



# CITY OF EAGLE POINT

*"Gateway to the Lakes"*

OREGON

## EAGLE POINT CITY COUNCIL

Council Chambers  
17 Buchanan Ave. South, Eagle Point, Oregon  
May 27, 2014

## REGULAR MEETING AGENDA

1. CALL TO ORDER – 7:00 P.M.
2. FLAG SALUTE AND INVOCATION
3. AUDIENCE QUESTIONS OR COMMENTS CONCERNING ITEMS NOT ON THE AGENDA
4. PRESENTATIONS
  - 4.1 Presentation regarding "If I were Mayor ..." Contest.
5. PUBLIC HEARINGS
6. CONSENT CALENDAR
  - 6.1 Presentation of Regular Meeting Minutes of May 13, 2014.
7. CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR
8. PRESENTATION OF BILLS TO BE PAID
9. OLD BUSINESS

*If a physical accommodation is needed to participate in this meeting, please contact the City Recorder at 541-826-4212 ext. 106 or TTY/TDD 711 or 800-735-2900. Notification of at least 48 hours prior to the meeting will assist the City in providing reasonable accommodations. (28 CFR 35.102-35.104 ADA Title II).*

**City Council Agenda**

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10. NEW BUSINESS

- 10.1 Resolution No. 2014-16. A Resolution authorizing a Telecommunications Franchise Agreement with Hunter Communications, Inc.
- 10.2 Resolution No. 2014-17. A Resolution authorizing the granting of a Sewer Easement to Rogue Valley Sewer Services for a Sanitary Sewer Line through City Property, and authorizing the execution of said easement.
- 10.3 Discussion regarding a ballot measure for possible annexation of Eagle Point into the Rogue Valley Transit District (RVTD).
- 10.4 Resolution No. 2014-18. A Resolution appointing Hank Rademacher to the Eagle Point Economic Development Commission.
- 10.5 Resolution No. 2014-19. A Resolution appointing Seth Womack to the Eagle Point Parks and Recreation Commission.

11. REPORTS FROM CITY COUNCIL AND CITY COMMITTEE REPRESENTATIVES

12. STAFF REPORTS

- 12.1 Planning Department.
- 12.2 Financial Department.
- 12.3 Public Works Department.
- 12.4 Police Department.

13. INFORMATION

14. ADJOURN

*AGENDA AND COUNCIL PACKETS ALSO AVAILABLE ON WEBSITE*

[www.cityofeaglepoint.org](http://www.cityofeaglepoint.org)



# CITY OF EAGLE POINT

*"Gateway to the Lakes"*

OREGON

EAGLE POINT CITY COUNCIL  
17 BUCHANAN AVE. SOUTH, EAGLE POINT, OREGON

MAY 13, 2014

## REGULAR MEETING MINUTES

### 1. CALL TO ORDER – 7:00 P.M.

Mayor Russell called the meeting to order at 7:00 p.m.

Council Members Present: Bob Russell, Jonathan Bilden, Wayne Brown, Bill Fierke, Ruth Jenks, Aaron Prunty, and Kathy Sell.

Staff Members Present: Henry Lawrence, City Administrator; Joe Kellerman, City Attorney; Robert Miller, Public Works Director; Melissa Owens, Finance Officer; Vern Thompson, Police Chief; Mike Upston, Planning Director; and Cindy Hughes, City Recorder.

Guests: Suzi Collins, Planning Commissioner; and members of the public and press.

### 2. FLAG SALUTE AND INVOCATION

Mayor Russell led the Pledge of Allegiance and Jonathan Bilden provided the invocation.

### 3. AUDIENCE QUESTIONS OR COMMENTS CONCERNING ITEMS NOT ON THE AGENDA

There were no questions or comments regarding items not on the agenda.

### 4. PRESENTATIONS

There were no presentations.

### 5. PUBLIC HEARINGS

There were no public hearings.

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### 6. CONSENT CALENDAR

6.1 Presentation of Regular Meeting Minutes of April 22, 2014.

6.2 Presentation of Special City Council Study Session Minutes of April 22, 2014.

Mayor Russell announced the Consent Calendar and asked for a motion. Councilor Bilden moved to approve the Consent Calendar as presented and Council President Fierke seconded the motion. There was no discussion. Roll call: Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Jonathan Bilden, aye; Wayne Brown, aye; and Bob Russell, aye. The motion passed unanimously.

