



GENERAL SERVICES COMMITTEE
with
Council Members Edinger, Evans & Miller
May 8, 2017, 12:00 p.m.
AGENDA

VISION STATEMENT

Our vision of Coeur d'Alene is of a beautiful, safe city that promotes a high quality of life and sound economy through excellence in government.

1. Request for Destruction of Records – Renata McLeod
2. Annexation Agreement with River's Edge Apartments, LLC – Mike Gridley
3. Franchise Agreement with Newmax, LLC – Mike Gridley
4. Approved Public Tree List Revision – Katie Kosanke
5. 2017 Trails and Bikeways Master Plan – Monte McCully
6. Art in Motion Sidewalk Stencils – Monte McCully
7. Request to Extend Two Hour Time Limit Parking to Sherman Avenue Between 7th & 8th Streets – Sam Taylor
8. Renewal of 816 Sherman Lease – Mike Gridley

Library Community Room
702 Front Street

The City will make reasonable accommodations for anyone attending this meeting who require special assistance for hearing, physical or other impairments. Please contact Juanita Knight, the committee liaison at (208) 769-2348 at least three days in advance of the meeting date and time.

GENERAL SERVICES COMMITTEE

DATE: May 8, 2017
TO: City Council
FROM: RENATA MCLEOD, Municipal Services Director
RE: Request for Destruction of Records

DECISION POINT:

Would the City Council approve the destruction of certain public records?

HISTORY:

The Administration Department is requesting the destruction of temporary records, which consist of old Parking tickets, project files/artist proposals for previous public art projects, former Administrator files, etc. Pursuant to the Records Retention Manual adopted by the City Council in 2006, the attached list is being presented to the Council for authorization for destruction of such records without scanning. It has been determined that the files are more than two years old and have no historical value.

PERFORMANCE ANALYSIS: Because of the lack of storage space, records are routinely reviewed to determine if the necessity of maintaining the record is warranted. Because the attached list of records has exceeded the time required to maintain them and their useful life has been exhausted, it is necessary to purge these files in order to maintain storage space for future records.

DECISION POINT: To authorize staff to proceed with the destruction of records as listed pursuant to I.C. 50-908.

File Name	Type of Record	Retention Schedule	Most Recent Doc Date
Parking Tickets 2007/2008	Admin Files	Temporary 24 Mo.	2008
McEuen Citizen Questionnaires (2002)	Admin Files	Temporary 24 Mo.	2002
City Administrator Files (1 storage box)	Admin Files	Temporary 24 Mo.	2014
City Administrator Files (1 storage box)	Admin Files	Temporary 24 Mo.	2000
East Sherman Public Art Artist Proposals	Arts Commission	Temporary 24 Mo.	5/2009
Granite Benches (laminated sketches), ROCCI construction pictures)	Arts Commission	Temporary 24 Mo.	> 24 months
WWTP Public Art Artist Proposals	Arts Commission	Temporary 24 Mo.	> 24 months
Public Art Proposals (2009)	Arts Commission	Temporary 24 Mo.	2009
Midtown Bike Rack Artist Proposals (2009)	Arts Commission	Temporary 24 Mo.	2009
Ed Corridor Public Art Artist Proposals	Arts Commission	Temporary 24 Mo.	> 24 months
Utility Box Beautification Project Artist Proposals (2012)	Arts Commission	Temporary 24 Mo.	2012
4 th & Kathleen Roundabout Project Artist Proposals	Arts Commission	Temporary 24 Mo.	> 24 months
Art Currents Files/Artist Submissions 2011-2013	Arts Commission	Temporary 24 Mo.	2013
Utility Boxes Project Artist Submissions 2013-2014	Arts Commission	Temporary 24 Mo.	2014
Parking Tickets 2009	Parking Commission	Temporary 24 Mo.	2009
Parking Ticket Appeals (2010-2011)	Parking Commission	Temporary 24 Mo.	2011

CITY COUNCIL STAFF REPORT

DATE: May 3, 2017
FROM: Mike Gridley – City Attorney
SUBJECT: Annexation Agreement with River’s Edge Apartments, LLC (Stimson office property)

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DECISION POINT:

Should the City Council approve the Annexation Agreement with River’s Edge Apartments, LLC for the property that was formerly the Stimson office property?

HISTORY:

The property is a 3.85 acre parcel located at 2772 W. Seltice Way and is located on the south side of Seltice and was previously the site of the Stimson Lumber Company office building. The City Council approved the annexation of this property on May 20, 2014 with the R-34 zoning but the annexation process was never finalized. The original Special Use Permit expired but on January 25, 2017 the Planning Commission approved the Owner’s renewed request for a Special Use Permit for R-34 zoning on the property. The Owner is proposing to build a total of 130 residential apartment units on the property.

FINANCIAL ANALYSIS:

The Owner will pay annexation fees of \$97,920. In addition, the Owner will reimburse the City for water, sewer and driveway improvements that are installed as part of the Seltice Way revitalization project. Further, by annexing the property the City will receive property taxes from the Owner.

PERFORMANCE ANALYSIS:

The City Council has determined that the property is appropriate for annexation. This Agreement will finalize the annexation process.

DECISION POINT/RECOMMENDATION:

City council should approve the Annexation Agreement with River’s Edge Apartment’s LLC.

ANNEXATION AGREEMENT
(RIVER'S EDGE/STIMSON OFFICE)
A-3-14/SP-1-14

THIS AGREEMENT, made and dated this ____ day of _____, 2017 , by and between the City of Coeur d'Alene, a municipal corporation organized pursuant to the laws of the state of Idaho, hereinafter termed the "City", and *River's Edge Apartments, LLC*, with its address at *1402 Magnesium Rd., Ste. 202, Spokane, WA 99217*, hereinafter referred to as the "Owner,"

W I T N E S S E T H:

WHEREAS, the Owner owns a parcel of land adjacent to the City limits of the City, which the Owner wishes to develop, and the Owner has applied for annexation to the City, and said property to be annexed is more particularly described in Exhibit "A" attached hereto (hereinafter referred to as "the Property") and incorporated by reference into the substantive portion of this agreement; and

WHEREAS, the City has approved Owner's request for a R-34 Density Increase special use permit in the C-17 zoning district (SP-1-17) subject to the adoption of this Agreement and the ordinance for annexation of the Property. A copy of the approved Findings and Order for (A-3-14) are attached hereto as Exhibit "B" and a copy of the approved Findings and Order for (SP-1-14) are attached hereto as Exhibit "C"; and

WHEREAS, by adopting its ordinance ("Annexation Ordinance") for annexation of the Property, the City has determined that it is in the best interest of the City and its citizens to annex the Property, subject to the Owner performing the conditions hereinafter set forth; that the annexation meets all legal requirements; and, further, that the annexation results in a consistent extension of City boundaries and does not conflict with City's Comprehensive Plan;

NOW, THEREFORE, IN CONSIDERATION of the covenants and conditions set forth herein, the parties agree as follows:

ARTICLE I - LEGAL DESCRIPTION

1.1. Legal description: The Property to be annexed is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE II - UTILITIES

2.1. Water and sewer: The City has determined it has the capacity to serve and that it will serve the Property and the proposed development that may occur within the Property. Water service, in the form of domestic, irrigation and fire flow, will be available with joint City and Owner improvements as specified below.

The Owner agrees to use the City's potable water and sanitary sewer services for the

Property after development. Owner agrees to comply with the City's Water and Wastewater plans, construction standards and policies in designing and constructing water and sewer systems to service any development of the Property.

Sanitary sewer exists within City right-of-way and it is the Owner's responsibility to connect to the existing sanitary sewer system. The connection to the public sanitary sewer system must be made at the Owner's expense via the existing Sanitary Sewer Manhole HUT-7.

The Owner agrees to use the City's public water system. The Property is currently fronted by an existing 8" AC water main on the south side of Seltice Way. The water main is supplied by a 6" AC water main at the eastern crossing of Seltice Way and a 2" water main on the western crossing. As this will not provide adequate fire service for a larger complex, the City agrees to, as part of a planned roadway improvement project, to replace the 6" AC crossing with a 12" C905 PVC crossing and the 2" galvanized crossing with an 8" C900 PVC crossing at the City's expense. The owner is encouraged to conduct service and fire flow calculations for any planned development to ensure that if any additional capacity beyond what is being supplied is anticipated, the Owner can make improvements at the Owner's expense to ensure adequate service. Connections to the water mains from the Owner's property will be at the Owner's expense.

The Property is currently served by an existing 6" commercial meter service and a 1 1/2" irrigation service. The Owner is encouraged to properly abandon the existing services and if done so, may use the capitalization credits from the abandoned services against future services for the Property. There is one public fire hydrant on the side south of Seltice at this location. All water main extensions beyond the right-of-way shall be constructed during the planned Seltice Way Revitalization Project at the owner's expense. All related public utility easements beyond the public right-of-way will be the Owner's responsibility.

2.2. Water rights: Prior to the recordation of any plat on the Property or any other transfer of an ownership interest in the Property, the Owner will grant to the City, by quit claim deed in a format acceptable to the City, all water rights appurtenant to the Property. The parties expressly agree that the Owner is conveying the water rights it has, if any, to the City so that the City will have adequate water rights to ensure that the City can provide domestic water service to the Property. The City acknowledges and agrees Owner has not represented and has expressly disclaimed any representation that there are any water rights appurtenant to the Property.

2.3. Garbage collection: The Owner agrees that upon the expiration of the existing term of any contract to provide garbage collection services to the Property, that the Owner will begin using the garbage collection service in effect within the City of Coeur d'Alene, which garbage collection service shall be identified by the City.

ARTICLE III - PUBLIC IMPROVEMENTS

3.1. Installation of public improvements: The Owner agrees prior to issuance of any building permits for buildings on the Property, the Owner shall submit plans ("Plans") for approval of all improvements required by this agreement or by City code ("Improvements")

including but not limited to sanitary sewer improvements, storm water disposal, water lines, hydrants, monumentation, grading, subbase, paving, curbs, dry utility conduit, street lights, pedestrian/bicycle paths and sidewalks. Following issuance of a building permit for the Improvements, the Owner shall construct and install the Improvements in accordance with the Plans. Within a reasonable time after completion of the Improvements the City shall accept the dedication of same by the Owner. The City shall have no obligation, if any exists, for maintenance of Improvements until such time as the City formally accepts the Improvements.

3.1.1 Installation of Frontage Improvements on Seltice: The City is reconstructing Seltice Way in front of the Property in 2017. As part of this project the City agrees to the two driveway approaches for ingress and egress to and from the Property described and depicted in the site plan included with Owner's application for the special use permit referenced above and improvements of water and sewer lines to serve the Property. The precise location of the two driveway approaches is described in the separate agreement between the City and Owner. The cost for which Owner is responsible to reimburse the City for the two driveway approaches is estimated to be approximately \$5,000. Owner agrees to reimburse the City for the actual cost of the installation of water line, sewer line and two driveway approaches pursuant to a separate agreement between the City and the Owner for this work. Payment for reimbursable work is due within 30 days of the project engineer certifying the completion of the work. The City reserves the right to withhold certificate of occupancy until full payment is received.

3.2. Compliance with conditions of approval: The conditions of approval for the subdivision of the Property in effect on the Effective Date are expressly incorporated into this Agreement as binding provisions of this Agreement. As such, the Owner specifically agrees to fulfill each condition of approval as if each condition was specifically enumerated in this Agreement.

ARTICLE IV - FEES

4.1. Consideration: Owner agrees to provide specific consideration for annexation, in the amount of Ninety-Seven Thousand Nine Hundred Twenty Dollars (\$97,920.00) to the City at the time of execution of this Agreement. This amount is based on the policy adopted by the City Council by Resolution 98-112 and represents a fee of Seven Hundred Fifty Dollars (\$750.00) per residential unit in the approved Subdivision. The sum provided for by this Agreement is deemed by the parties to be a reasonable fee for City benefits and services to the Owner's project, including but not limited to public safety and other services. The Owner will remain responsible for all other costs and fees required by City code. If the owner seeks a rezone to increase the number of residential units on this property within five years of the date of this agreement then the Owner, or its successor, will pay additional annexation fees based on the increased number of residential units. Annexation fees and fees for preparation of the annexation agreement are due prior to the publication of the annexation ordinance.

4.2. No extension of credit: The parties, after careful consideration of the actual burdens on the City, have agreed to a specific dateline in which those burdens will occur. This section anticipates specific payment at a specific date and is in no manner a loan of services or an

extension of credit by the City. Payment of the annexation fees will be due on or before the execution of this agreement.

4.3. Other fees: Additionally, the Owner shall be responsible for all required fees and charges including but not necessarily limited to water hook-up fee(s), water connection (capitalization) fee(s), sanitary sewer connection (capitalization) fee(s), and building permit fees and any applicable impact fees that may be imposed. Fees referred to in this paragraph, are set forth by Municipal Ordinance and/or resolution and arise independent of this agreement.

4.4. Owner's reimbursement to the City: The Parties further agree that the City has utilized substantial staff time to prepare the annexation agreement that will benefit the Owner. The Parties further agree the City shall be reimbursed a reasonable fee for its costs to prepare such agreement. The Parties further agree that such fee shall be in the amount of One Thousand Dollars (\$1,000) and shall be payable five business days following the Effective Date.

ARTICLE V - MISCELLANEOUS

5.1. Time is of the essence: Time is of the essence in this agreement.

5.2 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile transmission (with written confirmation of receipt), provided that a copy is mailed by certified mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Notices to City shall be addressed as follows:

Ms. Renata McLeod, City Clerk
City Hall
710 E. Mullan Avenue
Coeur D'Alene, Idaho 83314
cityclerk@cdaid.org

Notices given to Owner shall be addressed as follows:

Mr. Lanzce Douglass
River's Edge Apartments, LLC
1402 E. Magnesium Road, Suite 202
Spokane, Washington 99217
lanzce@irentspokane.com

with a copy to:

Mr. Edward A. Lawson

Lawson Laski Clark & Pogue, PLLC
675 Sun Valley Road, Suite A
Post Office Box 3310
Ketchum, Idaho 83340
eal@lawsonlaski.com

A party may change the address to which further notices are to be sent by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

5.3. Merger: The representations, warranties, covenants, conditions and agreements of the parties contained in the agreement shall survive the acceptance of any deeds and/or easements.

5.4. Recordation: The Owner further agrees this agreement shall be recorded by the City at the Owner's expense. All promises and negotiations of the parties merge into this agreement. Parties agree that this agreement shall only be amended in writing and signed by both parties. The parties agree that this agreement shall not be amended by a change in any law. The parties agree this agreement is not intended to replace any other requirement of City code. City shall execute and deliver from time to time upon request partial releases, estoppel certificates, and other appropriate documentation to release the lien of this Agreement from portions of the Property being conveyed to third party purchasers and to certify to said purchasers that this Agreement is not in default.

