shall determine that a franchise be denied, such determination shall be expressed by resolution; if the city council shall determine that franchise be granted, such determination shall be expressed by ordinance granting a franchise to the applicant. The action of the city council shall be final and conclusive.

J. The grantee shall pay to the city a sum of money sufficient to reimburse it for all expenses incurred by the provisions of this chapter, beyond those defrayed by application fees. Such payment shall be made within 30 days after the city furnishes the grantee with a written statement of such expenses. [Ord. 2046, 2-26-81. Code 2001 § 111.23.]

5.30.160 Applications for franchise renewal.

A. Any franchise may be renewed for a term not to exceed 15 years, at any time prior to the expiration of the same. An application for franchise renewal shall be submitted to the city manager containing the following information:

1. The information required pursuant to NMC 5.30.150(B)(1) and (2);
2. A map of the area proposed to be included in the franchise service area;
3. A schedule of rates and charges proposed;
4. A narrative and/or pictorial description of the facilities in place, and a narrative description of proposed additions and/or replacements thereto, if any.

B. Upon receipt of such an application the city manager shall review the same and forward to the city council a report containing the recommendation as to whether the renewal franchise should be granted or not. Upon receipt of such a report, the city council shall conduct a public hearing, noticed as is provided in NMC 5.30.150(G)(2). At the time of such hearing, or continuance of the hearing, the city council shall, based upon the application, report, and relevant evidence received, determine whether the public interest, convenience and necessity require the issuance of such franchise. If the city council determines to deny the application for renewal, it shall do so by resolution. If it determines that the said franchise should be granted, it shall do so in the manner provided in NMC 5.30.150(H)(2). In the event of nonrenewal or termination of a franchise, the city agrees to purchase, or to require any successor grantee to purchase, grantee's facilities at a cost not to exceed its then fair market value, with a reduction for any uncompensated damages incurred by the city in connection with the grantee's operation. If such fair market value cannot be agreed upon by the parties, it shall be determined by a three-member arbitration panel, in accordance with the arbitration process specified in NMC 5.30.130(C). The parties shall divide expenses of arbitration evenly among themselves. [Ord. 2046, 2-26-81. Code 2001 § 111.24.]

5.30.170 Acceptance of franchise.

A. No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance of the franchise shall have been filed with the city recorder. Written acceptance, which shall be in the form and substance approved by the city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter, and in such franchise, or otherwise specified as herein and therein provided.

B. The written acceptance shall be filed by the grantee not later than 12:01 p.m. of the fortieth day next following the effective date of the ordinance granting such franchise; in the event this day falls on a nonworking day, then the next business day will suffice.

C. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the grantee shall not be received or filed by the city recorder. The grantee shall have no rights, remedies, or redress in the premises, unless and until the city council, by resolution, shall determine that such acceptance be received or filed, and then upon such terms and conditions as the city council may impose.

D. In any case, and in any instance, all rights, remedies and redress in these premises which may or shall be available to the city, shall at all times be available to the city, and shall be preserved and maintained and shall continuously exist in and to the city, and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by reason of any of these premises, or otherwise.

E. Any franchise granted and accepted under the ordinance shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, of or pertaining to the construction, operation, or maintenance of any cable communications system(s) in the city. [Ord. 2046, 2-26-81. Code 2001 § 111.25.]

5.30.180 Transfer or assignment of franchise.

A. Any such franchise shall be a privilege to be held in personal trust by the grantee. The franchise shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, mortgaged, sold, transferred, or disposed of, either in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in the person(s), except the grantee, either by act of the grantee or by operation of law, without the consent of the city expressed by ordinance.

B. The grantee shall promptly notify the city of any proposed change in, or transfer of, or acquisition by, any other party of control of the grantee with respect to which the consent of the grantor is required, pursuant to subsection (A) of this section. Such change of control shall make this franchise subject to revocation unless and until the city council shall have consented thereto.

C. Consent of the city council shall not be granted until it has examined the proposed assignee's legal, financial, technical, character and other qualifications to construct, operate and maintain a cable communications system in the city and has afforded all interested parties notice and an opportunity to be heard on the question. The grantee shall assist the city in any such examination.

D. The said consent of the city council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by the city council and must agree to comply with all provisions of the franchise and of this chapter; and provided, further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed 50 percent of the market value of the property used by the grantee in the conduct of the cable communications system, prior consent of the city council shall be required for such a transfer. Such consent shall not be withheld unreasonably.

E. In the event that the grantee is a corporation, prior approval of the city council shall be required where there is an actual change in control or where ownership of more than 50 percent of the voting stock of the grantee is acquired by a person or group of persons acting in concert, none of whom already own 50 percent or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the city council shall constitute a failure to comply with a provision of this chapter within the meaning of NMC 5.30.130.

F. Any such transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise by transfer of a duly executed copy of which shall be filed with the city recorder within 30 days after any such transfer or assignment. [Ord. 2046, 2-26-81. Code 2001 § 111.26.]

5.30.190 Franchise fee.

A. In consideration of the granting and exercise of a franchise to construct and operate a cable communications system in the city, the grantee shall pay to the city during the life of the franchise a franchise fee equivalent to a percentage, as stipulated in the franchise ordinance, of the grantee's gross revenues including, but not limited to,

basic service revenues, nonbasic revenues, advertising revenues, lease revenues, and data transfer revenues, for the purpose of defraying administrative expenses associated with the conduct and performance of the city's authority, responsibilities, and police power in the promotion of safety, convenience, comfort, prosperity, and general welfare of the citizens of the city, and in consideration of the city's granting and the grantee's exercising a franchise to use the streets, as defined in NMC 5.30.020.

B. The percentage payments shall be made in the manner, amounts and at times directed in the franchise ordinance.

C. At the discretion of the city council, a percentage or portion of the fee payments may be earmarked to assist in the funding of certain nonbasic services; e.g., public and educational access, and the like.

D. A grantee shall file with the city manager, within 90 days after the expiration of any calendar year or portion of a calendar year during which its franchise is in force, a financial statement, for the grantee's Newberg operations, certified by a responsible officer of the grantee, showing in detail the gross revenues, as defined herein, of the grantee during the preceding calendar year or portion of a calendar year. Additionally, the grantee shall submit to the city copies of all FCC Form 325 and 326 reports (and any future revisions or replacements of those reports) within 10 days after submission to the FCC.

E. The city or its representative shall have the right to inspect the grantee's records to determine if proper payments have been made to the city. The cost of such audits shall be borne by the grantee if the same results in increasing, by more than two percent, the grantee's annual payment to the city. [Ord. 2046, 2-26-81. Code 2001 § 111.27.]

Article III. System Services – Operating Regulations

5.30.200 Cable communications services.

A. Basic Service. A cable communications system to be installed and operated pursuant to this chapter and a franchise granted hereunder shall:

1. Be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of what the grantee is now or thereafter authorized by the Federal Communications Commission; and
2. Distribute color television signals which it received in color; and
3. Provide channel capacity and basic equipment for program production in cablecasting for educational and public access uses, and for use of the city per NMC 5.30.300; and
4. Have a minimum capacity of 41 downstream video channels; and
5. As a minimum, have the capability of being converted at any time to provide full reverse transmission (two-way transmission) in any portion of the system or trunk by adding appropriate reverse amplifier modules. Further, the two-way capability shall be fully activated from production facilities in those sites specified in the cable communications franchise granted pursuant to this chapter.

B. Nonbasic Services. The cable communications system permitted to be installed and operated pursuant to this chapter may also engage in the business of:

1. Transmitting original cablecast programming not received through television broadcast signals;
2. Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;
3. Transmitting and receiving all other signals; digital, voice and audio-visual, and the like.

C. Emergency Service. The grantee shall design and construct the system to provide for a restricted audio and video override of video channels during emergencies as per NMC 5.30.310. [Ord. 2046, 2-26-81. Code 2001 § 111.40.]

5.30.210 Service area.

The grantee's system design and construction shall be such that service shall be made available to all residential units within the grantee's service area, as defined in the franchise, for the normal installation fee, with the exception that in those locations where the dwelling units per strand mile of system plant are less than the dwellings per mile figure stipulated in the franchise ordinance, the grantee shall provide cable service on a pro rata sharing of the installation costs with the potential subscribers. The pro rata sharing of those costs will be in accordance with the formulation set forth in NMC 5.30.220. [Ord. 2046, 2-26-81. Code 2001 § 111.41.]

5.30.220 System extension.

A. The grantee shall extend residential and institutional (the latter as required by the city) service into every new subdivision and/or development and/or newly incorporated/annexed area. Those new areas having more dwelling units per strand mile of plant than the number stipulated in the franchise ordinance shall receive residential service for the normal installation fee. The capacity to provide cable communications service shall be available to newly constructed structures on the date of first occupancy. Actual installation of service may be delayed up to 60 days from first occupancy or until after final grading, whichever is first. In those areas where the number of dwelling units per strand mile is less than the number stipulated in the franchise ordinance, the grantee will provide residential cable service on a pro rata sharing of the installation costs with the potential subscriber(s). Grantee will bear its pro rata share of the then current mile of plant construction cost based on a multiple of the actual number of potential subscribers per mile divided by the number of dwellings per mile stipulated in the franchise ordinance.

B. The remaining construction cost will be borne on the prorated basis by each applicant committing to service within the extension area. Mileage will be measured from the nearest point on the nearest trunk line. Example: If it requires one mile of plant extension at \$10,000 per mile of construction to serve 20 potential subscribers, and if the franchise stipulated dwellings per mile were 24, the grantee would pay \$10,000 times 20 divided by 24, or \$8,333, as its share of the extension cost. The remaining \$1,667 cost would be divided equally among the 20 potential subscribers or each would pay an \$84.00 installation fee assuming all 20 become subscribers. The above formula applies to individual installation distances, as stipulated in the franchise ordinance, or less. For distances in excess of the stipulated distance, there may be an additional charge for that distance in excess. [Ord. 2046, 2-26-81. Code 2001 § 111.42.]

5.30.230 Systems design, construction and technical performance standards.

A. Standards of cable communications system(s) construction, safety, and operation will meet, but not be limited to, the following referenced specifications, unless exception is agreed upon between the city and the grantee.

1. Applicable city, county, state and national/federal codes and ordinances as they apply to the construction of buildings, tower structures, and cable system installation;
2. Applicable utility joint attachment practices;
3. National Electrical Safety Code, NFPA No. 70;
4. Local utility code requirements;
5. Local right-of-way procedures.

B. The overall system(s) will be designed and constructed to meet all FCC technical performance specifications and standards over a temperature range of plus or minus 50 degrees Fahrenheit from the mean temperature of the Newberg area, and to function throughout all environmental extremes expected.

C. The forward portion of any cable communications system shall be capable of initial activation of a minimum carriage of 41 Class I television channels, the full FM broadcast band, and for pilot carriers or such auxiliary signals as required for system control.

D. The combined forward trunk and distribution system will deliver signals to each and every subscriber's receiver that will meet or exceed the franchise ordinance specifications at the mean system temperature plus or minus 50 degrees Fahrenheit, unless otherwise indicated. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set top converters.

E. The reverse portion of the residential system shall be capable of initial activation of a minimum of five to 30 MHz in bandwidth, with return signals from each subscriber and institutional (including all schools) signal source to the extreme end of any area in compliance with the specifications set forth in the franchise ordinance.

1. Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.
2. For Class I signals, the signal delivered to the subscribers' TV receiver, after being transmitted to the head-end, processed and retransmitted down a forward channel shall meet the specifications of the franchise ordinance.

F. All cable communications systems authorized to be constructed and operated pursuant to this chapter shall, insofar as financially and technically feasible, be compatible one with another. Signal specifications compliance determination for forward and/or institutional channels interchanged between other cable communications systems and a grantee's system are to be determined by applying the combined contribution of distortion of all pertinent components of the worst case (temperature and location) signal path. The combined contribution shall meet or exceed the specified technical specifications at the termination of the worst case signal path the channel could encounter. At the interconnect point the party delivering a channel or channels will provide signals, transported either in the forward or reverse system to the interconnect point, that meet or exceed the franchise ordinance specifications at the mean system temperature plus or minus 50 degrees Fahrenheit. The signals are to be in compliance as stated at a point which best represents the most direct signal path between the party providing the signal and the party receiving the signal. Only one such interconnect point is to be specified for all signal exchanges.

G. A comprehensive routine preventative maintenance program shall be developed, effected and maintained for each system by the respective grantee to ensure continued top quality cable communications operating standards in consonance with FCC Part 76 and the technical specifications stipulated in the franchise ordinance.

H. No newly constructed system services shall be offered for sale prior to proof-of-performance testing in accordance with FCC Part 76.601 and technical specifications and standards listed in the franchise ordinance. This initial proof-of-performance testing, and annual proof-of-performance testing, may be conducted by the city, or its designated representative, at the city's option, when sufficient cause is deemed by the city council, or its designated representative. The city reserves the right to have the measurements, associated with city-observed performance tests, conducted at city-selected test points and to a greater number of test points than the minimum required by Subpart 76.601, FCC Rules. Additionally, the grantee shall reimburse the city for all expenses incurred by it in connection with the city conducting or observing the annual performance tests, when the results of those tests are deemed by the city to fall below a 90 percent level of compliance with the technical standards set forth in FCC Part 76 and in the franchise ordinance.

I. Grantee's proof-of-performance testing procedures must be approved by the city for implementation prior to the initial proof-of-performance testing addressed in subsection (H) of this section. The results of performance tests conducted in accordance with Section 76.601(c), FCC Rules (or such other section of the rules as shall incorporate its substance) shall be retained for at least five years and be available for inspection by the city.

J. All system antennas and mounts shall be designed, installed and constructed for extremes in temperature, wind and ice loading. Antennas should be able to withstand 100 mile per hour winds with one-inch radial ice load.

K. All underground cable should be flooded and be armor-clad cable and/or installed in conduit, unless specifically exempted by the city director of public works, on a case-by-case basis.

L. Residential and institutional drop cables should be of the integral steel messenger variety where exposed to the possible accumulation of ice and a double-shielded type and fitted with sealed hex crimp ring high integrity connectors.

M. Polyethylene jacketed cable should be used in any and all areas of the plant where airborne heavy chemical particles can be expected.

N. The grantee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice and shall occur during a period of minimum use of the system. A written log shall be maintained of all service interruptions. The log shall reflect the date, time, duration, and reason for each service interruption. The record of the log shall be kept on file by the grantee for a minimum of three years. [Ord. 2046, 2-26-81. Code 2001 § 111.43.]

5.30.240 Undergrounding of cable lines.

A. In those areas and portions of the city where the transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer or subdivider as part of a development or subdivision, then the grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground.

B. In new developments or subdivisions the builder, developer or subdivider shall be responsible for the performance of all necessary trenching and backfilling of main line and service trenches, including furnishing of any imported backfill material required. Prewiring of new dwellings while under construction is mandatory. Amplifiers in the grantee's transmission and distribution line may be in concrete boxes, pedestals or vaults on the surface of the ground. The grantee will be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. The grantee will be responsible for pulling in the cable, and providing the pedestal amplifiers, electronics, stub ends and drops to individual homes, after occupancy.

C. In those areas and portions of the city heretofore designated by the city as local improvement districts and where utility service facilities are currently located underground, the grantee shall be responsible for the undergrounding of cable facilities including the performance of all necessary trenching and backfilling of main line and service trenches, and the furnishing of any imported backfill material required. Amplifiers in the grantee's transmission and distribution lines may be in concrete boxes, pedestals or vaults on the surface of the ground.

D. Previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with other utilities pursuant to the general ordinances of the city or applicable state law, or in the event such action shall be taken by all other utilities on a voluntary basis. [Ord. 2046, 2-26-81. Code 2001 § 111.44.]

Cross-reference: See ORS 758.210 – 758.270 pertaining to conversion of underground facilities.