### 7. CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

There were no items considered for removal from the Consent Calendar.

### 8. PRESENTATION OF BILLS TO BE PAID

Mayor Russell asked if there were questions about the bills to be paid. There were no questions or discussion. Councilor Bilden moved to approve the Bills to be Paid including the additional bills list (Submission No. 1) in the amount of \$765.50. Councilor Jenks seconded the motion. There was no further discussion. Roll call: Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Jonathan Bilden, aye; Wayne Brown, aye; Bill Fierke, aye; and Bob Russell, aye. The motion passed unanimously.

### 9. OLD BUSINESS

There was no old business to discuss.

### 10. NEW BUSINESS

10.1 Resolution No. 2014-11. A Resolution proclaiming May 15, 2014 as "National Peace Officers Memorial Day" and May 11-17, 2014 as "National Police Week" in the City of Eagle Point.

Vern Thompson, Chief of Police, explained that the idea of "National Peace Officers Memorial Day" and "National Police Week" originated in 1961. Chief Thompson reported there are more than 900,000 sworn law enforcement officers now serving in the United States, the highest figure ever, with approximately 12 percent female. Chief Thompson also reported 1.2M violent crimes were committed annually in the United States. In addition to Eagle Point honoring its law enforcement officers, recognition would be made throughout Jackson County and the nation.

Mayor Russell asked for a motion to approve Resolution No. 2014-11. Councilor Prunty made a motion to approve Resolution No. 2014-11 and Councilor Sell seconded the motion. There was no further discussion. Roll call: Aaron Prunty, aye; Kathy Sell, aye; Jonathan Bilden, aye; Wayne Brown, aye; Bill Fierke, aye; Ruth Jenks, aye; and Bob Russell, aye. The motion passed unanimously.

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- 10.2 Resolution No. 2014-12. A Resolution authorizing a donation to the Eagle Point and the Upper Rogue Chamber of Commerce, Community Flower Basket Program.

Melissa Owens, Finance Officer, explained that several years ago the City started the flower basket program as a way of beautifying the City. Later, the Chamber took the lead on the project. Discussion followed in order for the Council to determine a donation amount for the program. Mayor Russell reported that fund raising by the Chamber generated approximately \$7,000, in addition to the Chamber's donation. Mayor Russell was in favor of a \$5,000 donation and noted that the City of Central Point pays for the entire cost of its flower basket program. It was also clarified that a donation of \$5,000 would help to fill in a section of Linn Road with flower baskets.

Mayor Russell asked for a motion to approve Resolution No. 2014-12. Councilor Jenks made a motion to approve Resolution No. 2014-12, authorizing a donation in the amount of \$5,000, and Councilor Sell seconded the motion. There was no further discussion. Roll call: Kathy Sell, aye; Jonathan Bilden, aye; Wayne Brown, aye; Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; and Bob Russell, aye. The motion passed unanimously.

- 10.3 Resolution No. 2014-13. A Resolution authorizing a City of Eagle Point Personal/Professional Services Contract with Purcell Paintings and Coatings for the Covered Bridge (202) Painting.

Robert Miller, Public Works Director, reported this project had been on the list for some time. However, the first bid advertisement resulted in no bids, which was thought to be due it being a specialty type project with environmental regulations concerning the Little Butte Creek. Staff re-advertised and made additional efforts to receive bids, of which one sealed bid was submitted by Purcell Paintings and Coatings from Washington. Discussion ensued about the cost of painting being more than the \$10,000 that was budgeted. However, Mr. Miller explained that amount was a best guess at the time, and currently felt the bid was not out of range and recommended approval.

Mr. Miller also discussed the prior painting of the bridge which was done before it was erected. In addition, discussion followed about the project's liability, and details about the work in the bid and painting materials to be used. Purcell's experience with a number of bridge paintings in excess of \$1M was noted. Funding was available from other projects or improvements.

Mayor Russell asked for a motion to approve Resolution No. 2014-13. Council President Fierke made a motion to approve Resolution No. 2014-13 and Councilor Prunty seconded the motion. There was no further discussion. Roll call: Jonathan Bilden, aye; Wayne Brown, aye; Bill Fierke, aye; Aaron Prunty, aye; Kathy Sell, aye; Bob Russell, aye; and Ruth Jenks, nay. The motion passed with six ayes and one nay.

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- 10.4 Resolution No. 2014-14. A Resolution authorizing a City of Eagle Point Personal/Professional Services Contract with HGC, Inc., for the Judge Stewart House Parking and Alley Project.