5.5. Section headings: The section headings of this agreement are for clarity in reading and not intended to limit or expand the contents of the respective sections to which they appertain.

5.6. Compliance with applicable laws: The Owner agrees to comply with all applicable laws.

5.7. Covenants run with land: The covenants herein contained to be performed by the Owner shall be binding upon the Owner and Owner's heirs, assigns and successors in interest, and shall be deemed to be covenants running with the land. This document shall be recorded at the Kootenai County Recorder's Office at the sole cost of the Owner.

5.8. Publication of ordinance: The parties agree that until the date of publication of the Annexation Ordinance (Effective Date”), no final annexation of Owner's Property shall occur. Concurrent with the execution and recordation of this agreement, and payment of required annexation fees, the City will, to the extent lawfully permitted, adopt and thereafter publish an ordinance annexing Owner's Property.

5.9. Promise of cooperation: Should circumstances change, operational difficulties arise or misunderstandings develop, the parties agree to meet and confer at the request of either party to discuss the issue and proposed solutions. Further, each party agrees not to bring a claim, initiate other legal action or suspend performance without meeting directly with the other party regarding the subject matter of the disagreement.

5.10. Access: The principal point of access to the development is Seltice Way.

5.11. Miscellaneous:

A. Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

B. Authority. Each of the persons executing this Agreement represents and warrants that he or she has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

C. Recitals. The Recitals are incorporated herein and made a part of this Agreement by this reference.

D. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, which shall be the sole jurisdiction and venue for any action which may be brought by either party with respect to this Agreement or the subject matter hereof.

IN WITNESS WHEREOF, the City of Coeur d'Alene has caused this agreement to be executed by its Mayor and City Clerk and its corporate seal affixed hereto, and have caused the same to be executed the day and year first above written.

CITY OF COEUR D'ALENE

RIVER'S EDGE APARTMENTS, LLC

By: _____
Steve Widmyer, Mayor

By: _____
Name:
Title:

ATTEST:

Renata McLeod, City Clerk

STATE OF IDAHO)
) ss.
County of Kootenai)

On this ____ day of _____, 2017, before me, a Notary Public, personally appeared **Steve Widmyer** and **Renata McLeod**, known to me to be the Mayor and City Clerk, respectively, of the City of Coeur d'Alene that executed the foregoing instrument and acknowledged to me that said City of Coeur d'Alene executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My Commission expires: _____

STATE OF IDAHO)
) ss.
County of Kootenai)

On this ____ day _____ of, 2017, before me, a Notary Public, personally appeared _____, known to me to be the _____ of River's Edge Apartments, LLC and the person who executed the foregoing instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.


Notary Public for Idaho
Residing at _____
My Commission expires _____

ANNEXATION PROPERTY

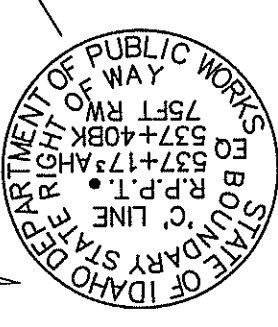
THAT PORTION OF GOVERNMENT LOT 1 AND 2 OF SECTION 10, T.50N., R.4W., B.M.. CITY OF COEUR D'ALENE, KOOTENAI COUNTY, STATE OF IDAHO DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 10; THENCE S81°10'43"W A DISTANCE OF 1091.76 FEET TO THE SOUTH RIGHT OF WAY OF SELTICE WAY AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE N89°23'05"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 666.00 FEET; THENCE S00°36'55"W A DISTANCE OF 92.77 FEET; THENCE S75°07'40"E A DISTANCE OF 110.00 FEET; THENCE S69°55'42"E A DISTANCE OF 120.00 FEET; THENCE S54°38'41"E A DISTANCE OF 543.04 FEET; THENCE N00°36'55"E A DISTANCE OF 469.28 FEET, TO THE POINT OF BEGINNING;

5/3/17



FOUND 3 1/2" BRASS CAP, IN CONCRETE

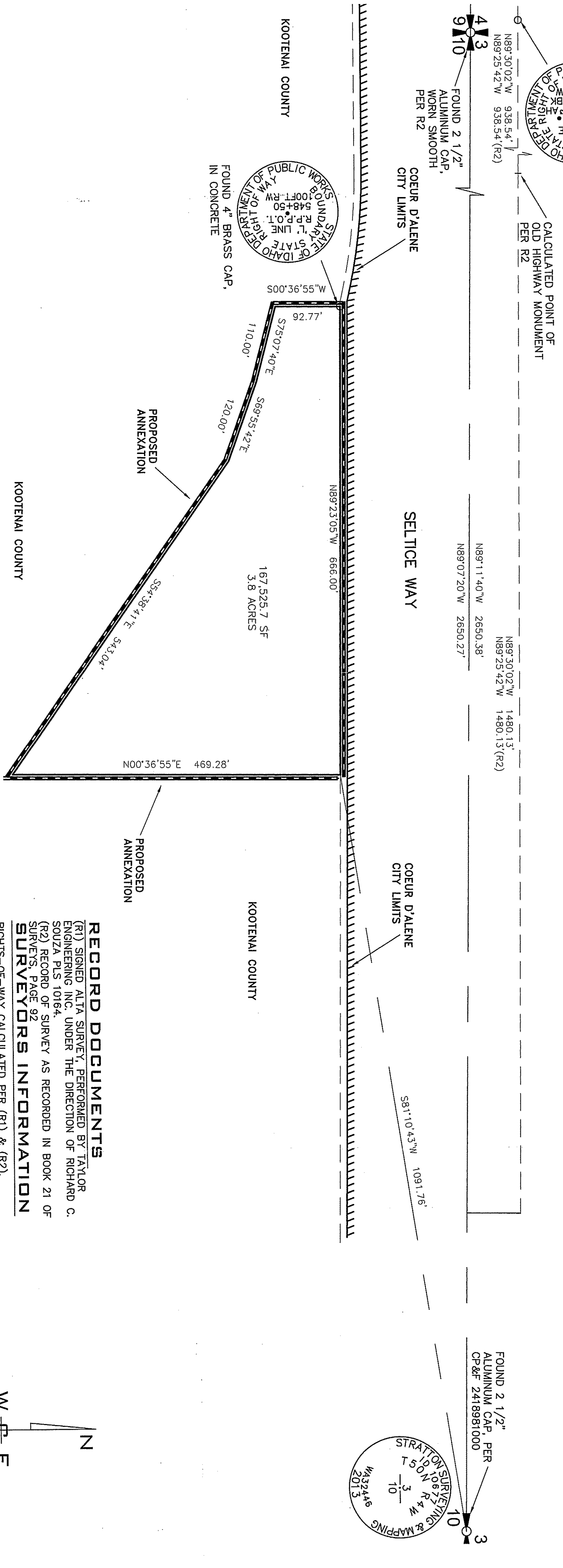


RECORD OF SURVEY & ANNEXATION MAP

SE 1/4 SECTION 10, T50N, R4W, B.M.

CITY OF COEUR D'ALENE ORDINANCE # _____

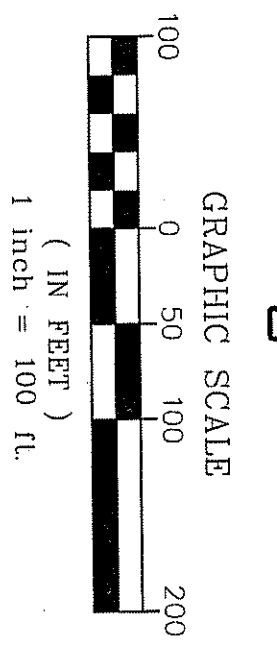
COUNTY RECORDER'S CERTIFICATE
 FILED FOR RECORD THIS _____ DAY OF _____ 20____
 AT _____ M IN BOOK _____ OF SURVEYS AT PAGE _____
 INSTRUMENT NO. _____
 AT THE REQUEST OF WHIPPLE CONSULTING ENGINEERING,
 COUNTY RECORDER: _____
 DEPUTY: _____
 FEE: _____



RECORD DOCUMENTS
 (R1) SIGNED ALTA SURVEY, PERFORMED BY TAYLOR ENGINEERING INC. UNDER THE DIRECTION OF RICHARD C. SOUZA PLS 10164.
 (R2) RECORD OF SURVEY AS RECORDED IN BOOK 21 OF SURVEYS, PAGE 92

SURVEYORS INFORMATION
 RIGHTS-OF-WAY CALCULATED PER (R1) & (R2).

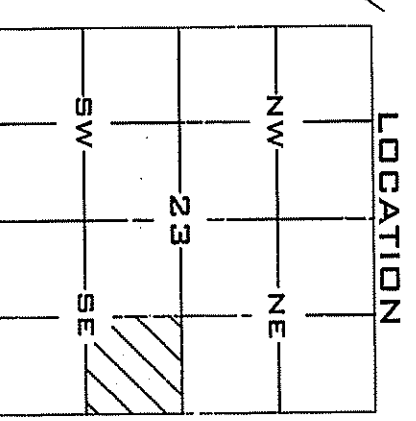
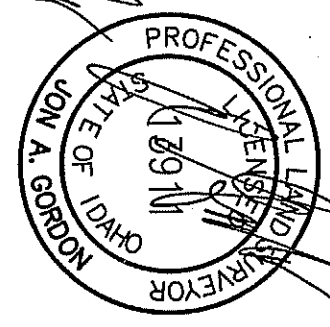
LEGEND:
 ○ - FOUND AS NOTED
 ● - SET 5/8" REBAR WITH ALUMINUM CAP
 STAMPED "WCE PLS 13911" UNLESS NOTED OTHERWISE
 - - - - - EXISTING CITY LIMITS
 - - - - - PROPOSED ANNEXATION BOUNDARY



LEGAL DESCRIPTION
 THAT PORTION OF GOVERNMENT LOT 1 AND 2 OF SECTION 10, T.50N., R.4W., B.M., CITY OF COEUR D'ALENE, KOOTENAI COUNTY, STATE OF IDAHO DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 10; THENCE S81°10'43"W A DISTANCE OF 1091.76 FEET TO THE SOUTH RIGHT OF WAY OF SELTICE WAY AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE N89°23'05"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 666.00 FEET; THENCE S00°36'55"W A DISTANCE OF 92.77 FEET; THENCE S75°07'40"E A DISTANCE OF 110.00 FEET; THENCE S69°55'42"E A DISTANCE OF 120.00 FEET; THENCE S54°38'41"E A DISTANCE OF 543.04 FEET; THENCE N00°36'55"E A DISTANCE OF 469.28 FEET, TO THE POINT OF BEGINNING;

BASIS OF BEARING
 THE BEARING OF S89°11'40"W ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10 BETWEEN FOUND MONUMENTS WAS USED AS THE BASIS OF BEARING FOR THIS SURVEY.

SURVEYOR'S CERTIFICATE:
 I, JON A. GORDON, REGISTERED PROFESSIONAL LAND SURVEYOR #13911, STATE OF IDAHO, DO HEREBY CERTIFY THAT THIS MAP REPRESENTS A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION IN ACCORDANCE WITH THE LAWS OF THE STATE OF IDAHO AT THE REQUEST OF THE OWNER IN OCTOBER 2014.



EQUIPMENT & PROCEDURES
 THIS SURVEY WAS PERFORMED WITH A TOPCON HIPER LEGACY E BASE AND HIPER LITE ROVER RTK, GPS SYSTEM, WITH TDS RANGER AND DATA LOGGER, USING GLOBAL POSITIONING SURVEY SYSTEM METHODOLOGIES IN CONJUNCTION WITH A 5-SECOND TOPCON GPT 3005LW TOTAL STATION-THEODOLITE USING FIELD TRAVERSE PROCEDURES THAT COMPLES WITH IDAHO CODE, TITLE 55, CHAPTER 1911.

SURVEYORS NOTE:
 BOUNDARY WAS BASED ON (R1).

FIELD BK: 1209	<input type="checkbox"/> CIVIL		SHEET 1 OF 1 JOB NUMBER 14-1209
DATE: 02/12/14	<input checked="" type="checkbox"/> STRUCTURAL		
DRAWN: JAG	<input type="checkbox"/> SURVEYING		
REVIEWED: JAG	<input type="checkbox"/> TRAFFIC		
	<input type="checkbox"/> PLANNING		
	<input type="checkbox"/> LANDSCAPE		
	<input type="checkbox"/> OTHER		

**COEUR D'ALENE PLANNING COMMISSION
FINDINGS AND ORDER**

A. INTRODUCTION

This matter having come before the Planning Commission on April 8, 2014, and there being present a person requesting approval of ITEM: SP-1-14, a request for an R-34 (Residential at 34 units/acre) Special Use Permit in the C-17 zoning district.

APPLICANT: RIVERS EDGE APARTMENTS, LLC

LOCATION: 2772 W SELTICE WAY

B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS RELIED UPON

(The Planning Commission may adopt Items B1 to B7.)

- B1. That the existing land uses are commercial to the north and across Seltice Way and Riverstone Development to the east.
- B2. That the Comprehensive Plan Map designation is Stable Established.
- B3. That the zoning is County Industrial.
- B4. That the notice of public hearing was published on March 22, 2014, which fulfills the proper legal requirement.
- B5. That the notice of public hearing was posted on the property on March 21, 2014, which fulfills the proper legal requirement.
- B6. That 5 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on March 21, 2014.
- B7. That public testimony was heard on April 8, 2014.

EXHIBIT B

B8. Pursuant to Section 17.09.220, Special Use Permit Criteria, a special use permit may be approved only if the proposal conforms to all of the following criteria to the satisfaction of the Planning Commission:

B8A. The proposal is in conformance with the comprehensive plan.

B8B. The design and planning of the site is compatible with the location, setting, and existing uses on adjacent properties. This is based on the fact that the density fits in this location and with the proposed C-17 zoning district.

B8C. The location, design, and size of the proposal are such that the development will be adequately served by existing streets, public facilities and services.

C. ORDER: CONCLUSION AND DECISION

The Planning Commission, pursuant to the aforementioned, finds that the request of RIVERS EDGE APARTMENTS, LLC for a special use permit, as described in the application should be approved

Special conditions applied are as follows:

1. Prior to the onset of development, a SWPPP (stormwater pollution prevention plan), and, NOI (notice of intent) will need to be filed with the EPA's Region 10 office. Accommodations will be required to be constructed for roadway drainage adjoining the median vehicle storage lanes and the subject property on the south side of Seltice Way.
2. Approval of the access through the median crossings will be required to be approved by the City Engineer prior to any site development, or, plan submission. West bound vehicular movements will be restricted, and, barrier installations may be required to control traffic turning movements through the adjacent median.
3. Median alteration and construction of storage lanes to accommodate turning traffic will be required prior to the use of the median crossings as point of ingress and egress for the development.
4. Installation of the street improvements (curbing, sidewalk, drainage facilities) along the entire subject property frontage. Engineered design drawings would be required to be approved prior to the installation.
5. The proposed project must adhere to the site plan as depicted on the record for item SP-1-14.