5.30.250 System maintenance.

Throughout the life of a grantee's franchise, and in addition to other service regulations adopted by the city council, and excepting circumstances beyond the grantee's control, such as acts of God, riots and civil disturbances, and in providing the foregoing services, a grantee shall:

A. Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. The system must serve individual residents, but also serve as a broad-based communications source for city government, other public facilities including hospitals, public libraries and schools, and industrial and commercial business users.

B. Retain sufficient employees to provide safe, adequate and prompt service for all such residential subscribers, institutional facilities and business users.

C. Limit system failures to minimum time duration by locating and correcting malfunctioning as promptly as is reasonably possible, irrespective of holidays or other nonbusiness hours. [Ord. 2046, 2-26-81. Code 2001 § 111.45.]

5.30.260 Emergency power.

Emergency power sources shall be provided by grantee at the head-end, network distribution center, satellite earth station, processing hubs, and other system locations as may be necessary to guarantee that in the event of a power failure on any part of the system, service will be maintained on the rest of the system. [Ord. 2046, 2-26-81. Code 2001 § 111.46.]

5.30.270 Rules and regulations for subscriber service standards.

A. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. Neither the city nor the grantee shall, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to prejudice or disadvantage.

B. Before providing cable television service to any subscriber, the grantee shall provide a written notice to the subscriber substantially as follows:

Subscriber is notified that in providing cable television/communications service the grantee is making use of the public rights-of-way within the City of Newberg and that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to grantee for any reason, grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television/communications service, subscriber agrees subscriber will make no claim nor undertake any action against the City, its officers, or its employees if the service to be provided hereunder is interrupted or discontinued.

C. There shall be no charges for service calls to subscribers' homes except as provided by the franchise.

D. The grantee may charge a subscriber for a lost or stolen converter, not to exceed the grantee's direct original wholesale cost; except that the loss or theft of a converter with the premium access feature will incur a monetary penalty as specified in the franchise ordinance to the responsible subscriber, unless a police report has been filed.

E. Converter deposits shall be fully refundable, with possible deductions for repairs due to damage other than that of normal wear, and for any unpaid service charges due.

F. The grantee shall be responsible for the protection of subscriber privacy, prohibiting the taping and/or monitoring of cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except the grantee may conduct tests of the functioning of the system where necessary in order to ensure proper maintenance of the system and to collect performance data for agencies regulating the quality of signals. Where critical information requires private communication, electronic signal-scrambling techniques must be used.

G. The grantee and the city shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer, or general cable communications system. The grantee shall not place in any private residence any equipment capable of two-way communications without the written consent of the residents, and will not utilize surveillance of any kind without the written consent of the subscriber.

H. No cable, line, wire, amplifier, converter, or other piece of equipment owned by the grantee shall be attached to any residence or other property by the grantee without first securing the written permission of the owner or responsible occupant of any property involved. If such permission is later revoked, whether by the original or a subsequent owner or responsible occupancy, the grantee shall remove forthwith all of its equipment and promptly restore the property to as near to its original condition as possible.

I. In the event that the grantee elects to rebuild, modify, or sell the system, or the city revokes or fails to renew the franchise, the grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event of a system purchase by the city, or the change of grantee, the current grantee shall cooperate with the city to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

J. Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon the subscriber's request, with the exception of underground installations if agreed upon by the subscriber at the time of subscription to the service.

K. The grantee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies, by name, subscriber viewing habits, to any person, agency, or entity, for any purpose whatsoever.

L. No polls or other two-way responses of subscribers shall be conducted unless the program of which the poll is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll. No commercial or other use of information of subscriber viewing habits or patterns may be made and no release of such information shall be permitted without prior consent of the city council or pursuant to rules and regulations duly adopted by the city. [Ord. 2046, 2-26-81. Code 2001 § 111.47.]

5.30.280 Subscriber complaint service.

A. Subscriber complaint service will be provided in conjunction with the grantee's corrective maintenance program. Location of the grantee's office and service center to be subject to city council approval. The subscriber complaint service will be as specified in the franchise ordinance.

B. A conveniently located business office and service center will be maintained within the Newberg service area. This office shall be open during all usual business hours, with its telephone listed in directories of the telephone company servicing the city, and be so operated that complaints and requests for repairs or adjustments may be received by telephone at all times when any television signals are being broadcast. Corrective maintenance for institutional services will be in accord with contract terms between the grantee and the subscriber. [Ord. 2046, 2-26-81. Code 2001 § 111.48.]

5.30.290 Rates and charges.

Except when preempted by FCC regulations and state laws, the following procedures apply to the rates and charges associated with the providing of services under this chapter and any franchise issued hereunder:

A. The grantee shall charge its subscribers and users rates and charges approved by the city council, and no change in rates and charges may be made without the prior approval of the city council expressed by resolution.

B. Should the grantee desire to change its rates and charges, it shall file a petition with the city council at least 90 days prior to the proposed date of change. The petition shall detail the proposed changes and set forth the reason changes are desired. The petition shall include system historical financial data (balance sheets and detailed profit and loss statements) for the period since commencement of system operations or the previous five years, whichever is the lesser.

C. City council determination of proper rates and charges shall be based on factors considered important by the city council, which shall include, but not be limited to: the quality of signal delivered to subscribers, the quality of service provided to subscribers, channel capacity, number and quality of programming sources, and underlying economics of the system (system cash flow, grantee return on investment, and the like). In this regard, the city reserves the right to inspect all of the grantee's property and records in adjudging the merits of a request for a change in rates and/or charges.

D. In connection with any proposed increase in any rate or charge, the city may direct an authorized representative to conduct a hearing on the matter. If so directed, the representative shall set the day, hour and place certain when and where any person having any interest therein may appear and be heard. This hearing should normally be conducted within 60 days from date of receipt of petition. The notice of a public hearing on the matter should be published at least 10 days before the date of the hearing in a newspaper of general circulation within the city.

E. At the time set for such hearing, or at any adjournment of the hearing, the representative shall hear the matter. Following the close of such hearing, the representative shall prepare and file with the city council a report of the hearing and the representative's recommendations and the reasons for the recommendations. After receipt of the representative's report, the city council shall determine whether to adopt the report or to hold a further hearing. If the city council elects to adopt the recommendations of the representative, it shall do so by resolution. If it elects to conduct a hearing, it shall adopt a resolution to do so, describing and stating the proposed change in rates or charges; and fixing and setting forth a day, hour and place certain when and where any person having any interest herein may appear before the city council. A notice shall be published of the resolution's adoption at least once within 10 days of the passage of the resolution in a newspaper of general circulation within the city. The city manager also shall cause notice of intent of such resolution to be mailed to the grantee at least 10 days prior to the date specified for hearing. At the time set for such hearing, or at any adjournment of the hearing, the city council shall hear and decide the matter.

F. No rate established shall afford any undue preference or advantage among subscribers, but separate rates may be established for separate classes of subscribers. [Amended during 2011 recodification; Ord. 2046, 2-26-81. Code 2001 § 111.49.]

5.30.300 Local origination and access.

A. The grantee shall provide and maintain at least one local origination and access studio within the Newberg service area, location of the studio to be approved by the city council or its designated representative.

B. The grantee shall provide, install and maintain a local origination and access audio/video system at their local origination and access studio. The system shall contain a complement of compatible equipment as specified in the franchise ordinance all of which will be broadcast or top-level industrial quality.

C. The grantee shall make the portable audio-video equipment available for use by residents in accordance with a grantee-developed and city- approved studio and equipment operations/usage plan, provided the following:

1. The grantee may charge a deposit for the use and safe return of said equipment.
2. The user shall be responsible to the grantee for any loss of or damage to said equipment.
3. Said equipment shall be available to residents on a “check-out” basis, and the grantee shall be given reasonable notice by a resident who wishes to use said equipment.
4. Residents may not use the equipment for longer than a reasonable period of time, or more frequently than is reasonable.
5. The grantee may deny use of said equipment to any resident who, in the judgment of the grantee, is not competent in the care of said equipment.
6. The grantee shall hold harmless the city from any damages resulting from the use of local origination and access studio and portable equipment.

D. If the grantee provides a color production van for remote public access productions and locally originated programming, the van should be a fully equipped, multiple-camera, color production van with switchers, special effects, editing, and audio origination capability. It should have complete videotape recording (VTR) equipment for editing and later playback of programs, and can be linked for live origination to the system head-end or network distribution center by two-way cable throughout the grantee’s service area. Portable microwave equipment should be provided to link the production van to the system where cable interconnections are not available. The head-end or network distribution center should be equipped with an omni-directional microwave receive antenna to afford reception of the production van microwave signal from virtually any line-of-sight location within a 20-mile radius.

E. The grantee’s production capability will be supplemented by a minimum of two port-a-pak cameras and two three-quarter-inch portable video recorders.

F. The grantee shall provide community access channels for use by city residents, including a channel for government access, a channel for primary and secondary school access use, a channel for access use by colleges, a channel for community access on a first-come, first-served basis, and a channel for leased access. Until there is demand for full channel-time use, such may be combined on one or more channels. Additional access channels will be activated when any of the channels stipulated are in use during 80 percent of the weekdays (Monday through Friday) for 80 percent of the time during any consecutive three-hour period for six consecutive weeks.

G. Additional access production studio equipment, including portable cameras and video recorders, will be provided by the grantee if and when the level of community usage dictates the requirement for additional equipment as jointly determined by the grantee and the grantor.

H. The grantee will actively promote production assistance to facilitate use of these community access channels. The grantee shall maintain sufficient dedicated studio staff to fully support active local origination and access activities. The staff, upon reasonable notice, shall provide training and technical assistance in the use of the studio and portable

equipment. This training and assistance shall, at a minimum, be available at the local origination and access studio and made available upon request at public schools.

I. The grantee shall maintain all studio equipment, including portable equipment, in a fully operational status on a continuous basis, and to technical standards requisite for quality performance. When any equipment is removed for maintenance it will be replaced by like-type equipment of equivalent performance standards by the grantee. [Ord. 2046, 2-26-81. Code 2001 § 111.50.]

5.30.310 Emergency alert – Audio-video override.

The grantee shall design and construct the cable communications system to provide for a restricted audio and video simultaneous override of all video channels during emergencies, with override to be placed under city control. Video override to include a character generator capability for delivery of emergency messages to the communicatively handicapped. The audio override shall include a squeal alert tone to precede the verbal and video messages. The design of the emergency alert system is to be submitted to the ordinance committee for approval prior to construction. [Ord. 2046, 2-26-81. Code 2001 § 111.51.]

5.30.320 Safety requirements.

A grantee shall, at all times:

A. Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the city building code and electrical safety ordinances and in such manner that they will not interfere with any installations of the city.

B. Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all its structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city wherever situated or located. [Ord. 2046, 2-26-81. Code 2001 § 111.52.]

Penalty: See NMC 1.05.200.

Article IV. Cable Communications Commission

~~5.30.330 Establishment and purpose.~~

~~A. Establishment. There is established a cable communications commission for the City of Newberg, Oregon, and for the cities of Dundee, Dayton and Lafayette, should they choose to participate.~~

~~B. Purpose.~~

~~1. The cable communications commission is established to promote, coordinate, and develop the use of all community access channels, local programming, local origination and related capabilities that are part of the cable communications system franchised in, and providing service to, the above enumerated cities.~~

~~2. The cable communications commission shall promote the use of cable communication systems, community and public access in the cities to meet the information and cultural needs of residents, businesses, nonprofit organizations and governmental bodies, and shall coordinate the use of community and public access channels.~~

~~3. The cable communications commission shall advise the city councils of the respective enumerated cities on matters pertaining to community and public access and other channels dedicated, or to be dedicated, by a cable communication systems operator for public access.~~

~~4. In carrying out its purposes, the cable communications commission shall make every reasonable effort to:~~

- ~~a. Seek and identify communities of interest and encourage them to use facilities and channels, over which the commission has jurisdiction, to express their interests, concerns, ideas and aspirations;~~
- ~~b. Provide free training in cable communications production for individuals and community groups;~~
- ~~c. Help individuals and community groups to develop and produce programs for cable casting;~~

~~d. Assure the availability of decentralized and accessible cable communications production facilities, pursuant to prescribed rules governing the use of such facilities and channels over which the commission has jurisdiction, to express diverging ideas and opinions on the broadest range of subjects; and~~

~~e. Provide programming different in format, style and content from the programming of other radio and television stations serving the cities of Newberg, Dundee, Dayton and Lafayette. [Ord. 2106, 12-6-82; Code 2001 § 111.60.]~~

5.30.340 — Membership.

The cable communications commission shall consist of 11 members who are as follows:

A. Five members appointed by the City of Newberg;

B. One member appointed by the city of Dundee;

C. One member appointed by the city of Dayton;

D. One member appointed by the city of Lafayette;

E. Two ex officio, nonvoting members designated by the franchisee, TCI Cablevision of Oregon, Inc., formerly Liberty Communications, Inc.; and

F. One member designated by the mayor of the City of Newberg. [Ord. 2464, 2-18-97; Ord. 2109, 2-7-83; Ord. 2106, 12-6-82; Code 2001 § 111.61.]

5.30.350 — Qualifications and appointment of members.

The following qualification and appointment procedure shall be used for the commission members, with consideration being given to representation by persons in the fields of the arts, education, public access, government, community information and special interest groups:

A. Five members shall be appointed by the mayor of the City of Newberg, with approval of the city council.

1. Four of the five members shall be residents of the City of Newberg.

2. None of these five members shall be officials or employees of the City of Newberg.

B. One member shall be:

1. Formally appointed by the mayor of the city of Dundee, using whatever procedure and qualifications are determined by the city of Dundee; and

2. A resident of the city of Dundee.

C. One member shall be:

1. Formally appointed by the mayor of the city of Dayton, using whatever procedure and qualifications are determined by the city of Dayton; and

2. A resident of the city of Dayton.

D. One member shall be:

1. Formally appointed by the mayor of the city of Lafayette, using whatever procedure and qualifications are determined by the city of Lafayette; and

2. A resident of the city of Lafayette.

E. Two ex officio, nonvoting members who:

- ~~1. Are designated by the franchisee, TCI Cablevision of Oregon, Inc.; and~~
- ~~2. May be officials or employees of the franchisee.~~

~~F. One member who:~~

- ~~1. Is designated by the mayor of the City of Newberg; and~~
- ~~2. May be an official or an employee of the City of Newberg. [Ord. 2464, 2-18-97; Ord. 2109, 2-7-83; Ord. 2106, 12-6-82. Code 2001 § 111.62.]~~

5.30.360 — Term of office.

~~A. The members of the cable communications commission shall be appointed for a term of two years.~~

- ~~1. Members may serve no more than two consecutive two year terms, plus a partial term if the commissioner is appointed to fill a vacancy in a partially expired term.~~
- ~~2. Terms shall run beginning on the first calendar day of the month following the effective date of this chapter.~~

~~B. In order to provide for a staggering of terms, two commissioners from Newberg and one commissioner from Dundee shall be initially appointed to only a one year term, but may serve two additional two year terms upon the completion of the initial one year term.~~

~~C. The term of each member shall continue until such time as a successor is appointed. [Ord. 2464, 2-18-97; Ord. 2109, 2-7-83; Ord. 2106, 12-6-82. Code 2001 § 111.63.]~~

5.30.370 — Vacancies and removal.

~~A. Appointments to fill vacancies shall be for the remainder of the unexpired terms.~~

~~B. A commissioner may be removed by the mayor of the appointing city for cause at any time, subject to the approval of the city council of the city from which the commissioner was appointed.~~

~~C. A commissioner who is absent from two consecutive meetings without an excuse may be removed for this cause and the position declared vacant. [Ord. 2106, 12-6-82. Code 2001 § 111.64.]~~

5.30.380 — Officers.