Robert Miller, Public Works Director, reported the Judge Stewart House Park and Alley was in need of maintenance and repair; and that there is not an existing storm system to convey water from the pavement. This project had been recognized and discussed for a couple of years. An adjoining property owner had also planned to participate in the parking lot paving. However, about two weeks before the City was moving forward with the project, the property owner informed Mr. Miller they were not able to participate this year.

Mr. Miller reported that at that time, staff restructured and sent the bid out to see what was out there. He further explained that a lot of people, plan centers and several contractors called on the project. Therefore, he reported being somewhat shocked to receive only one bid. HGC, Inc., submitted a bid in the amount of \$75,594.85 (Submission No. 2), and the budgeted amount was \$62,000. Alternatives for when bids come in high included accepting the high bid, reducing the project by Value Engineering, rejecting the bid and advertising at a later date, or rejecting the bid and repairing only the deteriorated sections. Grading Plans by Civil West dated October 2013 were reviewed as well (Submission No. 3).

Staff recommended reducing the project limits and awarding the project, not to exceed \$58,000. Discussion ensued about the project. Basically, only the worst areas would be patched. Later this summer, staff would propose seal coating the entire parking area and working with the neighboring property owner to seal coat their portion of the parking lot, extending the pavement life by approximately five plus years and giving a finished appearance. Mr. Miller reported ongoing discussions with the adjoining property owner about the project and he felt they would be good for it.

Mayor Russell asked for a motion to approve Resolution No. 2014-14. Council President Fierke made a motion to approve Resolution No. 2014-14 for Option 1 as recommended by Staff for a maximum amount of \$58,000; and Councilor Bilden seconded the motion. There was no further discussion. Roll call: Wayne Brown, aye; Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Jonathan Bilden, aye; and Bob Russell, aye. The motion passed unanimously.

- 10.5 Resolution No. 2014-15. A Resolution authorizing a City of Eagle Point Personal/Professional Services Contract for the Main Street and Bob Moore Park Lighting Project.

Robert Miller, Public Works Director, provided an overview of the project which consists of five lights in Bob Moore Park and seven along Main Street, and replacing electrical conduit. Each tree well will have electrical outlets and the lights will have outlets as well. Mr. Miller provided additional details about the bidding process and

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receiving calls from various companies about the project. Two bids were received by the deadline, one by Signal Construction at \$102,000 and the other by Kunert Electric LLC at \$60,095. Mr. Miller reported the entire project would cost around \$100,000 and proposed awarding the contract to Kunert Electric in the amount of \$60,095.

Discussion ensued about the City's knowledge of Kunert Electric's workmanship, the project being identified for five years and the need to move forward. There was also discussion about the expense and adding six more lights to the next budget which would be placed from Centennial Plaza to the old fire station property. Essentially, each light installed costs about \$10,000. Future lighting, budgeting, and plans to complete were discussed as well.

Mayor Russell asked for a motion to approve Resolution No. 2014-15. Councilor Sell made a motion to approve Resolution No. 2014-15 and Councilor Bilden seconded the motion. There was no further discussion. Roll call: Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Jonathan Bilden, aye; Wayne Brown, aye; and Bob Russell, aye. The motion passed unanimously.

- 10.6 Follow-up discussion concerning "old fire station" property, May 3rd community meeting, and next steps.

Henry Lawrence, City Administrator, reported a good turnout for the May 3<sup>rd</sup> community meeting with over 50 people in attendance. Although most of the Council attended that meeting, Mike Upston, Planning Director, discussed the benefits of holding that type of meeting. In summary, the development of the property will be market driven; however, it is the City's goal to be prepared for that. Additional discussion followed about setting goals for developing a proposal, governmental regulations and statutory restraints, and staff drafting a Request for Proposal that would be presented in a future study session.

## 11. REPORTS FROM CITY COUNCIL AND CITY COMMITTEE REPRESENTATIVES

Council President Fierke reported the School District had held a Safety Meeting and will be presenting their final report at the next School Board meeting. Next, he reported a number of school district individuals and the School Resource Officer (SRO) attended a training course on safety. Because of the SRO's attendance, now all of those attendees can be trainers. Their Budget Committee had also met and passed the budget, and a joint meeting between the School Board and the City Council was scheduled for the following night. Additional items discussed included forthcoming information about visitors from Showa, revisiting the Resolution regarding Regional Problem Solving, water rights issues, Cave Junction - medical marijuana, Supreme Court decision regarding prayer, and sports wagers.