6. Retaining the existing tree cover and/or plant new trees, outside the building envelope, as depicted on the site plan.

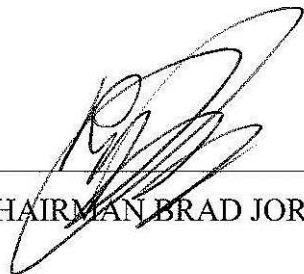
Motion by Ingalls, seconded by Ward, to adopt the foregoing Findings and Order.

ROLL CALL:

Commissioner Bowlby	Voted Yes
Commissioner Ingalls	Voted Yes
Commissioner Luttrupp	Voted No
Commissioner Ward	Voted Yes

Commissioner Messina was absent.

Motion to approve carried by a 3 to 1 vote.



CHAIRMAN BRAD JORDAN

**COEUR D'ALENE CITY COUNCIL
FINDINGS AND ORDER**

A. INTRODUCTION

This matter having come before the City Council on, May 20, 2014, and there being present a person requesting approval of ITEM A-3-14 , a request for zoning in conjunction with annexation from County Industrial (I) to City C-17 (Commercial at 17 units/acre)

APPLICANT: RIVERS EDGE APARTMENTS, LLC

LOCATION: 2772 W SELTICE WAY

**B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS
RELIED UPON**

- B1. That the existing land uses are commercial to the north and across Seltice Way and Riverstone Development to the east.
- B2. That the Comprehensive Plan Map designation is Transition.
- B3. That the zoning is County Industrial.
- B4. That the notice of public hearing was published on May 3, 2014, which fulfills the proper legal requirement.
- B5. That the notice of public hearing was not required to be posted, which fulfills the proper legal requirement.
- B6. That 5 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on May 2, 2014.
- B7. That public testimony was heard on May 20, 2014.
- B8. That this proposal is in conformance with the Comprehensive Plan policies as follows:

Exhibit C

- B9. That public facilities and utilities are available and adequate for the proposed use.
This is based on the availability of sewer and water. The street system is also adequate.
- B10. That the physical characteristics of the site do make it suitable for the request at this time based on
The topography of the subject property.
- B11. That the proposal would not adversely affect the surrounding neighborhood with regard to traffic, neighborhood character, and existing land uses.

C. ORDER: CONCLUSION AND DECISION

The City Council, pursuant to the aforementioned, finds that the request of RIVERS EDGE APARTMENTS, LLC for zoning in conjunction with annexation, as described in the application should be approved.

Suggested provisions for inclusion in an Annexation Agreement are as follows:

- Participation in the signalization of the adjacent Atlas Road/Seltice Way intersection,
- Sewer study will be required to assure there would be sewer capacity for the additional density on the site, and,
- Flow testing may be required to determine that there is adequate water supply for the proposed development, which is the applicant's responsibility.

Motion by Gookin, seconded by McEvers, to adopt the foregoing Findings and Order.

ROLL CALL:

Council Member Gookin	Voted Aye
Council Member Evans	Voted Aye
Council Member McEvers	Voted Aye
Council Member Adams	Voted Aye
Council Member Miller	Voted Aye

Council Member Edinger was absent.

Motion to approve carried by a 5 to 0 vote.



MAYOR STEVE WIDMYER

**GENERAL SERVICES COMMITTEE
STAFF REPORT**

DATE: May 3, 2017

FROM: Mike Gridley – City Attorney

SUBJECT: Franchise Agreement with Newmax, LLC dba Intermax Networks

DECISION POINT:

Should the city approve a 10 year franchise agreement with Newmax, LLC dba Intermax Networks (Intermax) allowing Intermax to use the city's rights of way to construct and operate a telecommunications system in Coeur d'Alene?

HISTORY:

Intermax is a local company based in Coeur d'Alene. Intermax has approached the city to obtain a franchise agreement that would allow Intermax to construct and maintain a fiber optic telecommunications system in the city's rights of way. The requirements of the proposed franchise agreement with Intermax are similar to those in other city franchise agreements with Fatbeam, Time-Warner, Avista and others. The proposed franchise would be for 10 years.

FINANCIAL ANALYSIS:

The financial impact would be similar to other franchise agreements. In exchange for the use of the city's rights of way, Intermax would pay the city five per cent (5%) of its annual gross revenues derived from the operation of the fiber optic telecommunications system to provide telecommunication services in the City. There would be some staff time involved in reviewing the location of their facilities and issuing building permits as the system is constructed. This would probably not be a significant financial impact.

PERFORMANCE ANALYSIS:

The addition of Intermax cable to Coeur d'Alene may increase competition among telecom providers and ISP's which could benefit citizens by lowering the cost of telecommunications services and providing greater access to the Internet. The franchise agreement also provides for a fee that may generate significant revenue to the city over time.

DECISION POINT/RECOMMENDATION:

City Council should approve the 10 year franchise agreement with Newmax, LLC dba Intermax Networks.

COUNCIL BILL NO. _____
ORDINANCE NO. _____

AN ORDINANCE of the City of Coeur d'Alene, Idaho granting a non-exclusive franchise to Newmax, LLC dba Intermax Networks ("INTERMAX") to construct, operate and maintain a Fiber-optic Telecommunications System, with all necessary facilities, within the City of Coeur d'Alene, Idaho (the "City"); setting forth provisions, terms and conditions accompanying the grant of this Franchise; providing for City regulation of construction, operation, maintenance and use of the Telecommunications System; prescribing penalties for the violations of its provisions; and setting an effective date.

BE IT ORDAINED BY THE CITY OF COEUR D'ALENE that a franchise is hereby granted to Newmax, LLC dba Intermax Networks, to operate and maintain a Telecommunications System in the City of Coeur d'Alene, Idaho, upon the following express terms and conditions:

SECTION 1 - DEFINITIONS

1.1 (A) Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

1.1 (B) Definitions. For the purposes of this Franchise the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in this Franchise is not defined in this Section and there exists a definition for the term in the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (the "Telecommunications Act"), the Telecommunications Act definition shall apply. Other terms in this Franchise that are not defined in this Section shall be given their common or ordinary meaning.

1.2 "City" shall mean City of Coeur d'Alene, Idaho, and all the incorporated territory within as of the effective date of this Franchise and any other areas later added thereto by annexation or other means.

1.3 "City Council" shall mean the City Council of the City of Coeur d'Alene, Idaho.

1.4 "Customer" means any person(s) who legally receives any one or more of the services provided by INTERMAX utilizing the Telecommunications System.

1.5 "Days" shall mean calendar days.

1.6 "Facility(ies)" means all wires, lines, cables, towers, antenna, conduits, equipment and supporting structures, and/or any other tangible component of INTERMAX's Telecommunications System, located in the City's rights-of-way, utilized by INTERMAX in the operation of activities authorized by this Franchise. The abandonment by INTERMAX of any Facilities as defined herein shall not act to remove the same from this definition.

1.7 "FCC" shall mean the Federal Communications Commission.

1.7a Fiber-optic communication is a method of transmitting information from one place to another by sending pulses of light through an optical fiber. The light forms an electromagnetic carrier wave that is modulated to carry information. (source of definition Wikipedia)

1.8 "Franchise" shall mean the right granted by the Franchise Ordinance and conditioned as set forth herein by which the City authorizes INTERMAX to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Telecommunications System in the City. The franchise granted herein shall be a non-exclusive franchise.

1.9 "Franchise Service Area" shall mean that area within the incorporated City limits in which INTERMAX shall extend its services.

1.10 "Grantee" shall refer to, as incorporated or used herein, Newmax, LLC dba Intermax Networks.

1.11 "Gross Operating Revenues" shall have a meaning consistent with any existing or future City Code. Gross Operating Revenues shall include compensation in whatever form, from any source, directly earned by INTERMAX or any affiliate of INTERMAX or any other person who would constitute an operator of INTERMAX's Telecommunications System under applicable local, state and/or federal law, derived from the provision of Telecommunications Services on the Fiber-optic system originating or terminating in the City and/or charged to a circuit location in the City regardless of where the circuit is billed or paid.

1.12 "Network Telephone Service" means the provision of transmission services capable of providing voice and data networking, video conferencing, distance learning, and security or similar communication or transmission services for hire via a local network, channel or similar communication or transmission system. Network Telephone Service includes intrastate or interstate services and specifically excludes cable television or open video system service, broadcast services or other multi-channel video services.

1.13 "Permittee" means any person who has been granted a permit by the assigned permitting authority.

1.14 "Permitting Authority" means the head of the City division or department authorized to process and grant permits required to perform work in the City's rights-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to the Permitting Authority shall include the designee of the department, division or agency head.

1.15 "Person" means any individual, sole proprietorship, corporation, partnership, association, joint venture or other form of organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.16 "Penalties" means any and all monetary penalties provided for in this Franchise.

1.17 "Right-of-Way" or "Rights-of-Way" shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing as such within all incorporated areas of the City. No reference in this Franchise to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Telecommunications System, and INTERMAX shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.

1.18 "Street" or "Streets" shall mean the surface of and the space above and below the right-of-way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing as such within all incorporated areas of the City.

1.19 "Telecommunications Services" shall mean:

A. Services interconnecting interexchange carriers, competitive carriers, and/or wholesale telecommunications providers for the services described in Section 1.12;

B. Services connecting interexchange carriers and/or competitive carriers to telephone companies providing local exchange services for the services described in Section 1.12;

C. Services connecting interexchange carriers or competitive carriers to any entity, other than another interexchange carrier, competitive carriers, or telephone company providing local exchange services for the services described in Section 1.12;

D. Services interconnecting any entities, other than interexchange carriers, competitive carriers, or telephone companies providing local exchange services for the services described in Section 1.12;

E. Other telecommunications services as authorized by the Federal Communications Commission or the Idaho Public Utilities Commission; and

F. Telecommunications Services include intrastate and interstate services and specifically exclude cable television or open video system services, broadcast services or other multi-channel video services.

1.20 "Telecommunications System" means all wires, cables, ducts, conduits, vaults, poles, towers, antenna, and other necessary Facilities owned or used by INTERMAX for the purpose of providing Telecommunications Services and located in, under and above the City streets and/or rights-of-way, excluding ducts, conduits and vaults leased from another City franchisee, licensee or permittee.

1.21 "IPUC" shall mean the Idaho Public Utilities Commission.

1.22 "Year", "Annual" or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided for in this Franchise.

SECTION 2 - FRANCHISE

2.1 Grant of Franchise. The City hereby grants to Newmax, LLC dba Intermax Networks, a non-exclusive franchise which authorizes INTERMAX, subject to the terms of the Franchise Ordinance, to construct a Telecommunications System and offer Telecommunications Services in, along, among, upon, across, above, over, under or in any matter connected with the rights-of-way located in the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any rights-of-way or extensions thereof and additions thereto, such poles, towers, antenna, wires, cables, conductors, ducts, conduits, vaults, utility access covers, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Telecommunications System. Said franchise shall constitute both a right and an obligation to provide the services of a Telecommunications System as required by the provisions of this Ordinance.

2.2 Franchise Term. The term of this Franchise shall be ten (10) years from the effective date unless extended in accordance with the provisions in Sections 2.7 and 2.12 of this Franchise or terminated sooner in accordance with this Franchise. This provision does not affect the City's right to revoke this Franchise for cause, because of a breach of any promise, condition or stipulation stated herein.

2.3 Franchise Non-Exclusive. The franchise granted herein shall be non-exclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Telecommunications System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke or terminate any rights previously granted to INTERMAX. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation or termination of rights previously granted to INTERMAX. Any franchise granted pursuant to this Franchise shall confer and impose substantially similar rights and obligations. In establishing the rights and obligations pursuant to a franchise, consideration shall be given to the services to be provided, the area to be served, the commitments made by the applicant to the City, the regulatory authority of the City and the investment proposed by such applicant. In no event will the City impose discriminatory rights or obligations on any franchise applicant.

2.4 Authority Granted.

A. Subject to local, state and federal law, this Franchise grants the authority, right and privilege to INTERMAX to operate and maintain a Telecommunications System including the lines, equipment, conduits, towers, antenna and other facilities necessary for the provision of Network Telephone Service, as defined in Section 1.12 of this Franchise and other Telecommunications Services as defined herein, in, upon, along, above, over and under the streets and rights-of-way in the City.

B. INTERMAX's right to operate and maintain its Telecommunications System is subject to the terms, conditions and requirements of the Franchise Ordinance, this Franchise and the City Charter and INTERMAX's right to construct, erect, install or modify its Telecommunications System is specifically subject to the requirement that INTERMAX obtain permits as set forth in this Franchise.

C. INTERMAX expressly acknowledges and agrees, by acceptance of this Franchise, that its rights under this Franchise are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety, health and welfare of the public and INTERMAX agrees to comply with all such applicable general laws and ordinances enacted by the City pursuant to such police power. The City, by the granting of this Franchise, does not render or to any extent lose, waive, impair or lessen the lawful powers and rights now or hereafter vested in the City to regulate the use of its rights-of-way and tax, regulate or license the use thereof, and INTERMAX, by its acceptance of this Franchise, acknowledges and agrees that all lawful powers and rights, whether regulatory or otherwise, as are or may be from time to time vested in or reserved to the City, shall be in full force and effect and INTERMAX shall be subject to the exercise thereof by the City at any time.

D. INTERMAX expressly acknowledges and agrees, by acceptance of this Franchise, that lines, equipment, conduits and other facilities and appurtenance in the City rights-of-way which are subsequently acquired by INTERMAX and which, if acquired prior to this original franchise grant, would have been subject to this Franchise and the permitting authority related thereto, shall be subject to the provisions of this Franchise and all permits related thereto.

E. In return for promises made and subject to the stipulations and conditions stated herein, the City grants to INTERMAX permission to use the City's rights-of-way to provide Telecommunications Services to persons within the Franchise Service Area. To the extent of the City's interests, permission is similarly granted to INTERMAX to use areas outside the City's rights-of-way, which are reserved by regulation, practice or dedication for public telephone utilities, but in such areas, INTERMAX's use is also subject to conditions now or hereafter recognized by the City as generally applicable to telecommunications or underground conduit utilities.

2.5 Limits on Permission.

A. As used in Section 2.4, E, "Telecommunications Services" means such services as those defined in Section 1.19 of this Franchise provided by INTERMAX to persons within the City. Permission is not granted to use the City rights-of-way for any other purpose, including but not limited to providing cable television service as defined in 47 USC § 522 or distribution of multi-channel video programming or any other video programming. INTERMAX stipulates that this Franchise extends no such rights or privileges for cable television services but shall permit internet data service which may include streaming services.