~~At its initial organization meeting and the first meeting of each calendar year thereafter, the commission shall elect a chairman and vice chairman to serve during the succeeding calendar year.~~

~~A. The chairman shall preside over all meetings of the commission.~~

~~B. In the absence of the chairman, the vice chairman shall preside. [Ord. 2106, 12-6-82. Code 2001 § 111.65.]~~

5.30.390 — Staff services.

~~A. Staff Contact.~~

- ~~1. Subject to the approval of the commission, the city manager of the City of Newberg shall appoint a member of city staff to act as staff contact from the city.~~
- ~~2. The city shall provide consultation services as may be appropriate.~~

~~B. Clerical Support.~~

- ~~1. The franchisee, TCI Cablevision of Oregon, Inc., shall provide clerical support.~~
- ~~2. A secretary shall be appointed to keep a record of commission proceedings. [Ord. 2464, 2-18-97; Ord. 2106, 12-6-82. Code 2001 § 111.66.]~~

5.30.400 — Meetings.

~~A. A majority of the voting members of the cable communications commission shall constitute a quorum.~~

~~B. A vote of the majority of the voting members of the commission present and voting shall be required to decide any matter before the commission.~~

~~C. The cable communications commission shall meet at least once every two months.~~

~~1. Meetings shall be open to the public, except as may be authorized by state law.~~

~~2. Meetings other than at regularly scheduled times may be announced at a prior meeting, and thereby be made a part of the meeting records.~~

~~3. At the request of two or more voting members or upon motion of the chairman alone, a previously unannounced special meeting may be called for a time not earlier than 24 hours after notice has been given to the remaining members.~~

~~4. Notice shall be given as required by state law.~~

~~5. An emergency meeting may be called in accordance with the requirements of state law. [Ord. 2106, 12-6-82. Code 2001 § 111.67.]~~

Cross reference: See ORS 192.610—192.690 pertaining to open meetings, notice, and emergency meetings.

5.30.410 — Powers and duties.

~~The commission shall have the powers and duties that are now, or may hereafter be, assigned to it by the Charter, ordinances or resolutions of the city, and general laws of the state. [Ord. 2106, 12-6-82. Code 2001 § 111.68.]~~

5.30.420 — Rules and regulations.

~~The commission may make and alter rules and regulations for its government and procedure consistent with the Charter and ordinances of the city and the laws of the state. [Ord. 2106, 12-6-82. Code 2001 § 111.69.]~~

5.30.430 — Funds, budget, and annual report.

~~A. Disbursements.~~

~~1. The funds for the support of the commission shall be paid to the city, and disbursed to the commission, as part of the city's budget.~~

~~2. Disbursements of funds shall be approved by the cable communications commission.~~

~~B. Annual Budget and Report.~~

~~1. The commission shall present an annual budget for inclusion in the city budget.~~

~~2. The commission shall present an annual report of its activities with its budget proposal each year. [Ord. 2106, 12-6-82. Code 2001 § 111.70.]~~

Chapter 5.20 CIGARETTE VENDING MACHINES
Repealed

Chapter 5.25 DANCES
Repealed

Chapter 5.30
CABLE COMMUNICATIONS
Sections:

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- 5.30.010 Title.
- 5.30.020 Definitions.
- 5.30.030 Permits and construction.
- 5.30.040 Indemnifications.
- 5.30.050 Conditions on rights-of-way occupancy.
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Article II. Franchise Requirements

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Article III. System Services – Operating Regulations

- 5.30.200 Cable communications services.
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- 5.30.310 Emergency alert – Audio-video override.
- 5.30.320 Safety requirements.

Article I. General Provisions

5.30.010 Title.

This chapter shall be known and may be cited as the Newberg cable communications ordinance. [Ord. 2046, 2-26-81. Code 2001 § 111.01.]

5.30.020 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural number.

“Applicant” means any person or corporation submitting an application for a cable communications franchise.

“Basic service” means that service regularly provided to all subscribers at a basic monthly rate including, but not limited to, the retransmission of local and distant broadcast television signals, nonpremium satellite services, automated services, local origination and access services.

“Cable communications system” or **“CATV system”** means a system employing antennas, microwave, wire, waveguides, coaxial cables, or other conductors, equipment or facilities designed, constructed or used for the purpose of:

1. Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;
2. Transmitting original cablecast programming not received through television broadcast signals;
3. Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
4. Transmitting and receiving all other signals: digital, voice, audio-visual, or other forms of electronic or electrical signals.

“Channel” means a six megahertz (MHz) frequency band which is capable of carrying either one standard audio/video television signal, or a number of audio, digital or other nonvideo signals.

“City” means the City of Newberg, a municipal corporation of the State of Oregon, in its present incorporated form or in any later reorganized, consolidated enlarged or reincorporated form.

“City council” or **“council”** means the legislative body of the City of Newberg.

“City manager” means the city manager of the City of Newberg.

“Community access channel” or **“access channel”** means any channel or portion of a channel utilized for programming on a nonprofit basis.

“Educational channel” means any channel or portion of a channel on which educational institutions are the only designated programmers.

“Entertainment services” means television services provided on a one-way noninteractive basis including but not limited to broadcast channels, local origination channels, pay channels or any other channels supplied to subscribers at a basic or premium charge where the content of the transmitted signals is uniform to all subscribers or individual classes of subscribers and program selection is accomplished by operation of a tuner or converter under the sole control of the subscriber.

“Federal Communications Commission” or **“FCC”** means the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

“Franchise” means any authorization granted hereunder in terms of a franchise, privilege, permit or license to construct, operate and maintain a cable television system within the City of Newberg. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of this city.

“Government channel” means any channel or portion of a channel dedicated to the use of the municipal agencies.

“Grantee” or “franchisee” means a holder of a cable television franchise issued by the city.

“Grantor” means the City of Newberg acting through its city council.

“Gross revenues” means any and all compensation in whatever form, directly or indirectly received by grantee, from the source specified, not including any taxes on services furnished by the grantee, which taxes are imposed directly on a subscriber or user by a city, county, state or other governmental unit, and collected by the grantee for such entity.

“Institution” means a building or buildings where service may be utilized in connection with a business, trade, profession, public agency or service, or nonprofit organization.

“Institutional network” means a cable communications network designed principally for the provisions of nonentertainment interactive services to businesses, schools, public agencies or other nonprofit agencies for use in connection with the on-going operations of such institutions.

“Institutional services” means services delivered on the institutional subscriber network.

“Institutional subscriber” means a place of business, public agency, school or nonprofit corporation receiving institutional services on the institutional subscriber network.

“Interactive services” means services provided to subscribers where the subscriber either (1) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber’s control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.

“Leased channel” means any channel or portion of a channel where the grantee is the only designated programmer, and which is utilized to provide television programs to subscribers.

“Local origination channel” means any channel or portion of a channel where the grantee is the only designated programmer, and is utilized to provide television programs to subscribers.

“Nonbasic service” means any communications service in addition to “regular subscriber services” including but not limited to access channel carriage including origination programming, pay television, burglar alarm service, fire alarm service, data transmission, facsimile service, home shopping service, and the like.

“Pay channel” or “premium channel” means a channel on which television signals are delivered to subscribers for a special charge fee or charged to subscribers over and above the regular charges for basic subscriber service, on a per-program, per-channel, or other subscription basis.

“Person” means any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of Oregon.

“Premium service” means pay-per-program, pay-per-channel, or other subscription service, i.e., delivered to subscribers for a fee or charge over and above the regular charges for basic services.

“Public access channel” means any channel or portion of a channel where any member of the general public may be a programmer on a first-come, first-served basis, subject to appropriate rules formulated by the city and/or franchisee.

“Residential services” means services delivered on the residential subscriber network.

“Residential subscriber” means a subscriber who receives residential services on the residential subscriber network.

“Residential network” means a cable communications network designated principally for the delivery of entertainment, community access or interactive services to individual dwelling units.

“Streets,” “public ways” and “rights-of-way” mean the surface of and the space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, sidewalk, waterway, dock, pier, alley, right-of-way, public utility easement, and any other public ground or water, now or hereafter, within or belonging to the city.

“Subscriber” means any person or institution that elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable communications system, whether or not a fee is paid for such services.

“Tapping” means observing a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever. [Ord. 2046, 2-26-81. Code 2001 § 111.02.]

5.30.030 Permits and construction.

A. Obtaining Permits and Authorizations – Copies to Be Submitted.

1. Within 30 days after acceptance of a franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, encroachment permits, microwave carrier licenses, and any other permits, licenses and authorizations to be granted duly constituted regulatory agencies having jurisdiction over the operation of cable television/communications systems, or associated microwave transmission facilities.

2. In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the grantee’s cable communications operations shall also be submitted simultaneously to the city manager.

B. Within 60 days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, grantee shall commence construction and installation of the cable communications system.

C. Within 180 days after the commencement of construction and installation of the system, grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan of construction are made part of the franchise and shall be provided as set forth therein.

D. Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein shall be grounds for termination of such franchise. By resolution and order, the city council, in its discretion, may extend the time for the commencement and completion of installation and construction for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond the grantee’s control.

E. Poles, Conduits and Other Facilities.

1. The grantee shall utilize existing poles, conduits, and other facilities whenever possible and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately owned property unless and until first securing the written approval of the city’s director of public works.

2. Whenever the grantee shall not utilize existing poles, conduits and other facilities, or whenever existing conduits and other facilities shall be located beneath the surface of the streets, or whenever the city shall undertake a program designated to cause all conduits and other facilities to be located beneath the surface of the streets in any area of the city, in the exercise of its police power or pursuant to the terms of this chapter, upon reasonable notice to the grantee, the city may require any such to be constructed, installed, placed, or replaced beneath the surface of the streets. Any construction, installation, placement, replacement, or changes which may be so required shall be made at the expense of the grantee, whose costs shall be determined as in the case of public utilities.

F. The city shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for the grantee in any street, provided such use by the city does not interfere with the use by the grantee.

G. Underground Facilities.

1. Per NMC 5.30.240, in those areas of the city where the transmission of distribution facilities of the respective public utilities providing telephone, communication and electric services are underground, or hereafter are placed underground, the grantee likewise shall construct, operate and maintain all of the grantee's transmission and distribution facilities underground. When directed by the city, previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with the utility companies involved pursuant to the general ordinances of the city or applicable state laws.

2. The term “**underground**” shall include a partial underground system; provided, that upon obtaining the written approval of the city, amplifiers in the grantee's transmission and distribution lines may be placed in appropriate housing upon the surface of the ground.

H. Property Removal, Relocation, Etc. – Property Abandonment.

1. The grantee at the grantee's expense shall protect, support, temporarily disconnect, relocate, or remove any property of the grantee when, in the opinion of the city manager, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction; change or establishment of street grade, installation of wastewater systems, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structures or improvements by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground.

2. The grantee may, at the sole option of the city, have the privilege, subject to the corresponding obligations, to abandon property of the grantee in place. A permit to abandon in place must first be obtained from the city director of public works. Nothing hereunder shall be deemed a taking of the property of the grantee, and the grantee shall be entitled to no surcharge by reason of anything hereunder.

I. Upon the failure, refusal, or neglect of the grantee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street within any time prescribed, or upon notice given, where no time is prescribed, the city manager may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to the grantee an itemized statement of the costs of the work. The grantee shall, within 30 days after receipt of such statement, pay to the city the entire amount.

J. Property Removal Ordered When.

1. In the event that:

- a. The use of any part of the system of the grantee is discontinued for any reason for a continuous period of 30 days, without prior written notice to and approval by the city; or
- b. Any part of such system has been installed in any street or other area without complying with the requirements of this chapter and/or the franchise ordinance; or
- c. Any franchise shall be terminated, cancelled or shall expire, then the grantee shall, at the option of the city, and at the expense of the grantee and at no expense to the city, and upon demand of the city, promptly remove from any streets or other area all property of the grantee, and the grantee shall promptly restore the street or other area from which such property has been removed to such condition as the city director of public works shall approve.

2. The city council may, at its sole option, upon written application by the grantee, approve the abandonment of any such property in place by the grantee. Upon abandonment of any such property in place, the grantee shall

cause to be executed, acknowledged, and delivered to the city such instruments as the city attorney shall prescribe and approve, transferring and conveying the ownership of such property to the city. [Ord. 2046, 2-26-81. Code 2001 § 111.03.]

5.30.040 Indemnifications.

A. Upon being granted a franchise, and upon filing of the acceptance required, the grantee shall, at the grantee's sole expense, obtain, file with the city, and, unless otherwise authorized by the city council, thereafter maintain during the full term of such franchise or any renewal of the franchise plus an additional six months thereafter, a corporate surety bond or other adequate surety agreement in such form and amount, not to exceed the penal sum of \$100,000, as shall have been approved by the city attorney.

B. Within 30 days after the effective date of any franchise, unless otherwise authorized by the city council, the grantee shall deposit into a bank account, established by the city manager, and maintain on deposit through the term of the franchise, a security fund of not less than \$15,000, as security of faithful performance by it of all provisions of the franchise, and compliance with all provisions of the franchise, and compliance with all orders, permits and directions of any agency of the city having jurisdiction over its acts or defaults under the contract, and payment by the grantee of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system. The grantee shall be entitled to all interest earned on such account.

1. Within 30 days after notice to it that any amount has been withdrawn by the city from the security fund pursuant to subsection (B) of this section, the grantee shall deposit a sum of money sufficient to restore such security fund to the original amount of \$15,000.

2. If the grantee fails, after 10 days' notice, to pay to the city any taxes due and unpaid; or fails to repay to the city within such 10 days any damages, costs or expenses which the city shall be compelled to pay by reason of any act or default of the grantee in connection with the franchise; or, fails after 30 days' notice of such failure by the city to comply with any provision of the franchise which the city reasonably determines can be remedied by an expenditure of the security, the city manager may immediately withdraw the amount, with interest and any penalties, from the security fund. Upon such withdrawal, the city shall notify the grantee of the amount and date.

3. The security fund deposited pursuant to this section shall become the property of the city in the event that the franchise is cancelled by reason of default of the grantee or revoked for cause. The grantee, however, shall be entitled to the return of such security fund, or portion of the security fund, as to the franchise expiration or upon termination of the franchise at an earlier date; provided, that there is then no outstanding default on the part of the grantee.

C. By accepting a franchise, each grantee shall be deemed to have agreed to indemnify and hold harmless the city, its officers, boards, commissions, agents, consultants, and/or employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including, but not limited to, damages to city property and damages arising out of copyright infringements, and damages arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable communications system), costs or liabilities (including costs of the city with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorneys' fees, accountants' fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the grantee, or the granting of a franchise by the city.

1. Alternatively, in the discretion of the city council, the city may, on behalf of itself, and/or any of its officers, agents, consultants, or employees, elect to employ, at the grantee's expense, attorneys to appear and defend such actions.

2. The grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against the grantee, the city, its officers, boards, commissions, agents, consultants, or employees in any of these premises; and such indemnity shall exist and continue without

reference to or limitation by the amount of any bond, policy of insurance, security deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither the grantee nor the city shall make or enter into any compromise or settlement of any claim, demand, cause of action, suit or other proceedings, without first obtaining the written consent of the other.

D. Upon being granted a franchise, and upon the filing of the acceptance required under NMC 5.30.170, the grantee shall file with the city recorder and shall thereafter, during the entire term of such franchise, maintain in full force and effect each of the following policies of insurance:

1. General comprehensive liability insurance in a form satisfactory to and an amount approved by the city manager, together with bodily injury and property damage liability insurance with such limits as may be required by the city council, but not less than \$500,000 for each person injured, and \$1,000,000 aggregate per single accident or occurrence, and \$500,000 for property damage. Such policies shall provide they cannot be cancelled unless at least 30 days' prior written notice of intent to terminate or cancel has been given to the city.

a. The city shall be named as an additional insured in any of said insurance policies.

b. Where such insurance is provided by a policy which also covers the grantee or any other entity or person, it shall contain the standard cross-liability endorsement.