Councilor Bilden discussed the Economic Development Commission's progress on their work plan, and providing an update at a joint meeting in the fall. Recruitment to fill the Commission's vacancies is ongoing. Next, Councilor Bilden discussed the relationship and

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roles of Southern Oregon Regional Economic Development Inc. (SOREDI), Workforce Investment Board, and the Governor's Regional Solutions. In addition, he reported attending a SOREDI meeting earlier in the day and noted SOREDI was changing their annual meeting to an afternoon event instead of a dinner event in Medford. He also attended the Workforce Investment Board meeting and they are taking up the Governor's initiative to focus on school to career, as not every student goes to college. Regarding Regional Solutions, legislature passed a bill which resulted in its reorganization which is in progress. Councilor Bilden concluded by briefly discussing the League of Oregon Cities (LOC) regarding Cave Junction, and noted that Policy Committees are winding down.

Councilor Jenks expressed appreciation for Robert Miller, Public Works Director, for attending the Rogue Valley Area Commission on Transportation (RVACT) on her behalf. Councilor Jenks also reported winning an award for her pie at the Vintage Faire.

Councilor Prunty reported returning from vacation and was not able to attend the recent Parks and Recreation meeting.

Councilor Brown reported attending a Rogue Valley Sewer Services (RVSS) meeting last week. An excellent presentation of its budget was presented and passed. A brief discussion followed about a solution for the City of Gold Hill's services.

Councilor Sell did not provide a report.

Mayor Russell reported on the Vintage Faire which was good all things considered, and expressed appreciation to the City and the team effort for that event. Other items noted were the City's flowers around town, a reminder about the Saturday Market (next on June 7<sup>th</sup>) which supports the Wood House, and a report on the Candidate Forum. Meetings included the Chamber meeting at the Harnish Visitor Center, the Medford Water Commission, and a joint meeting with the School District. Mayor Russell also reported on the "If I were Mayor ..." contest and invited the Council to review the entries. Mayor Russell's report was concluded with an inspiring story about his Granddaughter's lost purse which was returned to City Hall.

### 12. STAFF REPORTS

Mike Upston, Planning Director, discussed the Eagle Point Community Bible Church's expansion and reconfiguration of classroom space, and the possibility of longer range planning of a new sanctuary. The Planning Commission's recent approval of a single family home resulted in the issuance of a building permit. In regard to the Economic Development Commission, Mr. Upston reported the Commission had been looking at existing regulations and general practices to see if there are barriers to development in Eagle Point. The results were very positive with only one exception. In addition, Mr. Upston provided a brief update regarding transit service and planned to present a draft Resolution at the next Council meeting.



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Melissa Owens, Finance Officer, reported a balanced budget and that staff was busy working on the budget document. In addition, the auditors had visited the City during the prior week to conduct preliminary field work. The auditors made one suggestion to add a date when initialing or dating a document, but all of the procedures in place were very good. The auditors will return near the end of September to complete the audit process. Mayor Russell complimented Ms. Owens for an exceptional report by the auditors for the City's internal controls and procedures. Ms. Owens concluded the report by reminding the Council about the upcoming Budget Committee meeting.

Robert Miller, Public Works Director, discussed the recent Parks and Recreation Commission meeting. Discussion during that meeting covered a range of items including: potential water park and features, community day of service, a planning grant, and the new park layout. In regard to the RVACT meeting earlier in the day, there was discussion about Josephine County, the Rail Plan and a number of other items.

Police Chief Thompson announced two new police recruits would begin on June 2<sup>nd</sup>. Mayor Russell requested Chief Thompson to introduce the new recruits at a Council meeting.

Joseph Kellerman, City Attorney, did not provide a report.

Henry Lawrence, City Administrator, announced the Friday Letter had been sent out and was available on the City's website. Mr. Lawrence also reported on a franchise agreement with Hunter Communications that would be presented for approval at the next Council meeting. In addition, the City is currently working with Charter Communication to renew their franchise. The last item reported was a request from RVSS for an easement across the new park property which would also be presented at the next Council meeting.

Cindy Hughes, City Recorder, announced that beginning June 4, the City would begin accepting filings for candidacy for the offices of Mayor and three Council Member positions. Additional details would be available soon on the City's website, bulletin board, and in the Upper Rogue Independent. In addition, a Quick Reference guide on elections from the Secretary of State – Elections Division was provided to the Council (Submission No. 4).