B. Permission does not extend to areas outside those listed in Section 2.4, E of this Franchise, or otherwise to any area outside the authority of the City to extend franchised-use permission, such as buildings or private areas not reserved for utilities. INTERMAX is solely responsible to make its own arrangements for any access to such places.

C. This Franchise does not extend permission to municipal buildings or other municipally owned or controlled structures. For such locations, INTERMAX shall make specific arrangements directly with the municipal department or division controlling such building or other structure.

D. Permission granted by this Franchise is non-exclusive. INTERMAX stipulates the City may grant similar permission to others.

E. INTERMAX shall not permit installations by others in the Franchise Service Area without assuring they have the necessary skills, certifications, insurance, bonds, and permits. INTERMAX is responsible for determining if the requirements of the City have been met. INTERMAX remains responsible for all third-party installation, maintenance, and repair of the Telecommunications System for compliance with this Franchise.

F. No privilege or exemption is granted or conferred by this Franchise except as may be specifically prescribed.

G. Any privilege claimed under this Franchise in any street or right-of-way shall be subordinate to any prior lawful occupancy or any subsequent exercise of City police power. The grant of this Franchise shall not impart to INTERMAX any fee title property rights in or on any public or private property to which INTERMAX does not otherwise have title.

H. Limited Rights - This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Company with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Rights-of-Way covered by this Franchise, including without limitation the right to perform work on its roadways, streets or appurtenant drainage facilities, water

and waste water facilities and including constructing, altering, paving, widening, grading, or excavating such streets.

2.6 Franchise Service Area. The Franchise Service Area shall be that area within the present or future city limits of the City of Coeur d'Alene, Idaho.

2.7 Periodic Public Review of Franchise.

A. The City shall, at five-year intervals, conduct a comprehensive, public review of this Franchise. The first review shall begin upon the fifth anniversary of the effective date of this Franchise and occur every five (5) years thereafter. One purpose of such reviews shall be to ensure that this Franchise continues to effectively serve the public in light of new developments in telecommunications law and regulation, telecommunications technology, local regulatory environment and community needs and interests. Another purpose of such reviews shall be to accurately and completely evaluate compliance by INTERMAX with this Franchise and to identify any violations by INTERMAX of any provision(s) of this Franchise. Both the City and INTERMAX agree to make a full and good faith effort to participate in such reviews in a manner that accomplishes the goals stated.

B. During such reviews, the City may require INTERMAX to make available records, documents and other information necessary for the effective completion of such reviews and may inquire in particular whether INTERMAX is supplying services equivalent to those proposed by INTERMAX during the process leading to the granting of this Franchise.

C. The periodic reviews described in this Section may be, but need not be, made coincident with reviews involved in the consideration of INTERMAX requests for Franchise renewal, Franchise extension or approval of transfer of ownership of the Telecommunications System. Nothing in this Section shall be construed to prohibit the City and INTERMAX from engaging in a continuous review of the performance of INTERMAX. The City may also, at any time, conduct a public hearing on any issue related to compliance by INTERMAX with this Franchise or any permit related thereto.

D. After completion of each such review described herein, if the City is satisfied INTERMAX has substantially complied with this Franchise during the previous five years and is satisfied the public interest will be served by extending the term of this Franchise, it may, with the consent of INTERMAX, extend the term set forth in Section 2.2 of this Franchise by five additional years. .

2.8 Franchise Renewal or New Franchise.

A. The City may establish appropriate requirements for new franchises or franchise renewals consistent with federal, state, and local law.

B. Nothing in this Franchise shall be construed to require renewal of this Franchise.

2.9 Renegotiation. In the event that any provision of this Franchise becomes invalid or unenforceable and the City or INTERMAX expressly finds that such provision constituted a consideration material to entering into this Franchise, or in the event of significant change in the law regulating this Franchise or change in municipal authority to act under the terms of this Franchise, or in the event of significant change or advancement in technology governing INTERMAX's functions, the City and INTERMAX may mutually agree to renegotiate any or all of the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have one hundred twenty (120) days to conduct and complete the renegotiation. Nothing in this Franchise shall be construed to require acceptance by either the City or INTERMAX of an offer to renegotiate.

2.10 Revocation.

A. In addition to any rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise and all rights and privileges pertaining thereto in the event that:

(1) The City determines INTERMAX is in violation of any material provision of this Franchise and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 9.2 of this Franchise; or

(2) INTERMAX is found by a court of competent jurisdiction to have engaged in any actual or attempted fraud or deceit upon the City, persons or customers; or

(3) INTERMAX becomes insolvent, unable or unwilling to pay its debts as they become due, or is adjudged a bankrupt; or

(4) INTERMAX fails, refuses, neglects or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding INTERMAX's construction, maintenance, and operation of its Telecommunications System.

B. For purposes of this Section, the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Franchise:

(1) The invalidation, failure to pay or any suspension of INTERMAX's payment of any fees or taxes due the City under this Franchise;

(2) Any failure by INTERMAX to submit timely reports regarding the calculation of any gross revenue-based fees or taxes due the City under this Franchise;

(3) Any failure by INTERMAX to maintain the liability insurance required under this Franchise;

(4) Any failure by INTERMAX to maintain and provide the City a copy of a Performance Bond as required under this Franchise;

(5) Any failure by INTERMAX to otherwise fully comply with the requirements of this Franchise.

C. Upon occurrence of one or more of the events set out above, following sixty (60) days written notice to INTERMAX of the occurrence and the proposed forfeiture and an opportunity for INTERMAX to be heard, the City may, by ordinance or other appropriate document, declare a forfeiture. In a hearing of INTERMAX, INTERMAX shall be afforded due process rights as if the hearing were a contested case hearing subject to Idaho law, including the right to cross-examine witnesses and to require that all testimony be on the record. Findings from the hearing shall be written and shall stipulate the reasons for the City's decision. If forfeiture is lawfully declared, all rights of INTERMAX under this Franchise shall immediately be divested without a further act upon the part of the City.

2.11 Receivership. The City shall have the right to declare a forfeiture or otherwise revoke this Franchise one hundred eighty (180) days after the appointment of a receiver, or trustee, to take over and conduct the business of INTERMAX, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have vacated prior to the expiration of said one hundred eighty (180) days, or unless:

(1) Within one hundred eighty (180) days after his/her election or appointment, such receiver or trustee shall have been approved by the City and shall fully have complied with all the provisions of this Franchise and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said one hundred eighty (180) days, shall have executed an agreement, duly approved by the City as well as the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

2.12 Expiration. Upon expiration of this Franchise, the City shall have the right, at its own election, to:

(1) Extend this Franchise, as provided for herein, for up to a total of five (5) years, though nothing in this provision shall be construed to require such extension;

(2) Renew this Franchise, in accordance with applicable valid law;

(3) Invite additional franchise applications or proposals;

(4) Terminate this Franchise without further action; and

- (5) Take such other action as the City deems appropriate.

2.13 Other Codes and Ordinances. Nothing in this Franchise shall be deemed to waive the requirements of the other lawful codes and ordinances of the City regarding permits, fees to be paid or manner of construction.

2.14 Survival of Terms. Sections 4.9, 6.3, 7 and 10 of this Franchise shall continue in effect as to INTERMAX notwithstanding any expiration, forfeiture or revocation of this Franchise.

SECTION 3 - ENFORCEMENT AND ADMINISTRATION BY THE CITY

3.1 City Jurisdiction and Supervision. The City, through its Administrator or designee, shall have continuing regulatory jurisdiction and supervision over the operation and enforcement of this Franchise and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated herein. All questions of application, interpretation, conflict or ambiguity arising out of or in connection with this Franchise are to be determined by the City Administrator or designee, except only where otherwise specifically stated, or in the event that a different person or body may be designated by the City through written notice to INTERMAX.

3.2 Grantee to Have No Recourse. Subject to state and federal law, INTERMAX shall have no recourse other than non-monetary declaratory or injunctive relief against the City and shall be awarded no monetary recovery whatsoever for any incidental or consequential damages, including but not limited to lost profits, arising out of any provision or requirement of this Franchise, nor from the City's regulation under this Franchise, nor from the City's exercise of its authority to grant additional franchises.

3.3 Acceptance of Power and Authority of City. INTERMAX expressly acknowledges by acceptance of this Franchise that:

- (1) It has relied upon its own investigation and understanding of the power and authority of the City to grant and enforce this Franchise and that it has no objection to the exercise of the City's power and authority therein;

- (2) It has not been induced to enter into this Franchise arrangement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of this Franchise that is not specifically included herein;

- (3) It has carefully read the terms and conditions contained herein and INTERMAX is willing to and does accept all the obligations of such terms and conditions to the extent not inconsistent with state or federal law and further agrees that it

will not set up as against the City any claim that any provision of this Franchise is unreasonable, arbitrary, invalid or void subject to its rights herein; and

(4) The matters contained in INTERMAX's application and all subsequent applications or proposals for renewals of this Franchise, and as stated in any and all other presentations to the City, except as inconsistent with law, regulations or local ordinance, are incorporated into this Franchise as though set out verbatim.

3.4 Acts Discretionary, Reservation of Authority. All City acts undertaken pursuant to this Franchise shall be deemed discretionary, guided by the provisions of this Franchise and considerations of the public health, safety, aesthetics and convenience. INTERMAX stipulates and agrees that this Franchise is subject to the City Charter of the City of Coeur d'Alene. INTERMAX understands the Charter's provisions are incorporated herein, where applicable. INTERMAX agrees that the City reserves all municipal powers now or hereafter granted by law, including without limitation, the power to tax and license, regulate activities of land use, protect the public health and safety and regulate and control use of the public right-of-way.

3.5 Delegation of Authority to Regulate. The City reserves the right to delegate its regulatory authority wholly or in part to the federal government, state government and/or to agents of the City, including but not limited to an agency which may be formed to regulate several City franchises.

SECTION 4 - OPERATION IN STREETS AND RIGHTS-OF-WAY

4.1 Use of Streets. INTERMAX may, subject to terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the City streets and rights-of-way such lines, cables, conductors, poles, ducts, conduits, vaults, utility access covers, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Telecommunications System within the City. All installation, construction, alteration and/or maintenance of any and all Telecommunications System Facilities within City streets and rights-of-way incident to INTERMAX's provision of Telecommunications Services shall, regardless of who performs installation, construction, alteration and/or maintenance, be and remain the responsibility of INTERMAX.

4.1.1 Location of Facilities. The Company shall be a member of the Kootenai County 1 Call Utility Council. Within forty-eight (48) hours after any City department, franchisee, licensee, permittee notifies the Company of a proposed street excavation, the Company shall, at the Company's expense:

(1) Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;

(2) Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or

(3) Notify the excavator that the Company does not have any underground Facilities in the vicinity of the proposed excavation.

4.1.2 Rights-of-Way Occupancy.

(1) Nothing in this Franchise shall give the Company the right to attach its Telecommunication System to structures or poles owned by the City without consent of the City.

(2) The Company shall:

(a) Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;

(b) Keep and maintain all transmission lines, equipment and structures in a safe condition, and in good order and repair;

(c) Employ professional care;

(d) Place any fixtures in any right-of-way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort;

(e) Submit a traffic control plan to the City for approval and receive such approval at least 48 hours prior to commencing construction except in the case of emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and

(f) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.

(3) The Company shall not make street cuts or curb cuts unless absolutely necessary, and only after a permit has been obtained from the City under such conditions as the City shall in its sole discretion determine.

(4) Before beginning any excavation or other construction activity on a right-of-way that crosses or abuts any private property, the Company shall clearly mark with non-polluting water-soluble spray paint the excavation area. After such excavation or other construction activity, the Company shall restore such property to not less than the City's standards.

(5) The Company shall locate, mark, and map any of its installed cable or Cable System for the City at no expense to the City. The Company shall install underground warning tape at least twelve (12) inches above all fiber optic cable where such installation is

done by means of open trenching. Where cable is placed by boring or plowing, all fiber optic cable will be accompanied by a metallic tracer wire and all coaxial trunk and feeder cable shall serve as its own tracer for locating purposes.

4.2 Construction or Alteration.

4.2.1 Permits. INTERMAX shall in all cases comply with all lawful City ordinances and regulations regarding the acquisition of permits and other such items as may be reasonably required in order to install, construct, alter and maintain the Telecommunications System. INTERMAX shall apply for and obtain all permits necessary for installation, construction, alteration and/or maintenance of any such Facilities, and for excavation and laying of any Telecommunications System Facilities within City streets and rights-of-way. INTERMAX shall pay all applicable fees due for any such permits.

4.2.2 Schedule and Maps.

A. Prior to beginning installation, construction, alteration or maintenance of the Telecommunications System, INTERMAX shall provide the City with an initial work schedule for work to be conducted in City streets and rights-of-way and the estimated total cost of such work. INTERMAX shall, upon request, provide information to the City regarding its progress in completing or altering the Telecommunications System.

B. Upon completion of construction or alteration of the Telecommunications System, INTERMAX shall provide the City with a map showing the location of its installed Telecommunications System, as built. Such "as-built" maps shall be in a form acceptable to the City.

C. INTERMAX shall provide a map to the City's Engineering Department, or its successor, showing the location of INTERMAX's optical fibers in City streets and rights-of-way on a scale of 3500 feet per inch or in whatever standard scale the City adopts for general use:

- (1) One year after the effective date of this Franchise; and
- (2) Annually thereafter.

4.2.3 Good Engineering.

A. INTERMAX promises all of its property and facilities shall be constructed, operated and maintained in good order and condition in accordance with good engineering practice. In connection with the civil works of INTERMAX's Telecommunications System, such as, but not limited to, trenching, paving, compaction and locations, INTERMAX promises to comply with the edition of the American Public Works Association Standard Specifications which is in current or future use by the City, together with the City's Supplemental Specifications thereto, all as now or hereafter amended.

B. INTERMAX promises that the Telecommunications System shall comply with the applicable federal, state and local laws, the National Electric Safety Code and the Idaho "Rules Governing the Use of National Electric Code," where applicable.

4.3 Facilities Placement.

4.3.1 General Standards. The Telecommunications System shall be constructed and maintained in such manner as not to obstruct, hinder, damage or otherwise interfere with sewers, water pipes, other utility fixtures or any other property of the City, or any other pipes, wires, conduits or other facilities that may have been installed in City streets or rights-of-way by or under the City's authority. INTERMAX shall maintain a minimum underground horizontal separation of five (5) feet from City water facilities and ten (10) feet from above-ground City water facilities; PROVIDED, that for development in new areas, the City, together with INTERMAX and other utility purveyors or authorized users of City streets or rights-of-way, will develop and follow the City's determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Franchise.