2. Workers' compensation insurance coverage in at least the minimum amounts required by law. If a grantee fails to obtain or maintain such required insurance coverage, the city may, without notice to the grantee, obtain, at the grantee's sole expense, such coverage, or forthwith terminate, without prior notice, the franchise as granted.

E. Any of the indemnifications specified in this section may be reduced, in part or whole, in term or amount by the city council after three years from the date of award of the franchise if the purpose of the above required bond, security fund or insurance is deemed by the city council to have been served and no longer required. Once reduced, in part or whole, the full requirements, in term and amount, may be reimposed as indicated above at the city council's sole discretion and at the grantee's sole expense. [Ord. 2046, 2-26-81. Code 2001 § 111.04.]

5.30.050 Conditions on rights-of-way occupancy.

A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a grantee shall be done under permits issued for the work by the proper officials of the city, and under their supervision and direction, and shall be done in such manner as to give the least inconvenience to the inhabitants of the city. A grantee shall, at its own cost and expense, and in a manner approved by the proper city officials, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done and shall also make and keep full and complete plats, maps and records showing streets, rights-of-way, and easements of the city. These maps shall be available for inspection at any time during business hours by city officials.

B. A grantee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the city by reason of traffic conditions, public safety, road construction, change of street grade, installation of wastewater systems, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal improvements; provided, however, that the grantee may, at the sole option of the city, have the privilege of abandoning property in place.

C. A grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

D. A grantee shall have authority to trim the trees upon and overhanging the public streets so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, under the same rules and regulations applied to public utilities within the city, except that, at the option of the city council, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

E. In all sections of the city where the cable, wires or other similar facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

F. In all sections of the city where wires, cables and other system appurtenances are mounted above ground, every reasonable effort shall be made to minimize obstruction of the view of residents, and every reasonable effort shall be made to preclude an unsightly system installation. [Ord. 2046, 2-26-81. Code 2001 § 111.05.]

5.30.060 Rights reserved to city.

A. Nothing herein and/or in the franchise shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted thereby, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the city's right of eminent domain.

B. There shall be reserved to the city every right and power which is required to be reserved or provided by law, and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or agreements of the city in its exercise of such rights of power, theretofore or thereafter enacted or established.

C. Neither the granting of the franchise nor any provision of the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

D. The city reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this chapter and/or the grantee's franchise. The city council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and/or the grantee's franchise, and may determine any question of fact which may arise during the existence of any franchise granted. The city council, with the approval of the city attorney, is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under the franchise, either on behalf of the city, the grantee, or any subscriber, in the best interest of the public.

E. The city, at its option, when for sufficient cause as deemed by the city manager, may require that the annual proof-of-performance test, addressed in NMC 5.30.230, be conducted or observed by a qualified member of the city's staff or its designated representative. The city reserves the right to have the measurements, associated with city-observed performance tests, conducted at city-selected test points and to a greater number of test points than the minimum required by Section 76.601, FCC Rules.

F. Any delegatable right, power or duty of the city council, the city or any officials of the city may be transferred or delegated to an appropriate officer, employee, or department of the city.

G. The city reserves the right to promulgate other reasonable technical and operational performance standards for system franchises granted pursuant to this chapter.

H. The city reserves the right to enact reasonable regulations pertaining to franchises granted pursuant to this chapter which may include, but are not limited to:

1. Construction and use of poles;
2. Use of poles and conduits by the city;
3. Common user;
4. Filing of pole user agreement;
5. Reservation of street rights;
6. Restoration of streets;
7. Movement of facilities; and

8. Trimming of trees.

I. The city reserves the right to further regulate the conduct of the grantee in regard to the privacy and property rights of private citizens. Such regulations may include but are not limited to the security of all records maintained by the practices relating to such records and any other matters related to privacy and individual rights.

J. The city reserves the right to establish a cable communications regulatory and advisory commission to assist the city council in regulating cable activity in the city. The members and duties of any such commission, if any, shall be established by the city council.

K. Should the State of Oregon or the federal government or agency of the State of Oregon or the federal government subsequently require the grantee to act in a manner which is inconsistent with any provisions of this chapter, franchise ordinance or associated resolutions and orders, the grantee shall so notify the city. Upon receipt of such notification, the city shall determine if a material provision of the franchise is affected. Upon such determination, the city shall have the right to modify or amend any of the sections of the franchise to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter or the franchise ordinance. The city may terminate the franchise in the event the city determines the substantial and material compliance with the original proposed terms of the franchise have been frustrated by such state or federal requirement.

L. No grantee nor any major stockholder of a grantee shall directly or indirectly with the city use the position as cable grantee to gain a competitive advantage in the business of selling, leasing, renting, servicing or repairing radio or television sets or other receivers or parts of radio or television sets or other receivers, or data access and transfer equipment which make use of entertainment and information signals; provided, that nothing therein shall prevent the grantee from making modifications to the tuner input circuit of the subscribers' communications transmitters and/or receivers, and the fine-tuning of the customers' operating controls only, to ensure proper operation under conditions of cable connection at the time of installation or in repairing receivers and other equipment belonging to other cable system operators for use in the conduct of their businesses.

M. The grantee shall permit the city to fasten signs, wires, and cables and stretch such wires and cables on any and all poles of the grantee; provided, that the grantee shall not be responsible for any damage without the grantee's fault resulting to the signs, wires, cables or property of the city resulting from such use of its poles by the city.

N. The grantee shall manage all of its operations in accordance with a policy of totally open books and records. The city shall have the right to inspect at any time during normal business hours, at the local and parent corporation offices of the grantee, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the grantee. Access to the aforementioned records shall not be denied by the grantee on the basis that said records contain proprietary information.

O. Communications with Regulatory Agencies. Copies of all petitions, applications, communications, and reports submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise, shall also be submitted simultaneously to the grantor. Copies of responses or any other communications from the regulatory agencies to the grantee shall likewise be furnished simultaneously to the grantor.

P. Any intrastate interconnection of interactive services between the system operated by the grantee and any other system shall be subject to the regulatory authority of the city.

Q. The reservation of any particular right shall not be construed to limit the promulgation of other reasonable rules and regulations. [Ord. 2046, 2-26-81. Code 2001 § 111.06.]

5.30.070 Equal opportunity employment and affirmative action plan.

A. In the carrying out of the construction, maintenance and operation of the cable television system, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin.

B. The grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other form of compensation, and selection for training, including apprenticeship.

C. The grantee shall post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

D. The grantee shall, in all solicitations or advertisements for employees placed by or on behalf of the grantee, state that all qualified applicants will receive compensation for employment without regard to race, creed, color, sex, or national origin.

E. The grantee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the cable television system, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work. [Ord. 2046, 2-26-81. Code 2001 § 111.07.]

5.30.080 Adoption of rules and regulations.

A. At any time, the city council may adopt reasonable rules, regulations and standards governing the operation of cable communications systems in the city, consistent with the provisions of this chapter and the franchise ordinance. Such rules, regulations and standards shall apply to and shall govern the operations of the grantee of any cable communications franchise, and are expressly declared to be a part of any such franchise.

B. Prior to adopting any such rule, regulation, or standard, the city council shall conduct a duly noticed hearing. At the time set for such hearing, or at any adjournment of the hearing, the city council shall proceed to hear any relevant evidence relating to the matter. Thereafter, the city council, by resolution, may adopt, amend or modify such rules and regulations.

C. The standards adopted may govern the engineering, construction, installation, service, and maintenance of all cable communications systems in the city, including but not limited to standards governing carrier levels, signal-to-noise ratios, hum modulation, distortion levels, channel interactions and interactions, and composite beat levels. [Ord. 2046, 2-26-81. Code 2001 § 111.08.]

5.30.090 Amendments.

The city council shall amend this chapter and any franchise issued thereunder, upon its own motion or the application of a grantee, whenever amendment is necessary to enable a grantee to utilize new developments in television or radio signal transmission which would improve and update cable communications service in the city, or to comply with any modifications in the Rules of the FCC. Amendments to Section 76.31 of the FCC Rules will be incorporated into this chapter within one year of their adoption or at the time of franchise renewal, whichever comes first. No amendment shall be adopted except after full, open public hearing affording due process, and no amendment substantially amending the existing rights and obligations of the grantee shall be adopted without the grantee's consent. [Ord. 2046, 2-26-81. Code 2001 § 111.09.]

5.30.100 Miscellaneous provisions.

A. A franchise granted to provide service within the city shall authorize and permit the grantee to solicit, sell, distribute, and make a charge to subscribers within the city for connection to the cable communications system of the grantee and shall also authorize and permit the grantee to traverse any portion of the city in order to provide services outside the city.

B. A franchise, easement, license or other permit to anyone other than a grantee to traverse any portion of the city in order to provide service outside the city shall not authorize or permit said person to solicit, sell, distribute, or make any charge to subscribers within the city, nor to render any service or connect any subscriber within the city to the cable communications service system of the grantee.

C. When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the city manager. [Ord. 2046, 2-26-81. Code 2001 § 111.10.]

5.30.110 Violations.

A. It shall be unlawful for any person to construct, install or maintain within any public rights-of-way in the city or within any other public property of the city, or within any privately owned area within the city which has not yet become a public right-of-way but is designated or delineated as a proposed public right-of-way on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. It shall be unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of any cable communications system within this city for the purpose of enabling that person, firm or corporation or others to receive or use any television signal, radio signal, picture, program, sound, information, or other system service without payment to the owner of said system.

C. It shall be unlawful for any person, without the consent of the grantee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, information, data, or other system service. [Ord. 2046, 2-26-81. Code 2001 § 111.11.]

Penalty: See NMC 1.05.200.

Article II. Franchise Requirements

5.30.120 Franchise necessary to install and operate.

A. It shall be unlawful to commence or engage in the construction, operation or maintenance of a cable communications system without a franchise issued under this chapter. The city council may, by ordinance, award a franchise to construct, operate and maintain a cable communications system within all or any portion of the city to any person, whether operating under an existing franchise or not, who makes application for authority to furnish a cable communications system which complies with the terms and conditions of this chapter; provided, that this section shall not be deemed to require the grant of a franchise to any particular person or to prohibit the city council from restricting the number of grantees should it determine such a restriction would be in the public interest.

B. Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable communications system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across, and along any street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, and appliances, attachments, and other property as may be necessary and appurtenant to the cable communications system; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the city. [Ord. 2046, 2-26-81. Code 2001 § 111.20.]

Penalty: See NMC 1.05.200.

5.30.130 Term of franchise.

A. Any franchise granted by the city council shall be for a term of 15 years following the date such franchise is accepted by the grantee, and, upon application of the grantee and review of the performance of the grantee in a public proceeding, the city council may renew the franchise for a successive 15-year period, with such modification of the terms as the city council may determine in each instance.

B. The city council may terminate any franchise granted pursuant to the provisions of this chapter in the event of the willful failure, refusal or neglect by the grantee to do or comply with any material requirement or limitation contained in this chapter, or any other applicable rule or regulation of the city council or city manager validly adopted pursuant to this chapter.

1. The city manager may make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation. If the failure, refusal or neglect continues after notice for an unreasonable period of time, determined as such by the city manager, following such written demand, the city manager may

place request for termination of the franchise upon the next regular city council meeting agenda. The city manager shall cause to be served upon such grantee, at least 20 days prior to the date of such city council meeting, a written notice of the city manager's intent to request such termination and the time and place of the meeting.

2. The city council shall consider the request of the city manager and shall hear any persons interested therein and shall determine, in its discretion, whether or not any failure, refusal or neglect by the grantee was with just cause.

3. If such failure, refusal or neglect by the grantee was with just cause, the city council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the city council shall determine such failure, refusal or neglect by the grantee was without just cause, then the city council may, by ordinance, declare that the franchise with such grantee shall be terminated and forfeited, and the grantee shall be required to sell all interests, and title in all of its plants and systems operated under the franchise including any rights under the unexpired portion of the franchise.

C. In the event of termination, the city may purchase, or require any successor grantee to purchase, the grantee's facilities at a cost not to exceed its then fair market value, with a reduction for uncompensated damages incurred by the city in connection with the grantee's operation.

1. In order to determine the fair market value of the grantee's system as specified above, the following procedure will be followed. The grantee and the purchaser each shall select one qualified appraiser experienced in the evaluation of cable communications systems.

2. The two selected appraisers shall select a third appraiser. The three appraisers shall be employed to determine the fair market value of the grantee's system. The fair evaluation shall be the average of the three evaluations of the appraisers. The appraisers shall be directed to reach their determination within 30 days. The grantee and the purchaser shall each pay 50 percent of the costs of employing such appraisers.

3. Upon determination of the fair market value, and upon payment of such sum by the purchaser, the grantee shall transfer all rights, titles, and interests in the subject property to the purchaser within 30 days.

D. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the city to acquire the property of the grantee through the exercise of the right of eminent domain, nor any other of the rights of the city under the franchise or any other provision of the law.

E. In the event of any holding over after expiration or other termination of any franchise granted hereunder, without the prior consent of the city, expressed by resolutions, the grantee shall pay to the city reasonable compensation and damages of not less than 100 percent of its gross revenue derived from all sources within the city during said period. [Ord. 2046, 2-26-81. Code 2001 § 111.21.]

5.30.140 Limitations of franchise.

A. Unless an exclusive franchise shall be expressly granted, any franchise granted under this chapter shall be nonexclusive and nothing herein shall be construed to prevent the city from granting identical or similar franchises to more than one person, within all or any portion of the city.

B. A grantee shall, at all times during the life of its franchise, be subject to the lawful exercise of the city's police power and such reasonable regulations as the city council may subsequently promulgate thereunder.

C. Nothing contained in this chapter shall be deemed to prohibit in any way the right of the city to levy nondiscriminatory occupational license taxes on any activity conducted by the grantee.

D. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed herein, and/or in the ordinance granting the franchise.

E. Any privilege claimed by the grantee under its franchise, in any public way, shall be subordinate to the city's use of the public way, and to any other prior lawful occupancy of the public way. The city reserves the right to reasonably designate where a grantee's facilities are to be placed within the public ways.

F. Time shall be of the essence of any such franchise granted. The grantee shall not be relieved of the grantee's obligations to comply promptly with any of the provisions of this chapter, or the ordinance granting the franchise, by any failure of the city to enforce prompt compliance.

G. Pole or Conduit Use.

1. Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the city, utility company, or from others maintaining utilities in the public ways.

2. Whenever in the judgment of the grantor it is deemed impracticable to permit erection of poles or construction of underground conduit system by any other utility which may at the time have authority to construct or maintain a conduit or poles in street area, the grantor may require the grantee herein to afford to such utility the right to use such poles or facilities of the grantee as the grantor finds practicable in common with the grantee, both parties sharing the costs incident thereto and under such rules and regulations as they may agree upon, but in case they fail to agree within a reasonable time, then upon such terms, conditions and regulations governing the same as the grantor may determine to be just and reasonable.

H. Any franchise granted shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, or any successor to any interest of the grantee, of or pertaining to the construction, operation or maintenance of any cable communications system in the city; and the acceptance of any franchise shall operate as between the grantee and the city, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the city to the effect that, as between the grantee and the city, and all construction, operation and maintenance by any grantee of any cable communications system in the city shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

I. No franchise shall authorize the use of any public property other than public right-of-way and public utility easements owned by the city, unless such franchise or subsequent resolution of the city council expressly authorizes such other public property.

J. No franchise granted shall ever be given any value by any court or other authority, public or private, in any proceeding of any nature or character, wherein or whereby the city shall be a party or affected therein or thereby.

K. The grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the city heretofore or hereafter adopted, including but not limited to those pertaining to works and activities in, on, over, under and about public rights-of-way.

L. Any privilege claimed, under any such franchise granted, in any public right-of-way or other public property shall be subordinate to the public use and any other lawful use of the public right-of-way or other public property.