### 13. INFORMATION

At 8:25 p.m., Mayor Russell recessed the meeting for a short break and announced that representatives of the news media and designated staff would be allowed to attend the Executive Session. All other members of the audience would be asked to leave the room and welcomed back afterwards.

### 14. EXECUTIVE SESSION PURSUANT TO ORS 192.660(2)(e), To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

At 8:30 p.m., Mayor Russell opened the Eagle Point City Council Executive Session pursuant to ORS 192.660(2)(e). Following discussion, Mayor Russell closed the Executive Session at 8:38 p.m.

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15. ADJOURN

There being no further business, Mayor Russell closed the meeting at 8:39 p.m.

Respectfully submitted,

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Cindy Hughes, City Recorder

ATTEST:

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Robert E. Russell, Mayor

*Chyler 5-23-14*

BILL LIST  
5/27/2014

<u>CHECK #</u>	<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
	ASANTE PHYSICIAN PARTNERS	PHYSICAL	\$ 108.00
	CENTRAL VALLEY EXCAVATION INC	WATER MAIN REPAIR	\$ 3,563.67
	FERGUSON	WATER SYSTEM MAINT & REPAIR	\$ 278.40
	GENERAL PACIFIC, INC	WATER SYSTEM SUPPLIES ~ METERS	\$ 4,427.76
	HAYS OIL COMPANY	FUEL~DIESEL	\$ 1,951.16
	HUNTER COMMUNICATIONS	UTILITY	\$ 604.95
	INTERNATIONAL CODE COUNCIL, INC	MEMBERSHIP~BUILDING INSPECTOR	\$ 125.00
	JACKSON COUNTY COMMUNITY JUSTICE WORK CENTER	HWY 62 CLEAN UP	\$ 2,000.00
	JB'S PUMP SERVICE	PUMP REPAIR	\$ 265.56
	JOHN CRANE, INC	PUMP REPAIR	\$ 458.58
	LITHIA DODGE CHRYSLER JEEP #4	VEHICLE MAINT & REPAIR	\$ 31.92
	MIKE UPSTON	TRAVEL/TRAINING	\$ 162.68
	MIKE'S COPY	SUPPLIES	\$ 528.00
	MT SHASTA SPRING WATER	SUPPLIES	\$ 75.00
	NORTHWEST BROCHURE DISTRIBUTION LLC	BROCHURE DISTRIBUTION	\$ 399.50
	OFFICE DEPOT	SUPPLIES	\$ 359.63
	ONCAIC	KAZAKOFF TRAINING	\$ 150.00
	OWEN EQUIPMENT	SUPPLIES	\$ 381.54
	PACIFIC OFFICE AUTOMATION	COPIER	\$ 697.95
	PACIFIC POWER 0020	UTILITY	\$ 218.68
	PACIFIC POWER 0038	UTILITY	\$ 106.56
	PACIFIC POWER 0046	UTILITY	\$ 234.91
	PACIFIC POWER 0194	UTILITY	\$ 18.49
	PACIFIC POWER 0210	UTILITY	\$ 111.89
	PACIFIC POWER 0228	UTILITY	\$ 120.77
	PACIFIC POWER 0023	UTILITY	\$ 274.37
	PERSONNEL SOURCE, INC	TEMP SERVICES, HARNISH~MUS~CODE~PW	\$ 2,289.75
	PITNEY BOWES PURCHASE POWER	POSTAGE	\$ 2,000.00
	SPRINT	UTILITY	\$ 195.55
	TEKMANAGEMENT, INC	COMPUTER SUPPORT & PC REPLACEMENT	\$ 2,152.25
	US BANK	CITY CARD PURCHASES	\$ 4,178.92
	VERIZON	UTILITY	\$ 240.08
	WCP SOLUTIONS	JANITORIAL SUPPLIES	\$ 196.30
	YOUR FRIENDLY PHONE GUY	EQUIPMENT MAINT/REPAIR	\$ 245.50
		<b>TOTAL</b>	<b>\$ 29,153.32</b>

**BUSINESS OF THE CITY COUNCIL  
EAGLE POINT, OREGON**

**AGENDA STATEMENT**

**Item Number:** 10.1  
**Meeting Date:** May 27, 2014

**ITEM TITLE:** Resolution No. 2014-16. A Resolution authorizing a City of Eagle Point Telecommunications Franchise Agreement with Hunter Communications, Inc.