4.3.2 Limited Access. INTERMAX must follow the City's requirements for the placement of facilities in City streets and rights-of-way, including City requirements for location of facilities in specific City streets and rights-of-way, and must in any event install facilities in a manner that minimizes interference with the use of City streets and rights-of-way by others, including others that may have or may install telecommunications facilities in City streets and rights-of-way. The City may require that INTERMAX install facilities at a particular time, at a specific place and/or in a particular manner as a condition of access to a particular City street or right-of-way and the City may exclude INTERMAX's access to a particular street or right-of-way in accordance with City requirements for placement of facilities.

4.3.3 Consistency with Designated Use. Notwithstanding the grant to use City streets and rights-of-way contained in this Franchise, no street or right-of-way shall be used by INTERMAX if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street or rights-of-way were created or dedicated or presently used under state and local laws.

4.3.4 Non-Interference. INTERMAX shall exert its best efforts to construct and maintain the Telecommunications System so as not to interfere with other uses of City streets or rights-of-way. INTERMAX shall, where possible in the case of aboveground lines, make use of existing poles and other facilities available to INTERMAX. INTERMAX shall individually notify all residents affected by any proposed installation, construction, alteration or maintenance of the Telecommunications System of such work where and when such notification is reasonably possible.

4.3.5 Undergrounding. The City finds that overhead lines and aboveground wire facilities and installations in the streets or rights-of-way and other franchised areas adversely impact upon the public use and enjoyment of property in the City, including an aesthetic impact. Therefore, INTERMAX shall place underground all of its transmission lines

that are located or are to be located above or within City streets or rights-of-way in the following cases where:

- (1) All existing utilities are located underground;
- (2) Transmission or distribution facilities of the local exchange carrier and/or the electric utility are underground or hereafter placed underground;
- (3) Statute, ordinance, policy or other regulation of the City requires utilities to be placed underground;
- (4) INTERMAX is unable to obtain pole clearance;
- (5) Underground easements are obtained from developers of new residential areas; or
- (6) Utilities are overhead but residents prefer same to be located underground (such undergrounding to be provided at residents' expense).

INTERMAX hereby states it is familiar with and understands local procedures, custom and practice relating to the one-number locator service program. Consistent with any general municipal undergrounding policy or program now or hereafter developed, the City may require INTERMAX's participation in municipally imposed undergrounding or related requirements as a condition of INTERMAX's installation or continued maintenance of overhead facilities authorized under this Franchise. INTERMAX hereby agrees to coordinate its underground installation and planning activities with the City's underground plan and policies.

4.4 Coordination with Other Users. INTERMAX shall coordinate its activities with other utilities and users of City streets and rights-of-way scrupulously to avoid unnecessary cutting, damage or disturbance of such streets and rights-of-way and shall conduct its planning, design, installation, construction, alteration and maintenance of the Telecommunications System at all times so as to maximize the life and usefulness of the paving and municipal infrastructure. In addition, the City may determine with respect to franchised uses, in the exercise of reasonable discretion, when and where reasonable accommodation shall be made by INTERMAX to the City for public needs or, where requested, other third party needs, how such accommodation should be made and a reasonable apportionment of any expenses of same; PROVIDED, that this Franchise creates no third party beneficial interests or accommodation. Notwithstanding the foregoing, it remains the responsibility of INTERMAX to anticipate and avoid conflicts with other City streets or rights-of-way occupants or users, other utilities, franchisees or permittees. The City assumes no responsibility for such conflicts. Further, INTERMAX shall give appropriate notices to any other City streets or rights-of-way occupants or users, other utilities, franchisees, permittees, divisions of the City or other units of government owning or maintaining facilities which may be affected by INTERMAX's planning, design, installation, construction, alteration or maintenance of the Telecommunications System.

4.5 Relocation.

A. The City shall have the right during the term of this Franchise, as it may be extended, renewed or otherwise altered in accordance with this Franchise, to require INTERMAX to change the location of its Telecommunications System within City streets and rights-of-way when the public convenience and necessity requires such change. If the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair, install, maintain or otherwise alter any cable, wire, towers, antenna, wire conduit, pipe, line, pole, wire holding structure, structure or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, INTERMAX shall, upon request, except as otherwise hereinafter provided, at no expense to the City, remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, utility access covers and any other facilities which it has installed.

B. If the City requires INTERMAX to remove or relocate its facilities located within City streets or rights-of-way, the City will make a reasonable effort to provide INTERMAX with an alternate location for its facilities within City streets or rights-of-way.

C. The City shall provide INTERMAX with the standard notice given under the circumstances to other franchisees, licensees or permittees.

D. If during the term of this Franchise, as it may be extended, renewed or otherwise altered in accordance with this Franchise, another entity which holds a franchise or any utility requests INTERMAX to remove or relocate its Telecommunications System Facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or the more efficient use of such facilities, or to "make ready" the requesting party's facilities for use by others, or because INTERMAX is using a facility which the requesting party has a right or duty to remove, INTERMAX shall do so. The parties involved may decide among themselves who is to bear the cost of removal or relocation; PROVIDED, that the City shall not be liable for any such cost(s).

E. Any person requesting INTERMAX to remove or relocate its facilities shall give INTERMAX no less than ninety (90) days advance written notice advising INTERMAX of the date or dates removal or relocation is to be undertaken; PROVIDED, that no advance written notice shall be required in emergencies or in cases where public health and/or safety or property is endangered.

F. If INTERMAX fails, neglects or refuses to remove or relocate its facilities as directed by the City, or in emergencies or where public health and/or safety or property is endangered, the City may do such work or cause it to be done and the cost, including all direct, indirect and/or consequential costs and expenses incurred by the City due to INTERMAX's failure, neglect or refusal thereof shall be paid solely by INTERMAX. If INTERMAX fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if INTERMAX would

have been liable for the cost of performing such work, the cost, including all direct, indirect and/or consequential costs and expenses incurred by such franchisee or utility thereof to the party performing the work or having the work performed shall be paid solely by INTERMAX.

G. If INTERMAX causes any damage to private property or public property in the process of removing or relocating its facilities, INTERMAX shall pay the owner of the property for such damage.

H. INTERMAX does hereby promise to protect and save harmless the City, its officers, agents and employees from any customer or third party claims for service interruption or other losses in connection with any removal or relocation of INTERMAX's Telecommunications System Facilities.

4.6 Movement of Buildings. INTERMAX shall, upon request by any person holding a building permit, franchise or other approval issued by the City, temporarily remove, raise or lower its transmission or other wires appurtenant to the Telecommunications System to permit the movement of buildings. The expense for such removal, raising or lowering shall be paid by the person requesting the same and INTERMAX shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than seven (7) business day's notice to INTERMAX for such temporary wire changes.

4.7 Tree Trimming. INTERMAX, with twenty-four (24) hour notice to the property owner, shall have the authority to trim or cause to have trimmed trees upon and overhanging streets, alleys, sidewalks and rights-of-way so as to prevent the branches of such trees from coming in contact or otherwise interfering with the Telecommunications System; PROVIDED, that the cost for such trimming of trees shall be paid solely by INTERMAX.

4.8 Restoration.

A. Whenever INTERMAX damages or disturbs any area in or near City streets, rights-of-way, paved area or public improvement, INTERMAX shall, at its sole cost, expense and liability, restore such area in or near City streets, rights-of-way, paved area or public improvement to at least its prior condition, or the City standard, whichever is greater, to the satisfaction of the City.

B. Whenever any opening is made by INTERMAX in a hard surface pavement in any City street or right-of-way, INTERMAX shall refill, restore, patch and repave entirely all surfaces opened as determined necessary by the City in order to maintain and preserve the useful life thereof.

C. For pavement restorations, any patch or restoration shall be thereafter properly maintained in good condition and repair by INTERMAX until such time as the area is resurfaced or reconstructed.

D. The City hereby reserves the right, after providing reasonable notice to INTERMAX, to remove and/or repair any work done by INTERMAX which, in the

determination of the City, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid solely by INTERMAX.

E. Should INTERMAX fail, neglect, refuse or delay in performing any obligation here or elsewhere stated, or where the City deems necessary to protect the public right-of-way or to avoid liability, risk or injury to the public or the City, the City may proceed to perform or cause to have performed such obligation, including any remedial or preventative action deemed necessary, at INTERMAX's sole expense and liability, but no action or inaction by the City shall relieve INTERMAX of its obligation to hold the City harmless as set forth in Section 7.6 of this Franchise. Prior to undertaking corrective effort, the City shall make a reasonable effort to notify INTERMAX, except no notice is needed if the City declares an emergency or determines a need for expedient action. This remedy is supplemental and not alternative to any other municipal right.

F. Whenever INTERMAX damages or disturbs any area in or near City streets, rights-of-way, paved area or public improvement, INTERMAX stipulates that the City may, without limitation:

(1) Require INTERMAX to repave an entire lane or greater affected area within any cut or disturbed location; and/or

(2) Require INTERMAX to common trench with any other underground installation in City streets or rights-of-way, with cost sharing to be negotiated between the parties involved, or in the absence of agreement, as directed by the City in a non-discriminatory manner.

G. All requirements of this Section pertaining to public property shall also apply to the restoration of private easements and other private property.

H. If INTERMAX causes any damage to private property in the process of restoring facilities, INTERMAX shall pay the owner of the property for such damage.

I. All of INTERMAX's work under this Section shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

J. INTERMAX shall perform all restoration work promptly.

4.9 City Right to Require Removal of Property.

A. At the expiration of the term for which this Franchise is granted, providing no extension or renewal is granted by the City, or upon the forfeiture or revocation of this Franchise, as provided for in this Franchise, the City shall have the right to require INTERMAX to remove, at INTERMAX's sole expense, all or any part of the Telecommunications System from all City streets and rights-of-way within the Franchise Service Area, where the abandoned Facilities interfere with reasonable uses of City streets and rights-of-way. If INTERMAX fails to do so, the City may perform the work and collect the cost thereof from INTERMAX. The

actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of INTERMAX effective upon filing of the lien with the Kootenai County Recorder.

B. Any order by the City Council to remove any of INTERMAX's Telecommunications System Facilities shall be mailed to INTERMAX not later than thirty (30) calendar days following the date of expiration of this Franchise. INTERMAX shall file written notice with the Clerk of the City Council not later than thirty (30) calendar days following the date of expiration or termination of this Franchise of its intention to remove any Telecommunications System Facilities intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed no later than twelve (12) months following the date of expiration of this Franchise.

C. INTERMAX shall not remove any underground Facilities which require trenching or other opening of City streets or rights-of-way along the extension of the Facilities to be removed, except as hereinafter provided. INTERMAX may voluntarily remove any underground Facilities from City streets and rights-of-way which have been installed in such a manner that they can be removed without trenching or other opening of City streets and rights-of-way along the extension of the Facilities to be removed.

D. Subject to applicable law, INTERMAX shall remove, at its sole cost and expense, any underground Facilities by trenching or opening City streets and rights-of-way along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination, in the sole discretion of said Council, that removal is required in order to eliminate or prevent a hazardous condition. Underground Facilities in City streets and rights-of-way that are not removed shall be deemed abandoned and title thereto shall be vested in the City.

4.10 Emergency Repairs. In the event that emergency repairs to the Telecommunications System are necessary, INTERMAX shall notify the City of the need for such repairs. INTERMAX may immediately initiate such emergency repairs and shall apply for appropriate permits the next business day following discovery of the emergency.

4.11 City Right of Inspection. The City shall have the right to inspect and approve all installation, construction, alteration or maintenance work performed by INTERMAX within the Franchise Service Area and to make such tests as it deems necessary to ensure compliance with the terms and conditions of this Franchise and other pertinent provisions of law, the cost thereof to be paid solely by INTERMAX, but no action or inaction by the City shall create any duty or obligation by the City to inspect, test or approve any installation, construction, alteration or maintenance work performed by INTERMAX. In addition, the City may require INTERMAX to furnish certification from a qualified independent engineer that INTERMAX's Facilities are constructed in accordance with good engineering practice and are reasonably protected from damage and injury.

4.12 After-Acquired Facilities. INTERMAX expressly acknowledges and agrees, by acceptance of this Franchise, that any Telecommunications System Facilities located within City

streets or rights-of-way which are subsequently acquired by INTERMAX or upon addition or annexation to the City of any area in which INTERMAX retains or acquires any such Facilities (if acquired prior to this original Franchise grant) and which would have been subject to this Franchise and the permitting authority related thereto shall immediately be subject to the provisions of this Franchise and all permits related thereto.

4.13 Information. INTERMAX hereby promises to maintain and supply to the City, at INTERMAX's sole expense, any information requested by the City to coordinate municipal functions with INTERMAX's activities within City streets and rights-of-way. INTERMAX shall provide such information, upon request, either in hard copy and/or electronic format compatible with the City's data base system, as now or hereafter existing, including the City's geographic information service (GIS) data base. INTERMAX shall keep the City informed of its long-range plans so as to allow coordination with the City's long-range plans.

SECTION 5 - SYSTEM DESIGN AND STANDARDS

5.1 Initial Telecommunications System Construction.

5.1.1 Construction Schedule. A detailed construction schedule, which shall be subject to City approval, shall be submitted by INTERMAX to the City's Telecommunications Division no later than forty-five (45) days prior to the commencement of construction. For the purposes of this Franchise, "commencement of construction," as finally determined by the City if necessary, shall mean the beginning of installation of any part of the Telecommunications System including, but not limited to, strand mapping, system design, the construction of any facility, building or structure, or the stringing of any wire or the laying of any conduit, or the installation of any active or passive electronic equipment to facilitate the activation of the Telecommunications System.

5.2 Technical Standards. The technical standards used in the design, construction, alteration, maintenance and operation of the Telecommunications System shall comply, at a minimum, with the applicable technical standards promulgated by the Federal Communications Commission ("FCC") or the Idaho Public Utilities Commission ("IPUC"), as now or hereafter constituted or amended, and any and all other applicable federal, state or local law, regulations or technical standards which may currently or may subsequently concern any services which INTERMAX provides or may provide using the Telecommunications System. The City may establish reasonable technical standards for the performance of the Telecommunications System if the FCC or IPUC permit it to do so or if the FCC or IPUC standards are repealed in whole or in part.

5.3 Performance Testing. INTERMAX shall perform all tests of the Telecommunications System as required by and at the intervals as required by the FCC and/or any and all federal, state and local law or regulations, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise.

SECTION 6 - CUSTOMER SERVICE POLICIES

6.1 City Reservation of Rights. The City reserves the right to enforce any and all customer service and consumer protection standards at any time that such standards are established by state or federal law or regulation as applicable to telecommunications system operations should such right be granted to the City by such state or federal law or regulation.