M. The grantee shall be subject to the provisions of the general laws of Yamhill County and the State of Oregon, or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted pursuant to this chapter, including but not limited to those pertaining to works and activities in and about state highways.

N. The grantee shall be prohibited from directly or indirectly doing any of the following:

1. Imposing a fee or charge for any service or repair to subscriber-owned receiving or transmitting devices except for the connection of its service or for the determination by the grantee of the quality of signal reception and/or transmission;

2. Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by the grantee;

3. Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose.

O. Preemption of City Jurisdiction.

1. If the Federal Communications Commission or the Public Utilities Commission of the State of Oregon or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the city, the jurisdiction of the city shall cease and no longer exist.
2. The preemption or preclusion of the exercise by the city of any of its police power shall not diminish, impair, or affect any other contractual benefit to the city of the grantee nor any other contractual obligation of the grantee under any franchise granted.

P. The form of the grantee's contract with the subscriber shall also be subject to the approval of the city.

Q. It is not necessarily the city's intention to prohibit the erection or controlled use of individual television antennas, and no one is or will be required to receive cable communications service or connect with a cable communications system.

R. Should the grantee ever fail to pay any sum of money to the city owing to the city under provisions of this chapter, or the franchise ordinance, when such sum becomes due and payable, the grantee shall pay interest to the city on the delinquent sum, until it is fully paid at two interest points above the prime rate of interest charged in the Newberg area as calculated by the city.

S. A franchise to proceed with construction or operation of a cable communications system shall not be construed as any limitation upon the right of the city to grant to other persons or corporations, rights, privileges or authority similar to or different from the rights of authority set forth herein or the franchise document itself, in the same or other street, alleys, public highways, public places, or other public rights-of-way by agreement, franchise, permit or otherwise.

T. Nothing in this chapter shall be construed to prohibit any person from constructing or operating any private noncommercial satellite receiving station to the extent permitted by city, county, state and federal law.

U. "The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by ordinance at the City of Newberg and no other purpose whatever." Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the city to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with the franchise pursuant to the authority conferred by provisions of this chapter. [Ord. 2046, 2-26-81. Code 2001 § 111.22.]

5.30.150 Franchise application procedures.

A. This chapter itself grants no authority to operate a cable communications system to any person(s). Such grants are only made by the adoption of a separate ordinance awarding a specific franchise to an applicant who has complied with the provisions of this chapter.

B. Each application for a franchise to construct, operate, or maintain any cable communications system(s) in this city shall be filed with the city recorder and shall contain or be accompanied by the following:

1. The name, address, and telephone number of the applicant;
2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the city:
 - a. The names, residences and business addresses of all officers, directors and associates of the applicant.
 - b. The names, residences and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control five percent or more of the ownership of the applicant and the respective ownership share of each such person or entity.

- c. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part or owned and controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.
 - d. A detailed description of all previous experience of the applicant in providing cable television communications system service and in related or similar fields.
 - e. A detailed and complete financial statement of the applicant.
 - f. A statement identifying, by place and date, any and all cable television franchises awarded to the applicant, or its parent or subsidiary; the status of said franchises with respect to completion; the total cost of completion of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion of such systems.
3. A thorough, detailed description of the proposed cable communications system and plan of operation of the applicant which shall include, but not be limited to, the following:
 - a. A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.
 - b. A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those adopted by the Rules and Regulations of the Federal Communications Commission (contained in Title 47, Subpart K, Sections 76.601 et seq.), and as augmented and modified by the franchise awarded.
 - c. A detailed estimate of the cost of constructing the applicant's proposed system.
 - d. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber.
 - e. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation, which materially relate or pertain to or depend upon the application and the granting of the franchise.
 - f. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges.
4. A copy of any agreement existing between the applicant and any public utility subject to regulation by the Oregon Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines and conduits, within the city and/or adjacent areas.
5. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the city council, or by any provision of any other ordinance of the city.
6. An application fee in a sum to be set by the city which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration for the costs and not returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the city in studying, investigating and otherwise processing the application; provided, that any applicant who shall deliver to the city recorder a written withdrawal of or cancellation of any application within three business days following the day such application is received by the city recorder shall be entitled to have returned and refunded the sum of 50 percent of the fee less any actual costs or expenses incurred by the city by reason of such applications.

C. The city council may, by advertisement or otherwise, solicit for any other applications for cable communications system franchises and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications.

D. Upon receipt of any application for franchise, the city council shall refer the same to the ordinance committee which shall prepare a report and make its recommendations respecting such application and cause the same to be completed and filed with the city council within 90 days.

E. In making any determinations hereunder as to any application, the city council shall give due consideration to the character and quality of the service proposed, rates to subscriber, income to the city, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other consideration deemed pertinent by the city council for safeguarding the interest of the city and the public. The city council, in its discretion, shall determine the award of any franchise on the basis of such considerations and without competitive bidding.

F. If the city council, after public hearing, shall determine to reject such application, such determination shall be final and conclusive, and the same shall be deemed rejected.

G. If the city council shall determine to further consider the application, the following shall be done:

1. The city council shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.
2. The city council shall give notice of its intention to consider the granting of such a franchise, stating the name of the proposed grantee and that copies of the proposed franchise may be obtained at the office of the city recorder, fixing and setting forth a time and public place certain when and where interested parties may inspect all the bona fide applications, fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection to the granting of the franchise may file written protests and appear before the city council and be heard, and directing the city recorder to publish notice of said resolution's adoption at least once within 10 days of the passage of the resolution in a newspaper of general circulation within the city.

H. At the time set for the hearing, or at any adjournment of the hearing, the city council shall proceed to hear all written protests. Thereafter, the city council shall make one of the following determinations:

1. That such franchise be denied; or
2. That such franchise be granted upon such conditions as the city council deems appropriate, which conditions may include, on a not-to-exceed basis, where in accordance with applicable FCC regulations and state laws:
 - a. Charges for installation;
 - b. Subscriber rates;
 - c. Service rates for separate classifications of service such as additional connections.

I. If the city council shall determine that a franchise be denied, such determination shall be expressed by resolution; if the city council shall determine that franchise be granted, such determination shall be expressed by ordinance granting a franchise to the applicant. The action of the city council shall be final and conclusive.

J. The grantee shall pay to the city a sum of money sufficient to reimburse it for all expenses incurred by the provisions of this chapter, beyond those defrayed by application fees. Such payment shall be made within 30 days after the city furnishes the grantee with a written statement of such expenses. [Ord. 2046, 2-26-81. Code 2001 § 111.23.]

5.30.160 Applications for franchise renewal.

A. Any franchise may be renewed for a term not to exceed 15 years, at any time prior to the expiration of the same. An application for franchise renewal shall be submitted to the city manager containing the following information:

1. The information required pursuant to NMC 5.30.150(B)(1) and (2);
2. A map of the area proposed to be included in the franchise service area;
3. A schedule of rates and charges proposed;
4. A narrative and/or pictorial description of the facilities in place, and a narrative description of proposed additions and/or replacements thereto, if any.

B. Upon receipt of such an application the city manager shall review the same and forward to the city council a report containing the recommendation as to whether the renewal franchise should be granted or not. Upon receipt of such a report, the city council shall conduct a public hearing, noticed as is provided in NMC 5.30.150(G)(2). At the time of such hearing, or continuance of the hearing, the city council shall, based upon the application, report, and relevant evidence received, determine whether the public interest, convenience and necessity require the issuance of such franchise. If the city council determines to deny the application for renewal, it shall do so by resolution. If it determines that the said franchise should be granted, it shall do so in the manner provided in NMC 5.30.150(H)(2). In the event of nonrenewal or termination of a franchise, the city agrees to purchase, or to require any successor grantee to purchase, grantee's facilities at a cost not to exceed its then fair market value, with a reduction for any uncompensated damages incurred by the city in connection with the grantee's operation. If such fair market value cannot be agreed upon by the parties, it shall be determined by a three-member arbitration panel, in accordance with the arbitration process specified in NMC 5.30.130(C). The parties shall divide expenses of arbitration evenly among themselves. [Ord. 2046, 2-26-81. Code 2001 § 111.24.]

5.30.170 Acceptance of franchise.

A. No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance of the franchise shall have been filed with the city recorder. Written acceptance, which shall be in the form and substance approved by the city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter, and in such franchise, or otherwise specified as herein and therein provided.

B. The written acceptance shall be filed by the grantee not later than 12:01 p.m. of the fortieth day next following the effective date of the ordinance granting such franchise; in the event this day falls on a nonworking day, then the next business day will suffice.

C. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the grantee shall not be received or filed by the city recorder. The grantee shall have no rights, remedies, or redress in the premises, unless and until the city council, by resolution, shall determine that such acceptance be received or filed, and then upon such terms and conditions as the city council may impose.

D. In any case, and in any instance, all rights, remedies and redress in these premises which may or shall be available to the city, shall at all times be available to the city, and shall be preserved and maintained and shall continuously exist in and to the city, and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by reason of any of these premises, or otherwise.

E. Any franchise granted and accepted under the ordinance shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, of or pertaining to the construction, operation, or maintenance of any cable communications system(s) in the city. [Ord. 2046, 2-26-81. Code 2001 § 111.25.]

5.30.180 Transfer or assignment of franchise.

A. Any such franchise shall be a privilege to be held in personal trust by the grantee. The franchise shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned,

mortgaged, sold, transferred, or disposed of, either in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in the person(s), except the grantee, either by act of the grantee or by operation of law, without the consent of the city expressed by ordinance.

B. The grantee shall promptly notify the city of any proposed change in, or transfer of, or acquisition by, any other party of control of the grantee with respect to which the consent of the grantor is required, pursuant to subsection (A) of this section. Such change of control shall make this franchise subject to revocation unless and until the city council shall have consented thereto.

C. Consent of the city council shall not be granted until it has examined the proposed assignee's legal, financial, technical, character and other qualifications to construct, operate and maintain a cable communications system in the city and has afforded all interested parties notice and an opportunity to be heard on the question. The grantee shall assist the city in any such examination.

D. The said consent of the city council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by the city council and must agree to comply with all provisions of the franchise and of this chapter; and provided, further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed 50 percent of the market value of the property used by the grantee in the conduct of the cable communications system, prior consent of the city council shall be required for such a transfer. Such consent shall not be withheld unreasonably.

E. In the event that the grantee is a corporation, prior approval of the city council shall be required where there is an actual change in control or where ownership of more than 50 percent of the voting stock of the grantee is acquired by a person or group of persons acting in concert, none of whom already own 50 percent or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the city council shall constitute a failure to comply with a provision of this chapter within the meaning of NMC 5.30.130.

F. Any such transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise by transfer of a duly executed copy of which shall be filed with the city recorder within 30 days after any such transfer or assignment. [Ord. 2046, 2-26-81. Code 2001 § 111.26.]

5.30.190 Franchise fee.

A. In consideration of the granting and exercise of a franchise to construct and operate a cable communications system in the city, the grantee shall pay to the city during the life of the franchise a franchise fee equivalent to a percentage, as stipulated in the franchise ordinance, of the grantee's gross revenues including, but not limited to, basic service revenues, nonbasic revenues, advertising revenues, lease revenues, and data transfer revenues, for the purpose of defraying administrative expenses associated with the conduct and performance of the city's authority, responsibilities, and police power in the promotion of safety, convenience, comfort, prosperity, and general welfare of the citizens of the city, and in consideration of the city's granting and the grantee's exercising a franchise to use the streets, as defined in NMC 5.30.020.

B. The percentage payments shall be made in the manner, amounts and at times directed in the franchise ordinance.

C. At the discretion of the city council, a percentage or portion of the fee payments may be earmarked to assist in the funding of certain nonbasic services; e.g., public and educational access, and the like.

D. A grantee shall file with the city manager, within 90 days after the expiration of any calendar year or portion of a calendar year during which its franchise is in force, a financial statement, for the grantee's Newberg operations, certified by a responsible officer of the grantee, showing in detail the gross revenues, as defined herein, of the grantee during the preceding calendar year or portion of a calendar year. Additionally, the grantee shall submit to the city copies of all FCC Form 325 and 326 reports (and any future revisions or replacements of those reports) within 10 days after submission to the FCC.

E. The city or its representative shall have the right to inspect the grantee's records to determine if proper payments have been made to the city. The cost of such audits shall be borne by the grantee if the same results in increasing, by more than two percent, the grantee's annual payment to the city. [Ord. 2046, 2-26-81. Code 2001 § 111.27.]

Article III. System Services – Operating Regulations

5.30.200 Cable communications services.

A. Basic Service. A cable communications system to be installed and operated pursuant to this chapter and a franchise granted hereunder shall:

1. Be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of what the grantee is now or thereafter authorized by the Federal Communications Commission; and
2. Distribute color television signals which it received in color; and
3. Provide channel capacity and basic equipment for program production in cablecasting for educational and public access uses, and for use of the city per NMC 5.30.300; and
4. Have a minimum capacity of 41 downstream video channels; and
5. As a minimum, have the capability of being converted at any time to provide full reverse transmission (two-way transmission) in any portion of the system or trunk by adding appropriate reverse amplifier modules. Further, the two-way capability shall be fully activated from production facilities in those sites specified in the cable communications franchise granted pursuant to this chapter.

B. Nonbasic Services. The cable communications system permitted to be installed and operated pursuant to this chapter may also engage in the business of:

1. Transmitting original cablecast programming not received through television broadcast signals;
2. Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;
3. Transmitting and receiving all other signals; digital, voice and audio-visual, and the like.

C. Emergency Service. The grantee shall design and construct the system to provide for a restricted audio and video override of video channels during emergencies as per NMC 5.30.310. [Ord. 2046, 2-26-81. Code 2001 § 111.40.]

5.30.210 Service area.

The grantee's system design and construction shall be such that service shall be made available to all residential units within the grantee's service area, as defined in the franchise, for the normal installation fee, with the exception that in those locations where the dwelling units per strand mile of system plant are less than the dwellings per mile figure stipulated in the franchise ordinance, the grantee shall provide cable service on a pro rata sharing of the installation costs with the potential subscribers. The pro rata sharing of those costs will be in accordance with the formulation set forth in NMC 5.30.220. [Ord. 2046, 2-26-81. Code 2001 § 111.41.]

5.30.220 System extension.

A. The grantee shall extend residential and institutional (the latter as required by the city) service into every new subdivision and/or development and/or newly incorporated/annexed area. Those new areas having more dwelling units per strand mile of plant than the number stipulated in the franchise ordinance shall receive residential service for the normal installation fee. The capacity to provide cable communications service shall be available to newly constructed structures on the date of first occupancy. Actual installation of service may be delayed up to 60 days from first occupancy or until after final grading, whichever is first. In those areas where the number of dwelling units per strand mile is less than the number stipulated in the franchise ordinance, the grantee will provide residential cable service on a pro rata sharing of the installation costs with the potential subscriber(s). Grantee will bear its pro rata share of the then current mile of plant construction cost based on a multiple of the actual number of potential subscribers per mile divided by the number of dwellings per mile stipulated in the franchise ordinance.

B. The remaining construction cost will be borne on the prorated basis by each applicant committing to service within the extension area. Mileage will be measured from the nearest point on the nearest trunk line. Example: If it requires one mile of plant extension at \$10,000 per mile of construction to serve 20 potential subscribers, and if the franchise stipulated dwellings per mile were 24, the grantee would pay \$10,000 times 20 divided by 24, or \$8,333, as its share of the extension cost. The remaining \$1,667 cost would be divided equally among the 20 potential subscribers or each would pay an \$84.00 installation fee assuming all 20 become subscribers. The above formula applies to individual installation distances, as stipulated in the franchise ordinance, or less. For distances in excess of the stipulated distance, there may be an additional charge for that distance in excess. [Ord. 2046, 2-26-81. Code 2001 § 111.42.]