**SUBMITTED BY:** Henry Lawrence, City Administrator.

**SUMMARY EXPLANATION:** In 2007, a former Council passed Resolution No. 2007-53 to enter into an agreement with Hunter Communications, Inc., for temporary use of public rights-of-way to supply fiber optic services to City of Eagle Point facilities. The Council anticipated that a franchise agreement would be secured in order for Hunter Communications to provide service to residents and businesses within the City. However, with the onset of the recession and staffing changes at City Hall, follow through in securing a franchise agreement did not occur.

Hunter Communications, Inc., recently signed the proposed City of Eagle Point Telecommunications Franchise Agreement which defines payment and all other terms for the use of the public's right-of-way in Eagle Point. In accordance with the Agreement, Hunter Communications agrees to pay the City an amount equal to seven percent of its gross revenues. As with other utility franchise agreements, franchise fees provide an important revenue stream to the General Fund to help support police, parks and other services.

We will not know how much Hunter Communications generates in gross revenues within Eagle Point city limits until they begin submitting quarterly franchise fee payments to the City.

**FINANCIAL IMPACT:** Annual Revenue is unknown at this time.

**APPROVED FOR SUBMITTAL:**  5/22/14  
**Henry Lawrence, City Administrator**

**STAFF RECOMMENDATION:** Staff recommends approval.

**RESOLUTION NO. 2014-16**

**A RESOLUTION AUTHORIZING A CITY OF EAGLE POINT TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH HUNTER COMMUNICATIONS, INC.**

**WHEREAS**, the City of Eagle Point and the community does business with Hunter Communications, Inc., a provider of telecommunications services; and

**WHEREAS**, Hunter Communications utilizes the public rights-of-way to serve Eagle Point businesses, citizens and other users with telecommunications services; and

**WHEREAS**, the City of Eagle Point offers a non-exclusive franchise agreement with Hunter Communications to utilize City of Eagle Point public rights-of-way.

Now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAGLE POINT, OREGON, THAT:**

The City of Eagle Point authorizes a City of Eagle Point Telecommunications Franchise Agreement with Hunter Communications, Inc., for a new five-year nonexclusive franchise agreement which sets a franchise fee of 7% applied against the gross revenues collected by Hunter Communications within the corporate city limits of Eagle Point, Oregon, and establishes all other terms for the use of the public's right-of-way in Eagle Point.

Passed in open session on the 27th day of May, 2014.

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Robert E. Russell, Mayor

ATTEST:

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Cindy Hughes, City Recorder

City of Eagle Point  
Telecommunications Franchise Agreement  
Hunter Communications, Inc.

This franchise agreement is entered into by and , between the City of Eagle Point (City) and Hunter Communications, Inc. (Grantee) and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

1. **Grant of franchise.** Subject to the provisions and restrictions of this agreement and the Charter and the Municipal Code of Eagle Point, City grants to Grantee the non-exclusive privilege to use the public rights-of-way to construct and maintain telecommunication facilities within the corporate limits of the City.
  - 1.1. For purposes of this agreement,, Telecommunication Services means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used and Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." This definition shall not diminish the franchise fee on Gross revenues as that term is hereinafter defined.
  - 1.2. Upon the annexation of any territory to the City, the rights of Grantee in this agreement shall extend to the annexed territory to the extent the City has such authority. All facilities owned, maintained, or operated by Grantee located within any public rights of ways of the annexed territory shall be subject to all of the terms of this agreement.
2. **Term.** The term of this franchise shall be five years from the date listed above, at which time this franchise shall to continue on a month to month basis which will then be terminable on 30 days written notice to the other party for any or no reason at all. This franchise may be terminated by the City at any time upon 30 days prior written notice to Grantee specifying Grantee's failure to comply with any provision of this agreement or the Municipal Code of Eagle Point, unless such default is remedied within the 30 day period. Said notice and termination shall not prejudice or limit any other remedy of City. Upon termination or expiration of the franchise, Grantee shall remove all of its facilities from the City's rights of way..
3. **Fee.**
  - 3.1 Grantee shall pay as a franchise fee to the City, through the duration of this franchise, an amount equal to seven percent of Grantee's gross revenues. Payment of the franchise fee shall be made quarterly on or before April 30, July 31, October 31 and January 31 for the calendar quarter immediately preceding each of these dates. Grantee shall pay a pro rata fee for the last annual payment to the date of termination in

addition to any other sums due the City and shall make such payment within 30 days of termination.