6.2 Response to Customers. INTERMAX shall promptly respond to all requests from customers of the Telecommunications System for service, repair, installation, information or any other such reasonable and appropriate requests and shall render effective service, make repairs promptly and interrupt service only for good cause and for the shortest time possible as required by state and/or federal law or regulation. INTERMAX shall promptly respond to complaints from customers of the Telecommunications System and shall attempt to promptly resolve such complaints as required by state and/or federal law or regulation.

6.3 City Franchise Contact Identified. INTERMAX shall provide all appropriate and pertinent contact information for the person identified by the City as responsible for handling questions and complaints for the City regarding INTERMAX's operation in City streets and rights-of-way to any and all customers of the Telecommunications System and any interested persons. Said information shall be provided to such customers in a format acceptable to the City.

6.4 Notice of Change in Services. Throughout the term of this Franchise, INTERMAX shall provide the City written notice of any intended deletions, additions or other modifications to the Telecommunications Services authorized by this Franchise to be provided by INTERMAX.

6.5 Complaints. INTERMAX hereby acknowledges the City's interest in the prompt resolution of all complaints made to the City regarding INTERMAX's operation in City streets and rights-of-way and INTERMAX shall work in close cooperation with the City to resolve such complaints.

6.6 Regulation of Rates and Charges. The City expressly reserves the right to regulate rates and charges for Telecommunications Services and equipment in accordance with and to the extent provided by applicable federal or state laws, rules or regulations.

SECTION 7 - COMPENSATION AND FINANCIAL PROVISIONS

7.1 Fees.

7.1.1 Payment of Franchise Fee.

A. For the reason that the Rights-of-Way to be used by the Company in the operation of its Telecommunications System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that

the grant to the Company to use the said Rights-of-Way is a valuable property right without which the Company would be required to invest substantial capital in Rights-of-Way costs and acquisitions, and because the City will incur costs in regulating and administering the Franchise, the Company shall pay to the City quarterly an amount equal to five percent (5%) of the Company's Gross Revenues derived from the operation of the Fiber-Optic Telecommunications System to provide Telecommunications Services in the City. In the event that the City may lawfully increase the percentage of Franchise fees collected from the Company, but not effective before expiration of the initial term, then the Franchise fees will be increased automatically after the giving of thirty (30) days prior written notice to the Company.

B. In the event the Franchise is revoked or otherwise terminated prior to its expiration date, the Company shall file with the City, within 90 days of the date of revocation or termination, a verified revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise fees due up to the date of revocation or termination.

7.1.2 Other Fees.

A. INTERMAX shall pay the City all reasonable costs of granting, enforcing or reviewing the provisions of this Franchise as ordered by the City Administrator or designee, whether as a result of accrued in-house staff time or out-of-pocket expenses or administrative costs. Such obligation further includes municipal fees related to receiving and approving permits, licenses or other required approvals, inspecting plans and construction, or relating to the preparation of a detailed statement.

B. Upon request of INTERMAX, the City will submit proof of any charges or expenses incurred as defined in Section 7.1.2, A of this Franchise. Said charges or expenses shall be paid by INTERMAX no later than thirty (30) days after INTERMAX's receipt of the City's billing thereof.

C. INTERMAX shall pay all other taxes and fees applicable to its operations and activities within the City, all such obligations also being a condition of this Franchise. Such payments shall not be deemed franchise fees or payments in lieu thereof.

7.2 Payments.

A. INTERMAX shall make all required payments in the form, intervals and manner requested by the City Finance Director and shall furnish the City any and all information related to the City's revenue collection functions reasonably requested.

7.3 Financial Records.

A. INTERMAX shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. The City shall have the right, as necessary or desirable for effectively administering and enforcing this Franchise, to inspect at any time during normal business hours upon thirty (30) days prior written notice, all books,

records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by INTERMAX and/or any parent company of INTERMAX pursuant to the rules and regulations of the FCC, IPUC and other regulatory agencies, and other like materials INTERMAX and/or any parent company of INTERMAX which directly relate to the operation of this Franchise.

B. Access to the aforementioned records referenced in Section 7.3, A shall not be denied by INTERMAX to representatives of the City on the basis that said records contain "proprietary" information. However, to the extent allowed by Idaho law, the City shall protect the trade secrets and other confidential information of INTERMAX and/or any parent company of INTERMAX.

C. INTERMAX hereby agrees to meet with a representative of the City upon request to review its methodology of record keeping, financial reporting, and other procedures, the understanding of which the City deems necessary for understanding the meaning of such reports and records.

D. The City agrees to request access to only those books and records, in exercising its rights under this Franchise, which it deems reasonably necessary for the enforcement and administration of this Franchise.

7.4 Auditing.

A. The City or its authorized agent may at any time conduct an independent audit of the revenues of INTERMAX in order to verify the accuracy of payments made to the City. INTERMAX and each parent company of INTERMAX shall cooperate fully in the conduct of such audit. In case of audit, the City director of budget and finance may require INTERMAX to furnish a verified statement of compliance with INTERMAX's obligations or in response to any questions. Said certificate may be required from an independent certified public accountant at INTERMAX's sole expense. All audits will take place on INTERMAX's premises or at offices furnished by INTERMAX, which shall be a location within the City of Coeur d'Alene. INTERMAX agrees, upon request of the City Finance Director, to provide copies of all documents filed with any federal, state or local regulatory agency, to mail to the City on the same day as filed, postage prepaid, affecting any of INTERMAX's facilities or business operations in City.

7.5 Insurance.

7.5.1 Coverages. INTERMAX shall maintain, throughout the term of this Franchise, liability insurance insuring INTERMAX, its officers, employees and agents, with regard to all claims and damages specified in Section 7.5 herein, in the minimum amounts as follows:

(1) **Commercial Liability Insurance.**

On or before the date this Franchise is fully executed by the parties, INTERMAX shall provide the City with a certificate of insurance as proof of commercial liability

insurance with a minimum liability limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage. This coverage will have a per job aggregate endorsement and Idaho stop gap coverage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Franchise. The policy shall name the City, its elected and appointed officials, officers, agents and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Idaho. If INTERMAX uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the same minimum limits of liability and comply with all other provisions discussed above in this subsection entitled "Commercial Liability Insurance."

(2) **Commercial Automobile Liability Insurance.**

On or before the date this Franchise is fully executed by the parties, INTERMAX shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance with a minimum liability limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Franchise. The policy shall name the City, its elected and appointed officials, officers, agents and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Idaho. If INTERMAX uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the same minimum limits of liability and comply with all other provisions discussed above in this subsection entitled "Commercial Automobile Liability Insurance."

(3) **Umbrella Liability Insurance.**

INTERMAX and its contractors and/or subcontractors shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. On or before the date this Franchise is fully executed by the parties, INTERMAX shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of Three Million Dollars (\$3,000,000). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Idaho.

Providing coverage in the amounts as set forth above shall not be construed to relieve INTERMAX from liability in excess of those limits.

7.5.2 Proof of Insurance. INTERMAX shall file with the City copies of all certificates of insurance showing up-to-date coverages, additional insured coverages and evidence of payment of premiums as set forth above. INTERMAX shall file and maintain a certificate of insurance along with written evidence of payment of the required premiums with the manager of the City Telecommunications Division, or his or her designee.

7.5.3 Alteration of Insurance. Insurance coverages, as required by this Franchise, shall not be changed, cancelled or otherwise altered without approval of the City. INTERMAX shall provide the City no less than thirty (30) days prior written notice of any such proposed change, cancellation or other alteration. The City may, at its option, review all insurance coverages. If it is determined by the City that circumstances require and that it is reasonable and necessary to increase insurance coverage and liability limits above such coverage and limits as are set forth in this Franchise, in order to adequately cover the risks of the City, INTERMAX and INTERMAX's officers, agents and employees, the City may require additional insurance to be acquired by INTERMAX. Should the City exercise its right to require additional insurance, the City will provide INTERMAX with written notice.

7.5.4 Failure to Procure. INTERMAX acknowledges and agrees, by acceptance of this Franchise, that failure to procure and maintain the insurance coverages as detailed in Section 7.5.1 of this Franchise shall constitute a material breach of this Franchise, as provided for in Section 2.10, B, 3) of this Franchise. In the event of such failure to procure and maintain the referenced insurance coverages, the City may immediately suspend INTERMAX's operations under this Franchise, terminate or otherwise revoke this Franchise and/or, at its discretion, procure or renew such insurance in order to protect the City's interests and be reimbursed by INTERMAX for all premiums in connection therewith.

7.6 Performance Bond. Prior to the effective date of this Franchise, INTERMAX shall furnish to the City proof of the posting of a performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of Twenty-Five Thousand Dollars (\$25,000), conditioned that INTERMAX shall well and truly observe, fulfill and perform each term and condition of this Franchise. INTERMAX shall pay all premiums charged for said bond. Said bond shall be effective to continue obligation for the term of this Franchise, including any extensions, and thereafter until INTERMAX or any successor or assign of INTERMAX has liquidated all of its obligations with the City that may have arisen from the acceptance of this Franchise by INTERMAX or from its exercise of any privilege herein granted. Said bond shall contain a provision stating that said bond shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice having been provided to the City. The form and content of said bond and any associated documents shall be approved in advance by the City Attorney, or his or her designee. INTERMAX shall provide a duplicate copy of said bond to the City and said duplicate copy shall be kept on file at the City Telecommunications Division office or its successor(s). Neither the provisions of this Section nor any performance bond accepted by the City pursuant thereto, nor any damages or other amounts recovered by the

City thereunder, shall be construed to excuse faithful performance by INTERMAX or to limit liability of INTERMAX under this Franchise either to the full amount of the performance bond or otherwise, except as otherwise provided herein.

7.7 Indemnity, No Estoppel, No Duty.

A. INTERMAX shall, at its sole expense, protect, defend, indemnify and hold harmless the City, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the City from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising directly or indirectly from or out of, relating to or in any way connected with the performance or non-performance, by reason of any intentional or negligent act, occurrence or omission of INTERMAX, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors, whether or not such acts or omissions were authorized or contemplated by this Franchise or applicable law, including by not limited to the construction, installation, maintenance, alteration or modification of the Telecommunication System; arising from actual or alleged injury to persons or property, including the loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed; arising out of or alleged to arise out of any claim for damages for INTERMAX's invasion of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of INTERMAX's failure to comply with any and all provisions of any statute, regulation or resolution of the United States, State of Idaho or any local agency applicable to INTERMAX and its business. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve INTERMAX from its duty of defense against liability or of paying any judgment entered against such party. Notwithstanding any provision of this Section to the contrary, INTERMAX shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage or liability arises out of or in connection with negligent acts or omissions of the City.

B. Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs, or expenses, such judgment shall be conclusive against INTERMAX, not only as to the amount of such damage, but as to its liability, provided INTERMAX has reasonable notice or actually knew, or should have known, of the pendency of such suit. Under such circumstances, INTERMAX may also request the opportunity to defend or participate in the suit with legal counsel of its choice, at its expense, said request not to be unreasonably denied.

C. No action, error or omission, or failure to act by the City, its agents, officers, officials or employees, in connection with administering its rights, duties or regulatory functions related to this Franchise shall be asserted by INTERMAX, directly, indirectly or by way of seeking indemnification or as an assertion that the City has waived or is estopped to assert any municipal right hereunder, against the City, its boards, departments, divisions, officers, officials or employees.

D. It is not the intent of this Franchise to acknowledge, create, imply or expand any duty or liability of the City with respect to its role as a franchising authority, in the exercise of its police powers or for any other purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group or entity.

SECTION 8 – REPORTING REQUIREMENTS

All reports required under Section 8 of this Franchise may be requested by the City to be provided by INTERMAX in hard copy and/or electronic format compatible with City databases, including, but not limited to, the GIS system.

8.1 Quarterly Reports. Within thirty (30) calendar days after the end of the reporting quarter, INTERMAX shall submit to the City a completed form reporting any and all revenues for the previous quarter. Said reports shall be verified by an officer or other authorized representative of INTERMAX. Said reports shall contain an accurate statement in summarized form, as well as in detail, of INTERMAX's gross revenues and the computation basis and method. These reports shall be in a form reasonably required by the City. The City may, from time to time, make such reasonable amendments to the forms as are required to ensure that all gross revenues are reported clearly and accurately.

8.2 Annual Reports. Not later than one hundred-twenty (120) days following the end of INTERMAX's fiscal year each year, INTERMAX shall present, at its sole expense, a written report to the City which shall include:

(1) A full annual report on the customer revenue for the System within the corporate limits of the City of Coeur d'Alene. The report shall be certified by an officer or other authorized representative of INTERMAX to be an accurate reflection of INTERMAX's books and records.

(2) A current list of all of INTERMAX's officers and directors or partners, if any, including postal addresses, telephone numbers and, where applicable, electronic mail addresses.

(3) The names and business postal addresses, telephone numbers and, where applicable, the electronic mail addresses of the Telecommunications System's local manager and engineer.

(4) Complete and accurate maps of the Telecommunications System including the location of Facilities.

(5) A description of future plans by INTERMAX to expand or alter the Telecommunications System and/or expand or alter services provided over the Telecommunications System.

8.3 Monitoring and Compliance Reports. Only upon request of the City, but no more than once per year, INTERMAX shall provide a written report of any and all technical performance tests for the Telecommunications System required by the FCC, IPUC or any other governmental agency having jurisdiction over the Telecommunications System.

8.4 Additional Reports. INTERMAX shall prepare and furnish to the City or any other entity exercising lawful regulatory authority in connection with this Franchise, at the times and in the form prescribed by the City or such other regulatory entity, such additional reports with respect to INTERMAX's operations, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of the rights, functions or duties of the City or such other regulatory entity in connection with this Franchise.

8.5 Communication with Regulatory Agencies. INTERMAX shall simultaneously file with the City a copy of each petition, application, tariff, report or any other communication related to the Telecommunications System transmitted by INTERMAX to, or received by INTERMAX from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate the construction or operation of the Telecommunications System, including, specifically, the FCC and the IPUC. In addition, INTERMAX and its affiliates shall within ten (10) days of any communication transmitted by INTERMAX to, or received by INTERMAX from, any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement related to the Telecommunications System, provide the City a copy of the communication, whether specifically requested by the City to do so or not.

8.6 Preservation of Confidential Information. The City shall protect information provided to the City by INTERMAX designated as confidential or proprietary by INTERMAX, given such information had been so designated at the time it was provided to the City, to the maximum extent permissible under Idaho state law as it may now or hereafter exist.

