

**REVOCABLE LICENSE AND RIGHT TO USE
PUBLIC RIGHT-OF-WAY**

RECITALS

The City of McMinnville, an Oregon Municipal Corporation ("City"), for the consideration hereinafter stated, does hereby grant unto Yamhill County, a political subdivision of the State of Oregon ("Grantee"), and unto Grantee's heirs, successors and assigns, a revocable license and right to use that portion of the public right of way, situated in the City of McMinnville, County of Yamhill, State of Oregon, described as follows, to-wit:

[INSERT DESCRIPTION & ADD A MAP AS EXHIBIT A]

This license is revocable, and the right to use the described real property is limited to, conditioned upon and subject to the terms and conditions set out herein.

NOW THEREFORE:

1. Permission is given to Yamhill County, Grantee, a political subdivision of the State of Oregon, its heirs, successors and assigns, upon the terms and subject to the conditions of this License to use the described portion of the public right of way for the described purposes.
2. This license and use permission is understood to be revocable by the City, if at any time, for any reason, the City, in its sole reasonable discretion, determines that revoking the License and use is in the best interest of the City.
3. This license and use permission applies only to the portion of the right of way specifically described in this License (the "license area"). It does not permit any other intrusion or use of the public right of way. Grantee shall keep and maintain the license area free from all conditions that create a risk of injury or damage to the license area and to those lawfully using the license area.
4. This license and use permission applies only to the specific use set out in this License. No other uses are authorized or implied by this license and use permission. Uses may not expand beyond those specifically authorized.
5. This License authorizes the following uses of the public right of way within the described portion of the public right of way:

Installation, use and maintenance of conduit for purposes of running private utilities, including but not limited to fiber optic cable, between 621 Davis Street and 614 Davis Street, McMinnville.

6. The location of utilities, structures, architectural features, furnishings, footings and any other thing constructed, assembled or placed in the portion of the public right of way described in this License shall be as shown on sketches attached to this License and incorporated by this reference as part of this license and use permission. The structures, architectural features, furnishings, footings and any other thing constructed, assembled or placed in the public right of way shall be constructed, assembled,

B.O. 18-299

maintained and used only in accordance with the ordinances of the City.

7. If land use permission, building permits, business permits, parking permits, or other licenses, permits or authority from any governmental body, including the City, is required for the construction, assembly, placement, use or maintenance of anything by Grantee, Grantee must attain that permission, permit, license or authority through whatever process is required and nothing in this License shall be relied upon for anything other than authority to apply for that permission, permit, license or authority.

8. All uses of the public right of way by Grantee shall comply with all local, state and federal laws of any type whatsoever. If this License is for the placement of a private utility line in the right of way and damage occurs to the private utility line, right-of-way, or improvements as a result of the line not being properly located in conjunction with any proposed construction or Franchise utility work in the license area, the Grantee accepts full responsibility for the repair and/or replacement of the line, right-of-way or improvements. Grantee shall obtain a Right of Way Permit from the City prior to any maintenance or repair work on their facility occurring within the Public Right-of-Way. Grantee is responsible for replacing, to City Standards, any damage to the Public Right-of-Way due to repairs or maintenance of the facility at no cost to the City and comply with the provisions of the Right of Way Permit.

9. Grantee shall comply with ORS 757.557 which requires every operator of underground facilities to subscribe to the Oregon Utility Notification Center, and OAR 952-001 specifying the requirements for marking underground facilities.

10. Grantee shall be solely responsible for any and all environmental conditions, pollution, or concerns discovered as a result of Grantee's use of the right of way.

11. Subject to Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall indemnify, protect, defend, and hold City, its officers, agents, volunteers, and employees harmless against any actions, claim for injury or damage and all loss, liability, cost or expense, including court costs and attorney's fees, arising out of or resulting directly or indirectly from the license and Grantee's related use of the public right of way.

12. Upon revocation of this license and use permission, Grantee shall remove, at Grantee's sole expense any structures, architectural features, furnishings, footings or any other thing constructed, assembled or placed in the described portion of the public right of way by Grantee. Grantee shall, at Grantee's expense, return the portion of the public right of way used by Grantee to a condition that the City Engineer deems to meet the requirements of the City. Notwithstanding the above, the City agrees to give Grantee not less than thirty (30) days prior written notice before revocation and the City agrees to work with the Grantee in good faith to relocate Grantee's private utility with minimal disruption and cost to Grantee.

13. The failure of City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of CITY thereafter to enforce each and every provision hereof.

14. Neither by entering into this Agreement, nor by doing any act hereunder, may the Grantee or any

contractor or subcontractor of the Grantee be deemed an agent, employee or partner of City, or otherwise associated with City other than, in the case of the Grantee, as an independent contractor. The Grantee and its contractors and subcontractors shall not represent themselves to be agents, employees or partners of City, or otherwise associated with City other than, in the case of the Grantee, as an independent contractor. The Grantee shall notify all its contractors and subcontractors of the provisions of this paragraph.

15. Any notice under this Agreement shall be in writing and shall be effective when actually delivered or when deposited in the mail, registered or certified, addressed to the parties at the addresses stated in this Agreement or such other addresses as either party may designate by written notice to the other.

City: Community Development Director
City of McMinnville
230 NE Second Street
McMinnville, OR 97128

Grantee: Facilities and Maintenance
Yamhill County
535 NE 5th St.
McMinnville, OR 97128

CITY



Community Development Director

Date

17 Aug 2019

GRANTEE



Date

Date

8/17/18

Accepted by Yamhill County
Board of Commissioners on
8/16/18 by Board Order
18-299

Exhibit A

Description and Map

Google Maps

 Boring Route



Exhibit "A"