5.30.230 Systems design, construction and technical performance standards.

A. Standards of cable communications system(s) construction, safety, and operation will meet, but not be limited to, the following referenced specifications, unless exception is agreed upon between the city and the grantee.

1. Applicable city, county, state and national/federal codes and ordinances as they apply to the construction of buildings, tower structures, and cable system installation;
2. Applicable utility joint attachment practices;
3. National Electrical Safety Code, NFPA No. 70;
4. Local utility code requirements;
5. Local right-of-way procedures.

B. The overall system(s) will be designed and constructed to meet all FCC technical performance specifications and standards over a temperature range of plus or minus 50 degrees Fahrenheit from the mean temperature of the Newberg area, and to function throughout all environmental extremes expected.

C. The forward portion of any cable communications system shall be capable of initial activation of a minimum carriage of 41 Class I television channels, the full FM broadcast band, and for pilot carriers or such auxiliary signals as required for system control.

D. The combined forward trunk and distribution system will deliver signals to each and every subscriber's receiver that will meet or exceed the franchise ordinance specifications at the mean system temperature plus or minus 50 degrees Fahrenheit, unless otherwise indicated. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set top converters.

E. The reverse portion of the residential system shall be capable of initial activation of a minimum of five to 30 MHz in bandwidth, with return signals from each subscriber and institutional (including all schools) signal source to the extreme end of any area in compliance with the specifications set forth in the franchise ordinance.

1. Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.
2. For Class I signals, the signal delivered to the subscribers' TV receiver, after being transmitted to the head-end, processed and retransmitted down a forward channel shall meet the specifications of the franchise ordinance.

F. All cable communications systems authorized to be constructed and operated pursuant to this chapter shall, insofar as financially and technically feasible, be compatible one with another. Signal specifications compliance determination for forward and/or institutional channels interchanged between other cable communications systems and a grantee's system are to be determined by applying the combined contribution of distortion of all pertinent components of the worst case (temperature and location) signal path. The combined contribution shall meet or exceed the specified technical specifications at the termination of the worst case signal path the channel could encounter. At the interconnect point the party delivering a channel or channels will provide signals, transported either in the forward or reverse system to the interconnect point, that meet or exceed the franchise ordinance specifications at the mean system temperature plus or minus 50 degrees Fahrenheit. The signals are to be in

compliance as stated at a point which best represents the most direct signal path between the party providing the signal and the party receiving the signal. Only one such interconnect point is to be specified for all signal exchanges.

G. A comprehensive routine preventative maintenance program shall be developed, effected and maintained for each system by the respective grantee to ensure continued top quality cable communications operating standards in consonance with FCC Part 76 and the technical specifications stipulated in the franchise ordinance.

H. No newly constructed system services shall be offered for sale prior to proof-of-performance testing in accordance with FCC Part 76.601 and technical specifications and standards listed in the franchise ordinance. This initial proof-of-performance testing, and annual proof-of-performance testing, may be conducted by the city, or its designated representative, at the city's option, when sufficient cause is deemed by the city council, or its designated representative. The city reserves the right to have the measurements, associated with city-observed performance tests, conducted at city-selected test points and to a greater number of test points than the minimum required by Subpart 76.601, FCC Rules. Additionally, the grantee shall reimburse the city for all expenses incurred by it in connection with the city conducting or observing the annual performance tests, when the results of those tests are deemed by the city to fall below a 90 percent level of compliance with the technical standards set forth in FCC Part 76 and in the franchise ordinance.

I. Grantee's proof-of-performance testing procedures must be approved by the city for implementation prior to the initial proof-of-performance testing addressed in subsection (H) of this section. The results of performance tests conducted in accordance with Section 76.601(c), FCC Rules (or such other section of the rules as shall incorporate its substance) shall be retained for at least five years and be available for inspection by the city.

J. All system antennas and mounts shall be designed, installed and constructed for extremes in temperature, wind and ice loading. Antennas should be able to withstand 100 mile per hour winds with one-inch radial ice load.

K. All underground cable should be flooded and be armor-clad cable and/or installed in conduit, unless specifically exempted by the city director of public works, on a case-by-case basis.

L. Residential and institutional drop cables should be of the integral steel messenger variety where exposed to the possible accumulation of ice and a double-shielded type and fitted with sealed hex crimp ring high integrity connectors.

M. Polyethylene jacketed cable should be used in any and all areas of the plant where airborne heavy chemical particles can be expected.

N. The grantee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice and shall occur during a period of minimum use of the system. A written log shall be maintained of all service interruptions. The log shall reflect the date, time, duration, and reason for each service interruption. The record of the log shall be kept on file by the grantee for a minimum of three years. [Ord. 2046, 2-26-81. Code 2001 § 111.43.]

5.30.240 Undergrounding of cable lines.

A. In those areas and portions of the city where the transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer or subdivider as part of a development or subdivision, then the grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground.

B. In new developments or subdivisions the builder, developer or subdivider shall be responsible for the performance of all necessary trenching and backfilling of main line and service trenches, including furnishing of any imported backfill material required. Prewiring of new dwellings while under construction is mandatory. Amplifiers in the grantee's transmission and distribution line may be in concrete boxes, pedestals or vaults on the surface of the ground. The grantee will be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. The grantee will be responsible for pulling in the cable, and providing the pedestal amplifiers, electronics, stub ends and drops to individual homes, after occupancy.

C. In those areas and portions of the city heretofore designated by the city as local improvement districts and where utility service facilities are currently located underground, the grantee shall be responsible for the undergrounding of cable facilities including the performance of all necessary trenching and backfilling of main line and service trenches, and the furnishing of any imported backfill material required. Amplifiers in the grantee's transmission and distribution lines may be in concrete boxes, pedestals or vaults on the surface of the ground.

D. Previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with other utilities pursuant to the general ordinances of the city or applicable state law, or in the event such action shall be taken by all other utilities on a voluntary basis. [Ord. 2046, 2-26-81. Code 2001 § 111.44.]

Cross-reference: See ORS 758.210 – 758.270 pertaining to conversion of underground facilities.

5.30.250 System maintenance.

Throughout the life of a grantee's franchise, and in addition to other service regulations adopted by the city council, and excepting circumstances beyond the grantee's control, such as acts of God, riots and civil disturbances, and in providing the foregoing services, a grantee shall:

A. Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. The system must serve individual residents, but also serve as a broad-based communications source for city government, other public facilities including hospitals, public libraries and schools, and industrial and commercial business users.

B. Retain sufficient employees to provide safe, adequate and prompt service for all such residential subscribers, institutional facilities and business users.

C. Limit system failures to minimum time duration by locating and correcting malfunctioning as promptly as is reasonably possible, irrespective of holidays or other nonbusiness hours. [Ord. 2046, 2-26-81. Code 2001 § 111.45.]

5.30.260 Emergency power.

Emergency power sources shall be provided by grantee at the head-end, network distribution center, satellite earth station, processing hubs, and other system locations as may be necessary to guarantee that in the event of a power failure on any part of the system, service will be maintained on the rest of the system. [Ord. 2046, 2-26-81. Code 2001 § 111.46.]

5.30.270 Rules and regulations for subscriber service standards.

A. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. Neither the city nor the grantee shall, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to prejudice or disadvantage.

B. Before providing cable television service to any subscriber, the grantee shall provide a written notice to the subscriber substantially as follows:

Subscriber is notified that in providing cable television/communications service the grantee is making use of the public rights-of-way within the City of Newberg and that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to grantee for any reason, grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television/communications service, subscriber agrees subscriber will make no claim nor undertake any action against the City, its officers, or its employees if the service to be provided hereunder is interrupted or discontinued.

C. There shall be no charges for service calls to subscribers' homes except as provided by the franchise.

D. The grantee may charge a subscriber for a lost or stolen converter, not to exceed the grantee's direct original wholesale cost; except that the loss or theft of a converter with the premium access feature will incur a monetary penalty as specified in the franchise ordinance to the responsible subscriber, unless a police report has been filed.

E. Converter deposits shall be fully refundable, with possible deductions for repairs due to damage other than that of normal wear, and for any unpaid service charges due.

F. The grantee shall be responsible for the protection of subscriber privacy, prohibiting the taping and/or monitoring of cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except the grantee may conduct tests of the functioning of the system where necessary in order to ensure proper maintenance of the system and to collect performance data for agencies regulating the quality of signals. Where critical information requires private communication, electronic signal-scrambling techniques must be used.

G. The grantee and the city shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer, or general cable communications system. The grantee shall not place in any private residence any equipment capable of two-way communications without the written consent of the residents, and will not utilize surveillance of any kind without the written consent of the subscriber.

H. No cable, line, wire, amplifier, converter, or other piece of equipment owned by the grantee shall be attached to any residence or other property by the grantee without first securing the written permission of the owner or responsible occupant of any property involved. If such permission is later revoked, whether by the original or a subsequent owner or responsible occupancy, the grantee shall remove forthwith all of its equipment and promptly restore the property to as near to its original condition as possible.

I. In the event that the grantee elects to rebuild, modify, or sell the system, or the city revokes or fails to renew the franchise, the grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event of a system purchase by the city, or the change of grantee, the current grantee shall cooperate with the city to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

J. Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon the subscriber's request, with the exception of underground installations if agreed upon by the subscriber at the time of subscription to the service.

K. The grantee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies, by name, subscriber viewing habits, to any person, agency, or entity, for any purpose whatsoever.

L. No polls or other two-way responses of subscribers shall be conducted unless the program of which the poll is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll. No commercial or other use of information of subscriber viewing habits or patterns may be made and no release of such information shall be permitted without prior consent of the city council or pursuant to rules and regulations duly adopted by the city. [Ord. 2046, 2-26-81. Code 2001 § 111.47.]

5.30.280 Subscriber complaint service.

A. Subscriber complaint service will be provided in conjunction with the grantee's corrective maintenance program. Location of the grantee's office and service center to be subject to city council approval. The subscriber complaint service will be as specified in the franchise ordinance.

B. A conveniently located business office and service center will be maintained within the Newberg service area. This office shall be open during all usual business hours, with its telephone listed in directories of the telephone company servicing the city, and be so operated that complaints and requests for repairs or adjustments may be received by telephone at all times when any television signals are being broadcast. Corrective maintenance for institutional services will be in accord with contract terms between the grantee and the subscriber. [Ord. 2046, 2-26-81. Code 2001 § 111.48.]

5.30.290 Rates and charges.

Except when preempted by FCC regulations and state laws, the following procedures apply to the rates and charges associated with the providing of services under this chapter and any franchise issued hereunder:

A. The grantee shall charge its subscribers and users rates and charges approved by the city council, and no change in rates and charges may be made without the prior approval of the city council expressed by resolution.

B. Should the grantee desire to change its rates and charges, it shall file a petition with the city council at least 90 days prior to the proposed date of change. The petition shall detail the proposed changes and set forth the reason changes are desired. The petition shall include system historical financial data (balance sheets and detailed profit and loss statements) for the period since commencement of system operations or the previous five years, whichever is the lesser.

C. City council determination of proper rates and charges shall be based on factors considered important by the city council, which shall include, but not be limited to: the quality of signal delivered to subscribers, the quality of service provided to subscribers, channel capacity, number and quality of programming sources, and underlying economics of the system (system cash flow, grantee return on investment, and the like). In this regard, the city reserves the right to inspect all of the grantee's property and records in adjudging the merits of a request for a change in rates and/or charges.

D. In connection with any proposed increase in any rate or charge, the city may direct an authorized representative to conduct a hearing on the matter. If so directed, the representative shall set the day, hour and place certain when and where any person having any interest therein may appear and be heard. This hearing should normally be conducted within 60 days from date of receipt of petition. The notice of a public hearing on the matter should be published at least 10 days before the date of the hearing in a newspaper of general circulation within the city.

E. At the time set for such hearing, or at any adjournment of the hearing, the representative shall hear the matter. Following the close of such hearing, the representative shall prepare and file with the city council a report of the hearing and the representative's recommendations and the reasons for the recommendations. After receipt of the representative's report, the city council shall determine whether to adopt the report or to hold a further hearing. If the city council elects to adopt the recommendations of the representative, it shall do so by resolution. If it elects to conduct a hearing, it shall adopt a resolution to do so, describing and stating the proposed change in rates or charges; and fixing and setting forth a day, hour and place certain when and where any person having any interest herein may appear before the city council. A notice shall be published of the resolution's adoption at least once within 10 days of the passage of the resolution in a newspaper of general circulation within the city. The city manager also shall cause notice of intent of such resolution to be mailed to the grantee at least 10 days prior to the date specified for hearing. At the time set for such hearing, or at any adjournment of the hearing, the city council shall hear and decide the matter.

F. No rate established shall afford any undue preference or advantage among subscribers, but separate rates may be established for separate classes of subscribers. [Amended during 2011 recodification; Ord. 2046, 2-26-81. Code 2001 § 111.49.]

5.30.300 Local origination and access.

A. The grantee shall provide and maintain at least one local origination and access studio within the Newberg service area, location of the studio to be approved by the city council or its designated representative.

B. The grantee shall provide, install and maintain a local origination and access audio/video system at their local origination and access studio. The system shall contain a complement of compatible equipment as specified in the franchise ordinance all of which will be broadcast or top-level industrial quality.

C. The grantee shall make the portable audio-video equipment available for use by residents in accordance with a grantee-developed and city- approved studio and equipment operations/usage plan, provided the following:

1. The grantee may charge a deposit for the use and safe return of said equipment.
2. The user shall be responsible to the grantee for any loss of or damage to said equipment.
3. Said equipment shall be available to residents on a "check-out" basis, and the grantee shall be given reasonable notice by a resident who wishes to use said equipment.

4. Residents may not use the equipment for longer than a reasonable period of time, or more frequently than is reasonable.

5. The grantee may deny use of said equipment to any resident who, in the judgment of the grantee, is not competent in the care of said equipment.

6. The grantee shall hold harmless the city from any damages resulting from the use of local origination and access studio and portable equipment.

D. If the grantee provides a color production van for remote public access productions and locally originated programming, the van should be a fully equipped, multiple-camera, color production van with switchers, special effects, editing, and audio origination capability. It should have complete videotape recording (VTR) equipment for editing and later playback of programs, and can be linked for live origination to the system head-end or network distribution center by two-way cable throughout the grantee's service area. Portable microwave equipment should be provided to link the production van to the system where cable interconnections are not available. The head-end or network distribution center should be equipped with an omni-directional microwave receive antenna to afford reception of the production van microwave signal from virtually any line-of-sight location within a 20-mile radius.

E. The grantee's production capability will be supplemented by a minimum of two port-a-pak cameras and two three-quarter-inch portable video recorders.

F. The grantee shall provide community access channels for use by city residents, including a channel for government access, a channel for primary and secondary school access use, a channel for access use by colleges, a channel for community access on a first-come, first-served basis, and a channel for leased access. Until there is demand for full channel-time use, such may be combined on one or more channels. Additional access channels will be activated when any of the channels stipulated are in use during 80 percent of the weekdays (Monday through Friday) for 80 percent of the time during any consecutive three-hour period for six consecutive weeks.

G. Additional access production studio equipment, including portable cameras and video recorders, will be provided by the grantee if and when the level of community usage dictates the requirement for additional equipment as jointly determined by the grantee and the grantor.

H. The grantee will actively promote production assistance to facilitate use of these community access channels. The grantee shall maintain sufficient dedicated studio staff to fully support active local origination and access activities. The staff, upon reasonable notice, shall provide training and technical assistance in the use of the studio and portable equipment. This training and assistance shall, at a minimum, be available at the local origination and access studio and made available upon request at public schools.

I. The grantee shall maintain all studio equipment, including portable equipment, in a fully operational status on a continuous basis, and to technical standards requisite for quality performance. When any equipment is removed for maintenance it will be replaced by like-type equipment of equivalent performance standards by the grantee. [Ord. 2046, 2-26-81. Code 2001 § 111.50.]