SECTION 9 – REMEDIES AND PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS

9.1 Remedies for Franchise Violations.

A. In addition to the remedies set forth elsewhere in this Franchise, the City shall have the right to assert any or all of the following remedies in the event INTERMAX violates or defaults on, as determined by the City, any provision of this Franchise:

(1) Drawing upon or foreclosing all or any part of any security provided under this Franchise, including without limitation the Faithful Performance Bond provided for under Section 7.6 herein; PROVIDED, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the violation or default. Should the City take such action as described herein, INTERMAX shall be responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs incurred by the City;

(2) Commence an action at law for monetary damages or seek other equitable relief;

(3) In the case of substantial violation or default, as determined by the City, of a material provision of this Franchise, declare this Franchise to be revoked;

(4) Seek specific performance of any provision of this Franchise, which reasonably lends itself to such remedy, as an alternative to seeking damages.

B. In determining which remedy or remedies, as set forth herein, are appropriate, the City shall take into consideration the nature and extent of the violation or default, the remedy needed to prevent such violations or defaults from occurring in the future, whether INTERMAX has a history of previous violations of the same or similar kind and such other considerations as are appropriate under the circumstances.

9.2 Procedure for Remediating Franchise Violations.

9.2.1 Notice of Violation. In the event the City determines INTERMAX has not complied with any term or condition of this Franchise, the City shall notify INTERMAX of the exact nature of the alleged noncompliance.

9.2.2 INTERMAX's Right to Cure or Respond. INTERMAX shall have thirty (30) days from receipt of notice by the City of any alleged noncompliance with any term or condition of this Franchise to:

(1) Respond to the City contesting the assertion of noncompliance; or

(2) Cure such violation or default or, in the event that by the nature of the violation or default such violation or default cannot be cured within a thirty (30) day period, initiate reasonable steps to remedy such violation or default and notify the City of the steps being taken and the projected date such remedy will be completed.

9.2.3 Public Hearing. In the event INTERMAX fails to respond to a notice, as described herein, or in the event INTERMAX fails to cure such violation or default pursuant to the procedures set forth herein, the City shall schedule a public hearing to investigate any alleged violation or default. The City shall provide INTERMAX twenty (20) calendar days notice of the time and place of such hearing and provide INTERMAX an opportunity to be heard at such hearing.

9.3 Enforcement. In the event the City, after such hearing as described in subsection 9.2.3 of this Franchise has been conducted, upholds its determination that INTERMAX has violated or defaulted on any provision of this Franchise, the City may impose any of the remedies set out in Section 9.1, A of this Franchise.

9.4 Failure to Enforce. INTERMAX shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to

enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in INTERMAX's conduct.

9.5 Acts of Nature. INTERMAX shall not be held in violation, default or noncompliance with the provisions of this Franchise, nor suffer any enforcement or penalty related thereto, where such violation, default or noncompliance is caused by acts of nature, power outages or other events reasonably beyond its ability to control. However, INTERMAX shall take all reasonable steps necessary to provide service despite such occurrences.

9.6 Alternative Remedies. Nothing in this Franchise shall be deemed to bar the right of the City or INTERMAX to seek or obtain judicial relief from any violation of this Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by INTERMAX, or to seek and obtain judicial enforcement of INTERMAX's obligations under this Franchise by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

SECTION 10 – MISCELLANEOUS PROVISIONS

10.1 Posting and Publication. INTERMAX shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law, and such is payable upon INTERMAX's filing of acceptance of this Franchise.

10.2 Service of Notice. Except as otherwise specifically provided herein, any notice required or permitted to be given under this Franchise shall be deemed sufficient if provided in writing and when (1) delivered personally to the following addressee(s) or deposited with the United States Postal Service, postage paid, certified or registered mail; (2) sent by overnight or commercial air courier; or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

Notices to the City shall be addressed to the following:

Coeur d'Alene City Hall
710 E. Mullan Ave.
Coeur d'Alene, ID 83814-3958
Attn: City Clerk
Facsimile Number: 208-769-2366

Notices to INTERMAX shall be addressed to the following:

Newmax, LLC dba Intermax Networks
7400 Mineral Drive, Suite 300
Coeur d'Alene, ID 83815
Attn: Mike Kennedy
Facsimile Number: 208-762-8308

10.3 Compliance with Laws. INTERMAX shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as the general ordinances, resolutions, rules and regulations of the City, pursuant to the City's lawful authority, heretofore or hereafter adopted or established during the entire term of this Franchise. In the event any valid and superior law, rule or regulation of any governing authority or agency having jurisdiction contravenes the provisions of this Franchise subsequent to its adoption, then the provisions of this Franchise shall be superseded only to the limited extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation. Nothing in this Franchise shall limit the City's right of eminent domain under state law. Nothing in this Franchise shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid or manner of construction.

10.4 Governing Law and Venue. This Franchise shall be governed by and construed in accordance with the laws of the State of Idaho, and venue for any litigation arising out of or in connection with privileges extended herein is stipulated to be in Kootenai County.

10.5 Severability. If any section, subsection, sentence, clause, phrase or portion of this Franchise is for any reason declared by a court of competent jurisdiction to be void, invalid or unenforceable, such portion shall be deemed a separate, distinct and independent provision and such declaration shall not affect the validity of the remaining portions thereof. In such event, the City and INTERMAX shall negotiate in good faith to modify this Franchise as may be necessary to meet the requirements of the law and/or to effectuate the intention of this Franchise. In the event that such modifications are barred by any legal requirements governing any party, the City and INTERMAX shall use their best efforts to otherwise avoid prejudice to the respective parties' interests and to implement changes to effectuate the intent in entering into this Franchise.

10.6 Guarantee of Performance. INTERMAX hereby agrees that it enters into this Franchise voluntarily and in order to secure and in consideration of the grant from the City of a ten-year franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by INTERMAX.

10.7 Force Majeure.

A. For the purposes of this Section, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within in the control of the parties hereto.

B. If INTERMAX is wholly or partially unable to carry out its obligations under this Franchise as a result of a Force Majeure, INTERMAX shall provide the City prompt notice of such Force Majeure, describing the same in reasonable detail, and INTERMAX's obligations under this Franchise, other than for payment of moneys due, shall not be deemed in violation or default for the duration of the Force Majeure. INTERMAX agrees to use its best

efforts to remedy as soon as possible, under the circumstances, INTERMAX's inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Franchise.

10.8 City Right of Intervention. If the City otherwise has the right to intervene, INTERMAX expressly acknowledges and agrees, by acceptance of this Franchise, not to oppose such intervention by the City in any suit or proceeding to which INTERMAX is a party related to this Franchise.

10.9 Consent. Wherever the consent or approval of either INTERMAX or the City is specifically required in this Franchise, such consent or approval shall not be unreasonably withheld.

10.10 No Third Party Beneficiaries. There shall be no third party beneficiaries of this Franchise.

10.11 Franchise Ordinance Acceptance. INTERMAX shall execute and return to the City, within sixty (60) days after the date of adoption of the Franchise Ordinance by the Coeur d'Alene City Council, three (3) original Franchise Agreements, by which INTERMAX acknowledges that it has carefully read the terms and conditions of the Franchise Ordinance and accepts all of the terms and conditions of the Franchise Ordinance and this Franchise and agrees to abide by the same. In accepting this Franchise, INTERMAX shall indicate that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept this Franchise, that the Franchise Ordinance represents the entire agreement between INTERMAX and the City and that INTERMAX accepts all reasonable risks related to the interpretation of the Franchise Ordinance and this Franchise. The executed Franchise Agreements shall be returned to the City accompanied by the Letter of Credit as required in Section 7.6 of this Franchise and evidence of insurance as required in Sections 7.5.1 and 7.5.2 of this Franchise. In the event INTERMAX fails to submit a Franchise Agreement as provided for herein, or fails to provide the required accompanying documents, this Franchise shall be null and void.

10.12 Previous Rights Abandoned. This Franchise supersedes any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by INTERMAX pursuant to any previous franchise in the City.

10.13 Effective Date. This Franchise and the Franchise Ordinance shall be effective thirty (30) days after its adoption by the City Council, approval by the mayor, acceptance by INTERMAX and publication as required by law.

SECTION 11 – TRANSFER OF OWNERSHIP OR CONTROL

A. This Franchise shall not be assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably

withheld. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

B. The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition of or acquisition by any other party of, control of the Company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Company shall make the Franchise subject to cancellation unless and until the City Council shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control, the City Council may inquire into the qualifications of the prospective controlling party, and the Company shall assist the City Council in any such inquiry.

C. The proposed assignee must show its legal and technical qualifications and its financial responsibility as determined by the City Council and must agree to comply with all the provisions of the Franchise. Unless the Company and the City Council otherwise agree on an extension of time, the City Council shall be deemed to have consented to a proposed transfer or assignment in the event it has not acted within one hundred twenty (120) days following receipt of a completed FCC Form 394, or other replacement form in the future that fulfills the same requirements, and any information required by the terms of the Franchise or applicable federal, state or local law.

D. The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the rights-of-way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Franchise.

E. By its acceptance of this Franchise, the Company specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Company. In no event shall a transfer of ownership or change of control be approved without the successor in interest becoming a signatory to this Franchise.

F. For the purpose of this Section, a change of control of the Company shall be defined as any acquisition of the Company or the Company's parent's voting stock by a person or group of persons acting in concert which results in that person or group of persons owning more than fifty percent (50%) of the voting stock of the Company or Company's parent.

G. Within 30 days of any transfer or sale and upon request, if approved or deemed granted by the City, the Company shall file with the City a copy of the deed, agreement, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Company.

H. Standards. The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Company shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not

unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Company.

I. Common Control Exemption. Notwithstanding anything to the contrary in this Section, the prior written approval of the City Council shall not be required for any sale, assignment or transfer of the Franchise, Cable System or ownership to an entity controlling, controlled by, or under the same common control as the Company.

Passed under suspension of rules upon which a roll call vote was duly taken and duly enacted an Ordinance of the City of Coeur d'Alene at a regular session of the City Council on May __, 2017.

CITY OF COEUR D'ALENE

NEWMAX, LLC DBA INTERMAX NETWORKS

Steve Widmyer, Mayor

By: _____
Its: Michael R. Kennedy, President

ATTEST:

City Clerk

STATE OF _____)
) ss.
COUNTY OF _____)

On this day of, before me, a Notary Public in and for said State,
personally appeared **Michael R. Kennedy**, known to me to be President of **Newmax, LLC dba Intermax Networks**, the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named as Company and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its directors.

WITNESS my hand and official seal.

Dated this _____ day of _____, 2017.

Print Name: _____

NOTARY PUBLIC in and for the State of
_____, residing at

My commission expires: _____

**GENERAL SERVICES COMMITTEE
STAFF REPORT**

DATE: May 8, 2017
FROM: Katie Kosanke, Urban Forestry Coordinator
SUBJECT: **Approved Public Tree List Revision**

DECISION POINT:

Does the General Services Committee want to recommend to City Council that the most recent draft of the approved street tree list be adopted?

HISTORY:

The City's first approved tree list was developed along with the urban forestry ordinance, and was adopted in January of 1985. The list went through revisions in 1987, 1989, 1993, 2004 and most recently in 2014. The list designates which tree species can be planted within the public right-of-ways within the city.

FINANCIAL ANALYSIS:

The printing of the approved street tree list for distribution is currently done by photocopier on an as-needed basis. Changing the list will not result in a supply of unusable/out-of-date publications; nor will it incur any additional photocopying costs.

PERFORMANCE ANALYSIS:

The urban forestry ordinance specifies, "No species other than those included in the list may be planted as a public tree without prior approval of the city council . ." The urban forestry ordinance specifies, "A list of the official public tree species for the city of Coeur d'Alene shall be established by resolution of the city council."

The draft revision includes the following changes:

- Some "new" species and cultivars are included in the list, giving more selections (Silverbell, sweetgum, magnolia, parrotia, serviceberry, Pagoda tree, & cucumber magnolia (good urban trees for our zone).
- Purple Robe black locust was removed from the approved street tree list. This species has been unsuccessful in the landscape, declining from locust borers and causing nuisance issues with sucker sprouts off of the roots.
- *Fraxinus* (ash) species were removed from the list due to the invasive non-native insect pest, Emerald ash borer making its way toward Idaho. This pest has caused devastation to ash trees on the east coast estimated in the billions of dollars in damage and mitigation. This pest has been detected in Colorado. State Community Forestry representatives have advised against the continued planting of ash trees. Currently there are 1,655 ash trees in the public tree inventory, this includes park and street trees (6.3% of all public trees).

Having a diversity of species is important since pest problems are generally specific to certain tree species. If there is an outbreak of a major pest, it can easily move from tree to tree and cause significant damage.

DECISION POINT/RECOMMENDATION:

Does the General Services Committee want to recommend to City Council that the most recent draft of the approved street tree list be adopted?

CITY OF COEUR D'ALENE APPROVED STREET TREE LIST - MEDIUM TREES

General Tree Guidelines

The minimum size tree acceptable for planting on public properties is 1 1/2" caliper. In most cases trees are to be selected from the medium tree list. Small trees should only be selected if there are overhead power lines or if the planting space is less than four feet wide. Large trees are generally too large for residential properties, but are appropriate next to large commercial buildings or expansive properties. When selecting trees, always remember that there must be adequate room within the right-of-way planting location for the expansion of the trunks and roots.

More information on trees, including pictures of selected trees from this list, is available on the city website at <http://www.cdavid.org/>. Urban Forestry can be found under the Parks Department.

A permit is required before planting within the right-of-way within the City of Coeur d'Alene. Apply for a free permit on the city website, or call 769-2266.