3.1.1. Gross revenues means revenue of Grantee or any affiliate of Grantee in whatever form accrued from all sources in connection with operation of the communication facilities throughout the entire franchise area, and includes any amount even if separately identified or accounted for by Grantee as franchise or other license fees, including but not limited to, revenues from subscribers and customers for internet access; installation fees, fiber optic lease revenues (see section 10.5 herein), equipment fees, and other fees related to the communications service; advertising revenue; access and attachment charges paid to Grantee by other communications services or carriers; and revenue from the sale or lease of any wire, cable, facility, pole, duct, conduit or similar transmission equipment. As used in this section, "internet access" means access to content, information, electronic mail or other services offered over the internet, including voice over internet protocol (VOIP)." The fees and costs provided for in this franchise are subject to applicable federal and state laws.

3.1.2. Should Grantee determine that any revenue from Telecommunication Services or the use of Grantee's telecommunication facilities within the City is excluded from gross revenues, as defined above, because of federal or state laws, Grantee shall in any case account for such revenue in each of its payments. The accounting shall indicate the amount of revenue that was not included in the calculation of the fee paid to the city and the reason for the exclusion.

3.2. Franchise fee payments not received by the City on or before the due date shall be assessed interest at the rate of one percent per month. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

Each payment shall be accompanied by a written report to the City, verified by an officer or other authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's gross revenues and the computation basis and method. Such reports shall be in a form satisfactory to the City.

3.3. No acceptance of any payment by Grantee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within six years of the date any

audited and recomputed payment is due. If no such audit or financial review is conducted within the six year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. Grantee agrees to reimburse the City for:

- 3.3.1. The reasonable costs of such confirmation if the City's recomputation discloses that Grantee has paid 98% or less of the franchise fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit; or
- 3.3.2. The City's costs which may be reimbursed under this section shall not exceed \$7,500.00 per audit or financial review.
- 3.3.3. If the City determines that Grantee made any underpayment, and that the underpayment exceeded five percent of the amount due, Grantee shall pay interest compounded at the rate of one percent over the existing prime rate as set by the bank with which the City contracts for its banking services, compounded monthly. Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received.
- 3.3.4. If the City determines that Grantee has made any overpayment, it shall immediately refund such overpayment to Grantee.
- 3.4. If Grantee disputes the City's determination of underpayment, Grantee shall place the disputed amount in an escrow account until final resolution.
- 3.5. All Grantee's books, maps, and records directly concerning its gross revenues under this franchise and its calculation of franchise fee payments to the City shall be open for inspection in Jackson County Oregon by the proper officers or agents of the City, upon no less than 48 hours prior written notice, during normal business hours to determine the amount of compensation due the City under this franchise, and shall be kept so as to accurately show the same.
- 3.6. Payment of the franchise fee shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, tax or charge.
- 3.7. Grantee shall make its telecommunications services available to the City at its most favorable rate offered at the time of the request charged to a similar user within Oregon for a similar volume of service, subject to any of Grantee's tariffs or price lists on file with the Oregon Public Utilities Commission.



**4. Eagle Point Municipal Code Charter and General Ordinances to Apply.**

4.1 The Charter of the City and general ordinance provisions of the City affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or adopted in the future, are incorporated by reference and made a part of this franchise. Nothing in this franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid, or the manner of construction.

**5. General Financial and Insurance Provisions.**

5.1. Grantee shall secure and maintain the following liability insurance policies insuring both Grantee and City, its elected and appointed officers, officials, agents and employees as coinsured during the term of this agreement:

Bodily Injury/Death:	\$1,000,000
Property Damage:	\$1,000,000
Automobile Liability:	\$1,000,000
Workers' Compensation:	\$1,000,000
Explosion, Collapse, Product Hazard:	\$1,000,000

In lieu of the above, Grantee may provide evidence of self-insurance subject to review and acceptance by City.

**6. Covenant to Indemnify and Hold City Harmless.**

6.1. Grantee shall defend, indemnify and hold the City and its officers, employees, agents, elected officials, and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or resulting from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network.

6.2. Grantee also shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its facilities in the public rights-of-way in a timely manner in accordance with a relocation schedule furnished to Grantee by the City Engineer, unless Grantee's failure arises directly from the City's negligence or willful misconduct.