5.30.310 Emergency alert – Audio-video override.

The grantee shall design and construct the cable communications system to provide for a restricted audio and video simultaneous override of all video channels during emergencies, with override to be placed under city control. Video override to include a character generator capability for delivery of emergency messages to the communicatively handicapped. The audio override shall include a squeal alert tone to precede the verbal and video messages. The design of the emergency alert system is to be submitted to the ordinance committee for approval prior to construction. [Ord. 2046, 2-26-81. Code 2001 § 111.51.]

5.30.320 Safety requirements.

A grantee shall, at all times:

A. Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the city building code and electrical safety ordinances and in such manner that they will not interfere with any installations of the city.

B. Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all its structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city wherever situated or located. [Ord. 2046, 2-26-81. Code 2001 § 111.52.]

Penalty: See NMC 1.05.200.

REQUEST FOR COUNCIL ACTION



Date Action Requested: September 15, 2025

Order <input type="checkbox"/>	Ordinance <input checked="" type="checkbox"/>	Resolution <input type="checkbox"/>	Motion <input type="checkbox"/>	Information <input type="checkbox"/>	Proclamation <input type="checkbox"/>
Subject: Construction Noise Hours – NMC 8.15.150				Staff: Scot Siegel, CDD; Sgt Ronning and Neal Winter, PD; Brian Kershaw, Capital Projects	
Work Session <input type="checkbox"/> Business Session <input checked="" type="checkbox"/>				Order On Agenda:	

Is this item state mandated? Yes ☐ No ☒

Recommendation: Move to waive second reading and adopt Ordinance 2025-2939 by title only.

Executive Summary: Newberg Municipal Code Section 8.15.150(A)(3)(j) regulates noise from construction by limiting construction or repair of buildings and excavation of streets to the hours of 7:00 a.m. - 7:00 p.m. on weekdays only, except in the case of emergencies or for work by private utilities. Staff have found that by limiting construction to weekdays only, Newberg may be prolonging construction noise and adding cost and delays to the development process.

Exhibits A-1 and A-2, respectively, contain annotated and clean copies of proposed code amendments to bring Newberg's regulations into alignment with those of other jurisdictions. Exhibit B compares Newberg's regulations with those of its neighbors, most of whom allow limited construction on weekends.

Newberg code authorizes permits for construction during restricted hours for not more than three days when it determines that "the public health and safety... will not be impaired... and [a] loss or inconvenience would otherwise result". The Newberg Police Department has issued five permits for exceptions to work hours during the past year. According to Capital Projects staff, typical reasons cited for extra work hours, or "loss or inconvenience" if a permit is not granted, include:

- Grading and dirt work in dry weather/optimal working conditions to avoid seasonal delays.
- Concrete plant deliveries are scheduled months in advance. Extended work hours increase availability for this critical part of the supply chain and avoids delays.
- Paving has the same supply chain considerations as concrete.
- Achieve final completion of homes sooner to increase housing production.
- Overtime work hours equate to more worker-pay and helps to retain workforce.

Ordinance 2025-2939 extends the existing weekday construction hours to Saturdays, adds Sunday construction hours between 9:00 a.m. and 5:00 p.m, and clarifies "construction". Under the proposed ordinance, permits for longer work hours would continue to be available except on Sundays.

Fiscal Impact: None

Council Goals: Goal 1: Continue to create and maintain a high level of customer service. A: Ensure Newberg infrastructure (roads, water, city employees) is in good repair and supply.

ORDINANCE No. 2025-2939



AN ORDINANCE AMENDING NEWBERG MUNICIPAL CODE, SECTION 8.15.150, EXTENDING PERMITTED CONSTRUCTION HOURS AND CLARIFYING CONSTRUCTION FOR PURPOSES OF REGULATING NOISE

Recitals:

1. Newberg Municipal Code Section 8.15.150(A)(3)(j) regulates noise from construction by limiting hours of construction or repair of buildings and excavation of streets.
2. Current Newberg regulations limiting construction to weekdays only may prolong construction noise and add unnecessary costs and delays to the development process, which in turn may contribute to increased housing costs.
3. An analysis of construction hours permitted by other cities in the surrounding area found they allow limited construction on weekends.
4. Newberg's existing construction noise variance process does not provide sufficient flexibility for completing large construction projects in a timely manner, including during dry weather.

The City of Newberg Ordains as Follows:

1. Newberg Municipal Code is amended as shown in Exhibit A-1 (Annotated) and Exhibit A-2 (Clean Copy).

Effective Date of this ordinance is 30 days after the adoption date, which is: _____, 2025.

Adopted by the City Council of Newberg, Oregon, this _____ day of _____, 2025, by the following votes: **AYE:** **NAY:** **ABSTAIN:**

Rachel Thomas, City Recorder

Attest by the Mayor this _____ day of _____, 2025.

Bill Rosacker, Mayor

Ordinance 2025-2939
Exhibit A-1
Code Amendment With Comments

Newberg Municipal Code

8.15.150 Unnecessary noise – Permitted exceptions.

A. Unreasonable Noise and Exceptions.

3. The following acts are declared to be per se violations of this section. This enumeration does not constitute an exclusive list:

//

j. ~~Construction, or Repair of Buildings, or Excavation of Streets and Highways. The~~ such as construction, demolition, alteration or repair of any structure ~~building, or~~ the excavation of streets and highways, or construction of underground utilities, other than between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and Saturdays and between the hours of 9:00 a.m. and 5:00 p.m. on Sundays. In cases of emergency, construction or repair noises are exempt from this provision. In nonemergency situations, the city may issue a permit, upon application, if the city determines that the public health and safety, as affected by loud and raucous noise caused by construction ~~or repair of buildings or excavation of streets and highways~~ between the hours of 7:00 p.m. and 7:00 a.m. on a weekday or Saturday will not be impaired, and if the city further determines that loss or inconvenience would otherwise result. The permit shall grant permission in nonemergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

#

Comment: Amendment extends construction hours to Saturday and provides limited Sunday workhours consistent with neighboring jurisdictions to minimize the duration of construction noise and support economic development and housing construction. Maintains existing provisions for emergencies and nonemergency cases but does not allow for nonemergency extension of workhours on Sundays.

Edited description of construction because existing code omits some types of construction such as underground utilities and non-building structures. Other exemptions exist for franchise utility construction by public utility, its agents or contractors in NMC 8.15.150.F.

Ordinance 2025-2939
Exhibit A-2
Code Amendment Clean Copy

Newberg Municipal Code

8.15.150 Unnecessary noise – Permitted exceptions.

A. Unreasonable Noise and Exceptions.

3. The following acts are declared to be per se violations of this section. This enumeration does not constitute an exclusive list:

//

j. Construction such as construction, demolition, alteration or repair of any structure, the excavation of streets and highways, or construction of underground utilities, other than between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and Saturdays and between the hours of 9:00 a.m. and 5:00 p.m. on Sundays. In cases of emergency, construction or repair noises are exempt from this provision. In nonemergency situations, the city may issue a permit, upon application, if the city determines that the public health and safety, as affected by loud and raucous noise caused by construction between the hours of 7:00 p.m. and 7:00 a.m. on a weekday or Saturday will not be impaired, and if the city further determines that loss or inconvenience would otherwise result. The permit shall grant permission in nonemergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

#

Exhibit 3
Construction Hours for Buildings and Streets Comparison

	Mon-Fri	Sat	Sunday	Holidays	Notes
Newberg NMC 8.15.150.3.j	7am-7pm	No	No	-	Construction or Repair of Buildings, or Excavation of Streets and Highways. Exceptions by permit (3 days), renewable once for “loss or inconvenience”. Allows for emergencies too.
Dundee DMC 8.28.040 (Noise Limits) DMC 8.28.050.I (Exceptions)	7am-7pm	9am-6pm	No	-	Sounds originating from the construction, demolition, alteration or repair of any building or the excavation of streets and highways (exception to dBA limits). Variances approved by City Council for hardship. No limit on utility work.
McMinnville MMC 8.10.260	7 am-8pm	7 am-8pm	7 am-8pm	-	Construction Noise. The erection, including excavation, demolition, alteration or repair, of any building in residential districts (exception to dBA limits). Special permit by the city manager or designee (no criteria).
Sherwood SMC 9.52.050 (Noises Prohibited) SMC 9.52.060 (Exemptions)	Daytime hours	Daytime hours	Daytime hours	-	Construction or repair of buildings. The construction, demolition, alteration, or repair of any building during night hours . In cases of emergency, construction or repair noises are exempt from this provision. Flexibility for maintenance, construction, demolition, or repair of public improvements “when public welfare and convenience renders it impractical...”
Lake Oswego LOC 34.10.539	7am-6pm	8am-6pm (residential zones) 7am-6pm (nonresidential zones only)	*	*	The erection, excavation, demolition, alteration or repair of any building or structure. *Allows work that does not require a permit on Sundays and Holidays between 10am-6pm. Exceptions by special permit by city manager.

No special restrictions (-)

REQUEST FOR COUNCIL ACTION



Date Action Requested: September 2, 2025

Order ☐ Ordinance ☐ Resolution ☐ Motion ☒ Information ☐

Subject: Chapter 12.05 Recommended Updates

Staff: Scot Siegel and Leanne Wagener
Department: Community Development Department
File No. n/a

Business Session

Order On Agenda: New Business

Is this item state mandated? Yes ☐ No ☒

If yes, please cite the state house bill or order that necessitated this action: n/a

Recommendation:

Move to direct staff to draft amendments to Newberg Municipal Code Sections 12.05.260 (E)(F) clarifying the requirements for street tree pruning and replacement.

Background: On July 21, 2025, City Council adopted a new Approved Street Trees List and directed staff to prepare options for clarifying the City's street tree replacement policy. The purpose of the September 2nd work session is for Council to review policy options and direct staff to prepare code changes.

This work follows the City Council meeting held on August 5, 2024, in which Council received one public comment regarding street tree replacements. The commenter asked Council to specify that street tree replacement is not required when the original tree planting was done voluntarily by a property owner and not required by an approved landscape plan.

At that time, Council acknowledged that the existing code is unclear and directed staff to pause all tree replacements that would have been processed as part of a tree removal permit for properties that were not governed by a subdivision approval or approved landscape plan. Tree replacement continues to be required when tree removal permits are approved for properties that are governed by an approved subdivision or landscape plan. Additionally, as directed by the City Manager, the City of Newberg replaces street trees that it removes for street and utility maintenance, and capital projects, including those in the downtown area and elsewhere.

Currently, the following code requirements for tree replacement and pruning, respectively, are unclear:

1. The tree replacement requirement “may” in NMC 12.05.260 (E) is unclear:

*“E. The designated staff person **may** require that the tree removed be replaced with a tree in accordance with an approved street tree plan or from the city’s approved street tree list.”*

2. The exemption for “pruning” in NMC 12.05.260 (F) is not defined. Excessive pruning of a tree’s canopy or roots can kill the tree and create a hazard.

“F. The above requirements do not apply to tree pruning or removal by city staff or agents. They also do not apply to public utility agencies or their agents pruning or removing trees as necessary to comply with applicable utility clearance standards. They do not apply in emergency circumstances.”

Staff seeks to amend Newberg Municipal Code (NMC) Chapter 12 *Street and Sidewalks*, Section 12.05.260(E), to make the street tree replacement requirements clearer, specifying that tree replacements are required when a street tree planting area would become deficient based on the tree spacing standards in NMC Chapter 15.420. Making this explicit in the code would provide greater certainty for abutting property owners, who are responsible for tree maintenance, and align with standard operating procedures for tree removal permits. This update would also bring the City of Newberg into greater alignment with urban forestry best practices and provide consistency with other chapters within the NMC which codify landscape provisions. Likewise, staff seeks to amend NMC 12.05.260(F) to clarify “tree pruning”, versus “removal”.

If Council agrees with this approach, staff would also revise NMC 12.05.260 in its entirety to make the code clearer and easier to follow. By providing a clear progression from maintenance to pruning, then to removal and replacement, a revised code will provide contractors, property owners, and staff with a better understanding of what is required and how the city applies urban forestry principles through its code.

Alternatively, Council could exempt property owners from tree replacement when a tree was not subject to an approved development plan. Staff does not recommend this approach because over time it would result in the loss of tree canopy within entire neighborhoods which could decrease property values and reduce key environmental benefits.

Fiscal Impact: None.

Council Goals:

- Goal 1: Continue to create and maintain a high level of customer service.
- Goal 4: Create and maintain a high level of transparency with our residents in order to build trust.
- Continuous Goal A: Ensure Newberg infrastructure (roads, water, city employees) is in good repair and supply.
- Continuous Goal D: Develop ways to help tourism and the wine industry flourish.

Attachment

1. NMC12.05.260 Tree removal and pruning

ATTACHMENT 1
Newberg Municipal Code Chapter 12.05.260

12.05.260 Tree removal and pruning.

A. All street trees that were required to be installed under a street tree plan or similar requirement shall be maintained in a healthy condition by the adjoining property owner, or replaced with a tree consistent with the approved street tree plan for that location or, if none, with any approved street tree plan for the area or, if none, with any tree from the city's approved street tree list.

B. No person shall remove any tree greater than two inches in diameter from the public right-of-way without first obtaining a permit from the city to do so, except as noted below.

C. Because mature, healthy trees contribute significantly to the beauty and character of the community, city staff generally will not issue a permit to remove a street tree greater than eight inches in diameter unless the tree is diseased, rotten, dead or dying, significantly misshapen, an obstruction, or otherwise a hazard. The designated staff person may require a report from a certified arborist to verify the tree's condition before removal.

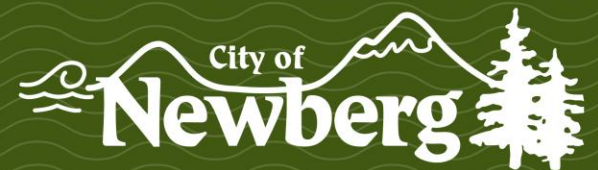
D. No person shall top or severely prune a tree greater than two inches in diameter in the right-of-way without first obtaining a permit from the city to do so, except where such pruning is required by city ordinances or requested by the city, such as to maintain clearances from sidewalks, street signs, streets, or alleys. "Severe pruning" is defined as severing the trunk, or cutting back the trunk or a limb larger than four inches in diameter to a stub. The designated staff person may issue a permit to prune a tree, remove trees which are dead, limbs or roots which have been severely damaged by storms or other causes or which otherwise pose a danger to the public health, safety or general welfare, to alter the shape of trees located under utility wires or other obstructions where other pruning practices are impractical, or to maintain the health and overall attractive shape of the tree. The designated staff person may require that the pruning be done by or under supervision of a certified arborist.

E. The designated staff person may require that the tree removed be replaced with a tree in accordance with an approved street tree plan or from the city's approved street tree list.

F. The above requirements do not apply to tree pruning or removal by city staff or agents. They also do not apply to public utility agencies or their agents pruning or removing trees as necessary to comply with applicable utility clearance standards. They do not apply in emergency circumstances.

Chapter 12 Proposed Code Maintenance

City Council September 2, 2025



Background

- ❖ On July 21, 2025, City Council adopted a new Approved Street Tree List and directed staff to prepare options for clarifying the City's street tree replacement policy.
- ❖ On August 5, 2024, Council received one public comment related to street tree replacement requirements when a tree was planted voluntarily by a property owner and not as part of an approved landscape plan. Council directed CDD staff to halt replacement of trees removed from areas not governed by an approved landscape plan until staff could address code amendments that would make replacement requirements clearer.

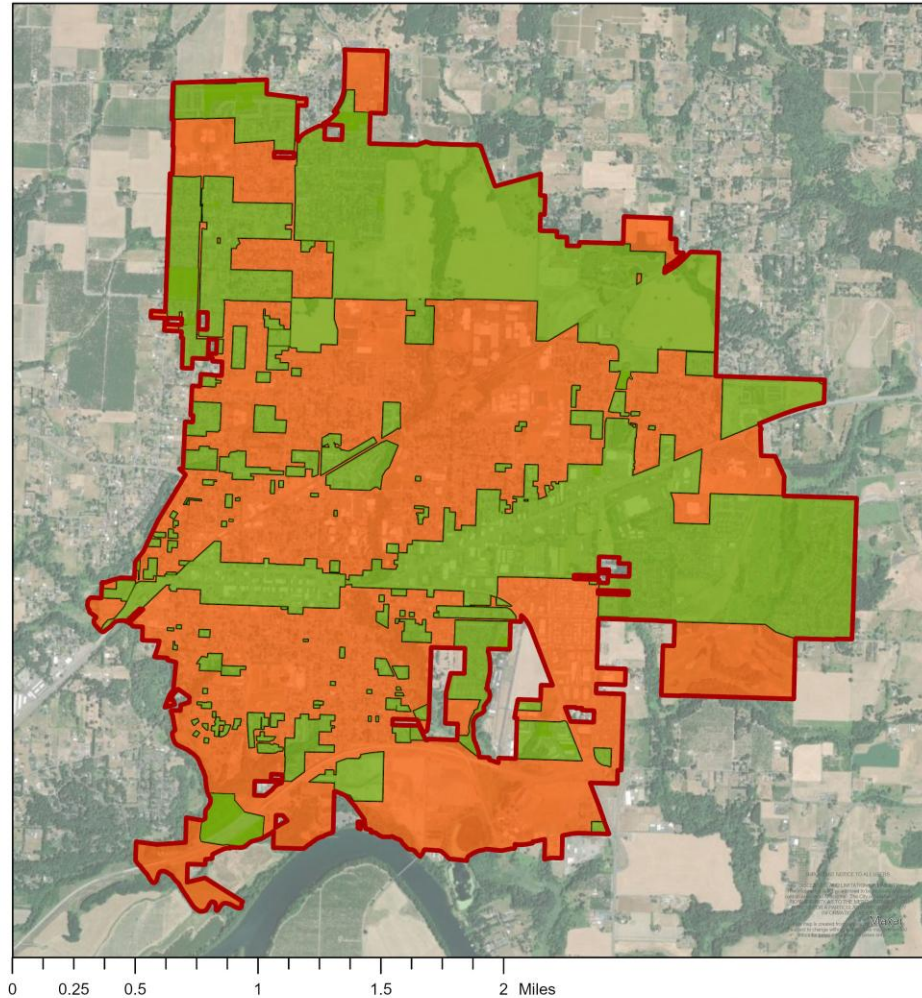
Background

- ❖ Staff seeks to amend NMC Section 12.05.260(E) to make the street tree replacement requirements clear after removal. The intention is to require replacement when a property would become deficient of the required standard street tree spacing as specified in NMC Chapter 15.420.
- ❖ This would mean that trees planted in addition to the required spacing specified in NMC 15.420 would not need to be replaced if felled by the adjacent property owner.

Typical Issues in the Field



City of Newberg Areas with No Landscape Plans

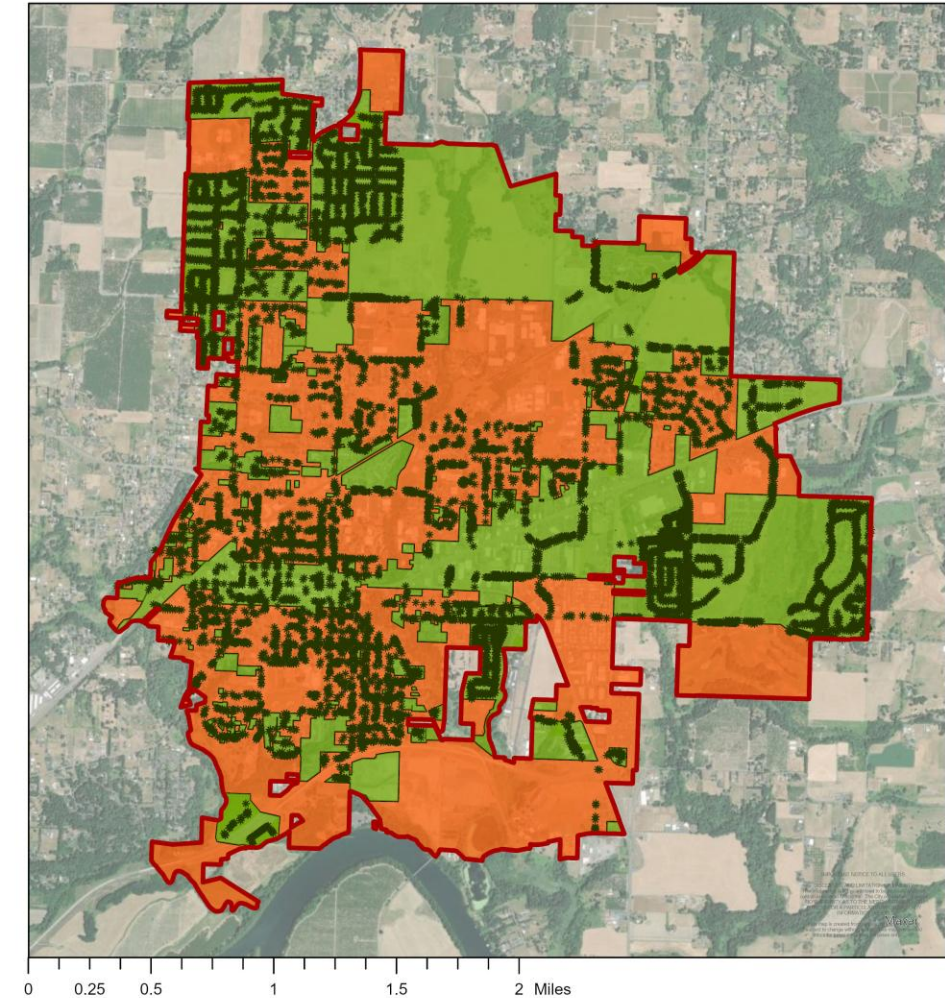


Landscape Plan Areas

- Outside Planned Landscape Areas
- Planned Landscape Areas
- City Boundary



City of Newberg Areas with No Landscape Plans

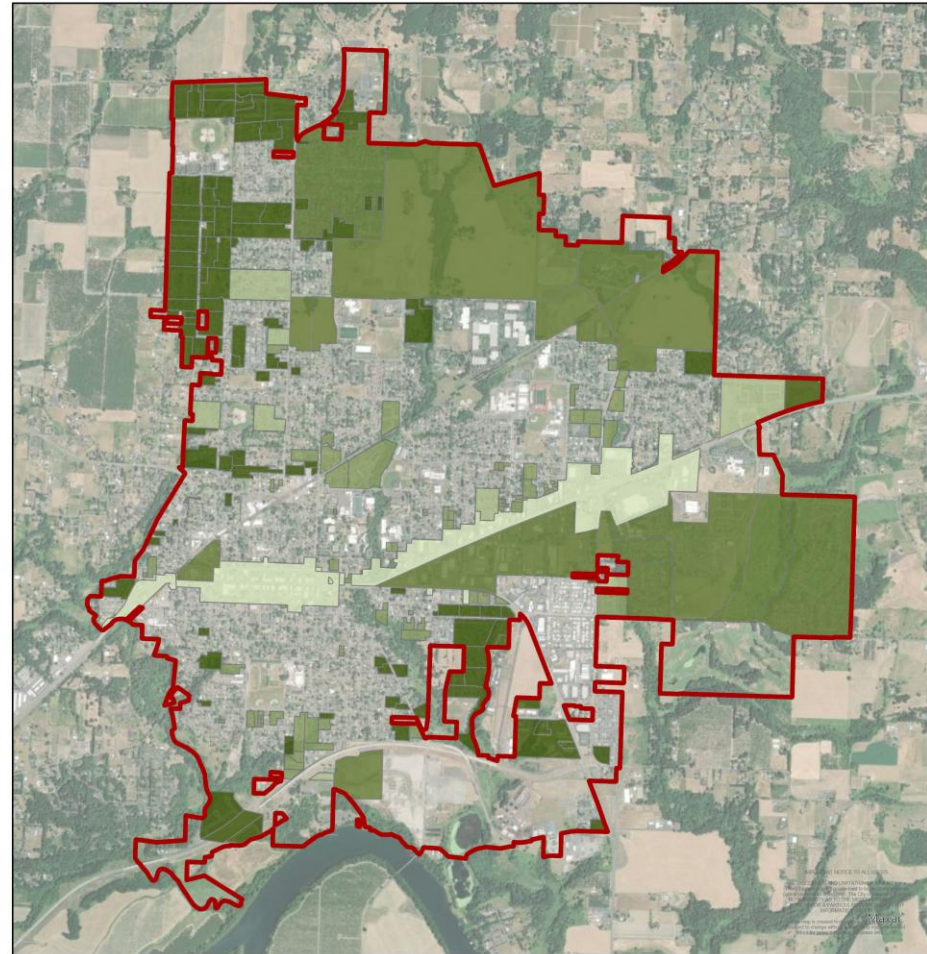


Landscape Plan Areas

- Outside Planned Landscape Areas
- Planned Landscape Areas
- ✱ Trees within 15' of Curb
- City Boundary



City of Newberg Landscape Plan Areas

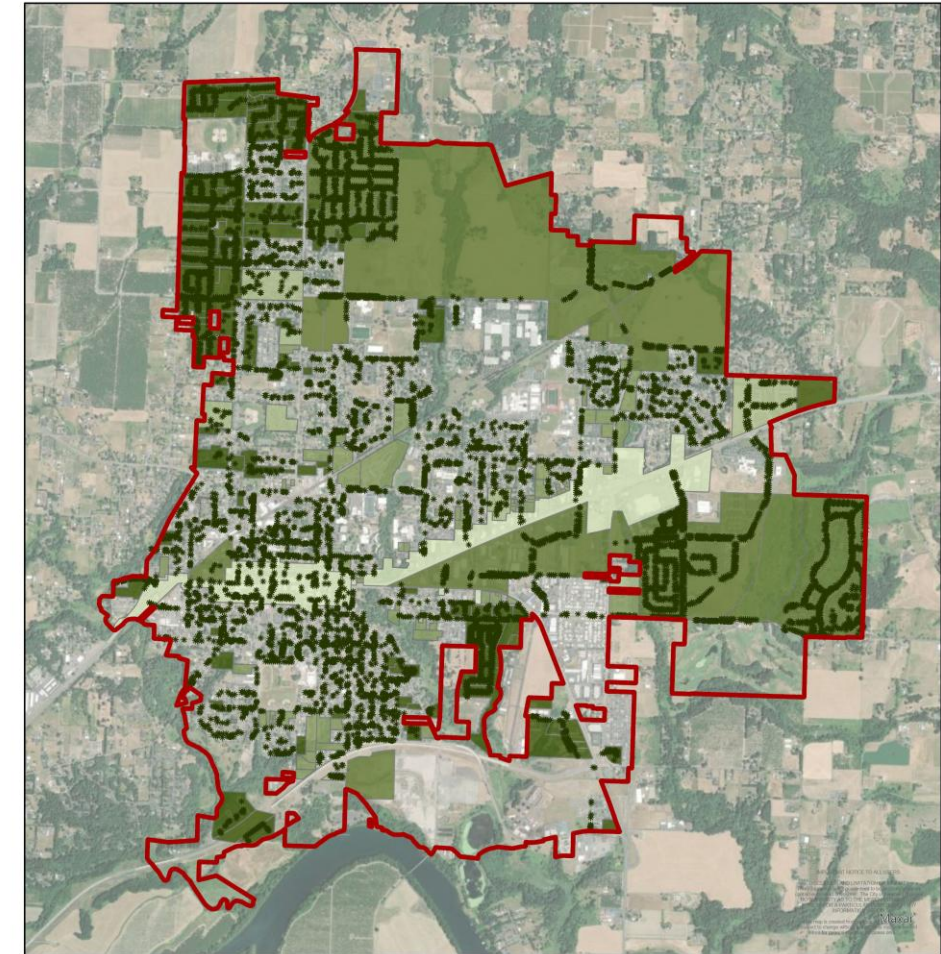


Landscape Plan Areas

- Commercial
- Planned Unit Developments
- Multifamily
- Specific Plans
- Subdivision after 1992
- City Boundary



City of Newberg Landscape Plan Areas



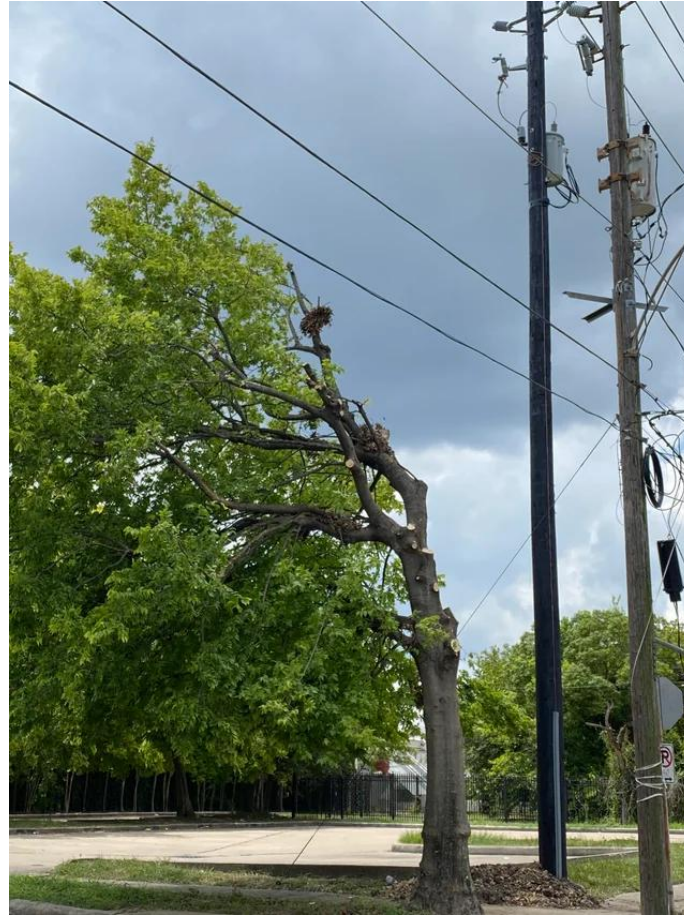
Landscape Plan Areas

- Commercial
- Planned Unit Developments
- Multifamily
- Specific Plans
- Subdivision after 1992
- City Boundary
- Trees within 15' of Curb



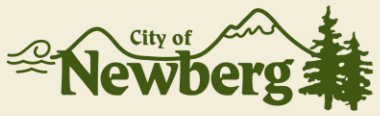
- ❖ Staff also seeks to amend NMC Section 12.05.260(F) to make criteria clear for street tree pruning versus removal.
- ❖ Specifying established parameters for canopy and root pruning at time of session ensures that the tree in question has a viable chance at recovery. If more than recommended standard quantities are required to be removed for utility clearance, the tree shall be felled so that the potential hazard of a compromised tree does not fall to the adjacent property owner. Replacement with a powerline friendly tree is recommended under such circumstances.

Over Pruning Examples



Council Deliberation Points

- ❖ Staff recommends revising NMC 12.05.260 in its entirety to make it easier to follow by providing a clear progression from maintenance to pruning, then to removal and replacement, including the previous specified amendments.
- ❖ Alternatively, Council could exempt property owners from tree replacement when a tree was not part of an approved landscape plan. Staff does not recommend this approach because of the loss of property value, aesthetic value, and ecosystem services to the community over time.



Requested Staff Direction

Staff is requesting City Council direction on the following:

- Consider code amendments and reorganization of Newberg Municipal Code Chapter 12.05.260 consistent with established urban forestry best practices.