Key to Approved Uses:




Approved for use in Swales




Approved for use under Power Lines

MEDIUM TREES (25'- 50' height)	USES APPROVED	MATURE SIZE HT X W	TREE FORM	OTHER INFORMATION OF INTEREST
Black Alder <i>Alnus glutinosa</i>		50' x 30'	Broadly pyramidal	A fast-growing tree that tolerates tough sites, and wet infertile soil.
Black Tupelo (Black Gum) <i>Nyssa sylvatica</i>		35' x 20'	Pyramidal, spreading with age	Best known for its coppery red fall color.
Tri Color Beech <i>Fagus sylvatica 'Roseomarginata'</i>		30' x 20'	Oval	Variegated, purple with rose-pink and cream margin.
Fastigate Beech <i>Fagus sylvatica 'Fastigiata'</i>		45' x 15'	Columnar	Dark green foliage Fall Color:
Cork Tree <i>Phellodendron</i>		40' x 35'	Upright, then spreading	This tree has bark that is ridged and furrowed into a cork-like pattern at maturity. This tree is usually free of pests and tolerates drought and polluted air.
Plant Approved Cultivars Only :				
Eye Stopper		40' x 35'	crown	Fall Color: bright yellow
His Majesty		40' x 35'	Broadly vase shaped	Fall Color: yellow





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Sargent Cherry <i>Prunus sargentii</i> Approved cultivar for narrow spots:		Varies 30' x 30'	branches, round		
Columnar Sargent Cherry	<i>Only in narrow spots</i>	35' x 15'	Columnar to narrowly vase shaped		This tree has attractive mahogany colored bark. Pink flowers in the spring; produces fruit 1/3" long; fall color: orange and red. Species can be planted as medium tree, but use of the columnar form is restricted to narrow planting situations.
Yoshino Cherry <i>Prunus x. yedoensis</i>		30' x 30'	Round, spreading		Fall Color: yellow; light pink to white flowers
Crabapple - Robinson <i>Malus 'Robinson'</i>		25' x 25'	Upright, spreading		Tree has bronze/green foliage. Deep pink flowers are followed by 3/8" red fruit in the fall and winter. This is the only crabapple on the medium list.
Fraser Fir <i>Abies fraseri</i>		30-40' x 20'	Pyramidal		Evergreen, good substitution for subalpine fir.
Nikko Fir <i>Abies homolepis</i>		40' x 20'	Pyramidal		Evergreen, good substitution for subalpine fir.
Turkish Filbert <i>Corylus colurna</i>		45' x 30'	Pyramidal		Dark green foilage. Fall Color: yellow




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EmeraldSunshine Elm <i>Ulmus propinqua</i>		35' x 25'	Vase shaped		Deep green foilage. Fall Color: yellow.
Dynasty Elm <i>Ulmus parvifolia 'Dynasty'</i>		40' x 40'	Rounded		Fall Color: orange-yellow.
Frontier Elm <i>Ulmus 'Frontier'</i>		40' x 30'	Vase shaped to oval		Fall Color: burgandy.
Prospector Elm <i>Ulmus silsoniana 'Prospector'</i>		40' x 30'	Vase shaped		Fall Color: yellow
Vanguard Elm <i>Ulmus 'Morton Plainsman'</i>		45' x 40'	Rounded vase		Fall Color: yellow
Hackberry <i>Celtis occidentalis</i>		40' x 30'	Broad top w/arching branches		Has interesting park with narrow corkey ridges. Is tolerant of harsh conditions. Fall Color: yellow.

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Honeylocust <i>Gleditsia triacanthos</i> Plant Approved Cultivars Only :		Varies	cultivar		These trees have delicate, fine textured leaves let sunlight through and minimize leaf litter. Plant one of the approved cultivars only.
Moraine		45' x 40'	Widely vase shaped w/rounded top		Fall Color: golden
Shademaster		45' x 35'	Vase shaped to rectangular		Upright branch structure. Fall Color: yellow
Skyline		45' x 35'	Broadly pyramidal		Fall Color: golden
True Shade		40' x 35'	Broadly oval		Vigorous growth, Fall Color: yellow

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Hophornbeam <i>Ostrya virginiana</i>		40' x 25'	Upright oval	Fall Color: yellow
European Hornbeam <i>Carpinus betulus</i>		35' x 25'	Dense, narrow, oval w/age	Dense branching is excellent for screening. This tree has a formal look. Fall Color: yellow
Katsuratree <i>Cercidiphyllum japonicum</i>		40' x 40'	Upright, rounded with age	Fall Color: yellow or apricot orange
American Linden <i>Tilia americana</i>		Varies	Varies by cultivar	A stately tree with low spreading branches. Has larger leaves than other lindens. May need to discourage aphids. Fall Color: yellow
Plant Approved Cultivars Only :				
Legend		40' x 30'	Broadly pyramidal	
Lincoln		35' x 25'	Pyramidal, compact	
Redmond		35' x 25'	Pyramidal	Largest leaves of Linden cultivars.
Crimean Linden <i>Tilia x euchlora</i>		40' x 35'	Broadly pyramidal to oval	Fall Color: yellow; buy rooted cutting; hot & dry tolerant
Silver Linden <i>Tilia tomentosa</i>		Varies	Broadly pyramidal to oval	Silvery white underside of leaves give this tree its name. Fall Color: yellow; tolerates heat and drought. Use only cultivars listed.
Plant Approved Cultivars Only :				
Green Mountain		45' x 35'	Broadly pyramidal	
Sterling		45' x 35'	Broadly pyramidal	
Littleleaf Linden <i>Tilia cordata</i>		35-45' x 30'	Pyramidal to oval	A good shade tree. Fall Color: yellow. Use species and all cultivars.
Crescendo Sugar Maple <i>Acer saccharum</i> 'Morton'		45' x 40'	Broadly oval	A nice shade tree with smaller leaves than the Norway maple common to Cd'A. Fall Color: orange/red to bright red
Hedge Maple <i>Acer campestre</i>		30' x 30'	Dense, round	This tree has corky bark and requires only low maintenance. Fall Color: Yellow
Hardy Rubber Tree <i>Eucommia ulmoides</i>		45' x 45'	Rounded with ascending branches	Fall Color: yellow. Pests are not a problem for this tree
European Mountainash <i>Sorbus aucuparia</i>		35' x 25'	Upright and oval, round w/age	A hardy tree that is particularly beautiful in fall when foliage turns rusty orange and fruit is orange-red. Fruit is attractive to birds, but can be messy
Korean Mountainash <i>Sorbus alnifolia</i>		40' x 30'	Oval to round	Fall Color: yellow to orange. White flowers in spring. Scarlet fruit in fall and through winter is attractive to birds, but can be messy.
Oak-leaf Mountainash		30' x 20'	Upright w ascending branches; oval	

Sorbus x hybrida

White flowers in the spring followed by scarlet fruit. The good yellow to orange fall color of the other Mountainash with an unusual leaf. Fruit is attractive to birds, but can be messy

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English Oak Crosses

Varies Columnar to narrow oval

Quercus robur x bicolor 'Long'

Plant Only these Crosses:

Regal Prince Oak



45' x 18' Columnar to narrow oval

Rosehill Oak



40' x 20' Narrowly oval

Sky Rocket



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Swamp White Oak

45' x 45' Rounded, open

Fall Color: red to reddish purple

Quercus bicolor

Sawtooth Oak



40' x 40' Rounded

Fall Color: yellow

Quercus acutissima

Chinkapin Oak



45' x 45' Rounded, open

Fall Color: yellow to yellow brown

Quercus muehlenbergii

Crimson Spire Oak



45' x 15' Columnar, tightly fastigate

Fall Color: rusty red. Mildew resistant foliage.

Quercus robur x Q. Alba 'Crimschmidt'

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Callery Pear

Varies Upright

Clustered white flowers bloom in the spring followed by fall Color of red/scarlet. **Use only cultivars listed.**

Pyrus calleryana

Plant Approved Cultivars Only :

Autumn Blaze



30' x 25' Round

Best hardiness of the pears. Fall Color: bright red

Aristocrat



40' x 28' Pyramidal

Open, informal appearance. Fall Color: deep red;

Chanticleer



40' x 15' Upright, narrowly pyramidal

Fall Color: reddish

Trinity



30' x 25' Broadly oval to rounded

Smaller than other callery pears; Fall Color: orange/red

Prairie Gem



25' x 25' Dense, round

Hardy tree that generally blooms earlier than other varieties of pears. Fall Color: yellow to purple

Pyrus ussuriensis 'Mordak'

Carolina Silverbell

35' x 25' Rounded

White flowers in early spring. Fall Color: Yellow or golden

Halesia tetaptera

Sweetgum



40' x 25' Pyramidal

Fall Color: Orange, red, burgandy and purpleish. Has small 1" spiny hard ball fruits.

Liquidambar styraciflua

Scotch Pine

30'-60' x 40' Irregular pyramid

An evergreen that likes sunlight. It is salt intolerant and produces 1.5-3" cones.

Pinus sylvestris

Fastigate White Pine



30' x 10' Columnar, fastigate

Evergreen, bluish green needles.

Pinus strobus 'Fastigiata'

White Spruce

40'-60' x 20' Broad, densely pyramidal

Nice, adaptable evergreen that produces 1-2.5" long cones.

Picea glauca

Stewartia <i>Stewartia pseudocamellia</i>	30' x 20'	Pyramidal to oval	exfoliating bark, white 2" blooms in summer, Fall Color: red
Yellowwood <i>Cladrastus lutea</i>	30' x 40'	Round, arching branches	Fragrant flowers in the spring followed with fall colors of brilliant yellow.
Village Green Zelkova <i>Zelkova serrata</i> 'Village Green'	40' x 38'	Vase	A relative of the elm tree, this tree can be susceptible to the elm leaf beetle. Fall Color is an apricot to rusty red color.

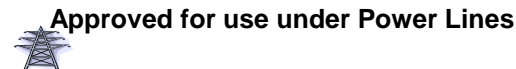
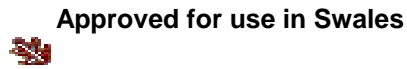
CITY OF COEUR D'ALENE APPROVED STREET TREE LIST - LARGE TREES

General Tree Guidelines

The minimum size tree acceptable for planting on public properties is 1 1/2" caliper. In most cases trees are to be selected from the meduim tree list. Small trees should only be selected if there are overhead power lines or if the planting space is less than four feet wide. **Large trees** are generally too large for residential properties, but are appropriate next to large commercial buildings or expansive properties. When selecting trees, always remember that there must be adequate room within the right-of-way planting location for the expansion of the trunks and roots.

More information on trees, including pictures of selected trees from this list, is available on the city website at <http://www.cdaid.org/>. Urban Forestry can be found under the **A permit is required** before planting within the right-of-way within the City of Coeur d'Alene. Apply for a free permit on the city website, or call 769-2266.


Key to Approved Uses:



LARGE TREES (> 50')	USES APPROVED	MATURE SIZE HT X W	TREE FORM	OTHER INFORMATON OF INTEREST
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Bald Cypress <i>Taxodium distichum</i>		55' x 30'	Pyramidal	Decidious conifer. Fall Color: rusty red.
American Beech <i>Fagus grandifolia</i>		50' x 40'	Broadly oval	Fall Color: golden bronze
Green Beech <i>Fagus sylvatica</i>		50' x 40'	Broadly pyramidal	Fall Color: bronze
Fernleaf Beech <i>Fagus sylvatica</i> 'Asplenifolia'		50' x 40'	Broadly oval	Fall Color: golden brown
Rivers Purple Beech <i>Fagus sylvatica</i> 'Riversii'		50' x 40'	Broadly oval	purple foliage, Fall Color: yellow brown
Northern Catalpa <i>Catalpa Speciosa</i>		50' x 35'	structure	Tolerant of tough conditions, large leaves that produce dense shade; does produce seed pods which are messy in the fall, large white flowers.
Kentucky Coffee Tree		50' x 35'	arching branches	bluish-green leaves, late to leaf out in spring, loses leaves early in the fall. Fall Color:

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	<i>Gymnocladus dioicus</i>			yellow.
F I R	White Fir	50-70' x 15-30'	Conical, branched to the base	Evergreen; 3-6" cone
	<i>Abies concolor</i>			
	Grand Fir	100' x 35'	Long, narrow crown	Evergreen
	<i>Abies grandis</i>			
	Nordmann fir	40-60' x 20'	branches	Evergreen
	<i>Abies nordmanniana</i>			
	Balsam fir	45-75' x 20-25'	Symmetrically pyramidal	Evergreen
	<i>Abies balsamea</i>			
	Valley Forge American Elm	 70' x 70'	Vase Shaped, drooping branches	Most resistant to Dutch Elm disease; fall color yellow/brown
	<i>Ulmus Americana</i> 'Valley Forge'			
	Chinese Elm	50' x 50'	Round w/ pendulous branches	aka Lacebark elm; Fall Color: purple
	<i>Ulmus parvifolia</i>			
	Plant Approved Cultivars Only :			
	Allee	50' x 35'	Upright, spreading	Fall Color: yellow
	Athena	40' x 55'	Round, spreading	Fall Color: bronze/brown
	Burgundy	50' x 50'	Broad, round	Fall Color: deep burgundy; rapid growth
	Accolade Elm	70' x 60'	Vase shaped with arching limbs	Fall Color: yellow
	<i>Ulmus japonica x wilsoniana</i> 'Morton'			
	Commendation Elm	60' x 50'	Upright oval	Fall Color: yellow
	<i>Ulmus</i> 'Morton Stalwart'			
E L M	Danda Charm Tree Elm	70' x 60'	Vase shaped with arching limbs	Fall Color: yellow
	<i>Ulmus x wilsoniana</i> 'Morton Red Tip'			
	Homestead Elm	55' x 35'	Upright arching, narrow oval	Fall Color: yellow
	<i>Ulmus</i> 'Homestead'			
	New Horizon Elm	55' x 40'	Upright oval, slightly arching	Fall Color: yellow
	<i>Ulmus japonica x pumila</i> 'New Horizon'			
	Jefferson Elm	70' x 50'	Vase shaped with arching limbs	Fall Color: yellow
	<i>Ulmus americana</i> 'Jefferson'			
	Pioneer Elm	50' x 50'	Rounded	Fall Color: yellow
	<i>Ulmus</i> 'Pioneer'			
Princeton Elm	65' x 50'	Upright vase shaped	Fall Color: yellow	
<i>Ulmus americana</i> 'Princeton'				
Triumph Elm	55' x 45'	Upright oval to vase	Fall Color: yellow	
<i>Ulmus</i> 'Morton Glossy'				
	Ginkgo	40-45' x 15-35'	narrowly to broadly pyramidal	Fall Color: bright golden yellow

Ginkgo biolba

Magnifica Hackberry

Celtis 'Magnifica'



50' x 40'

Broadly oval with ascending rather than descending branches.

Has better insect resistance than common Hackberry. Fall Color: yellow

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Eastern Hemlock

Tsuga canadensis

40-70' x 25-35'

Pyramidal

Evergreen; moist well-drained,acid soils;shade/drought tolerant

Western Hemlock

Tsuga heterophylla

100' x 50'

Narrow

Largest hemlock; Evergreen; 3/4-1" cone

Boulevard Linden

Tilia americana 'Boulevard'

50' x 25'

Tall, narrow

Hardy and well suited to street plantings; Fall Color: yellow

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European Larch

larix decidua

70' x 25'

Slender, pyramidal

Does not tolerate air pollution; Fall Color: yellow.

Japanese Larch

Larix kaempferi

70-90' x 25-40'

Open, pyramidal

Fall Color: Yellow; deciduous

Western Larch

larix occidentalis

70-75' x 20-30'

Narrow, short crown

Fall Color: yellow, gold; deciduous; shade intolerant

Cucumber Magnolia

Magnolia acuminata



60' x 50'

age

Fall Color: yellow bronze. Greenish white flowers in the spring.

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Sugar Maple

Acer saccharum

50' x 45'

Upright oval to round

Fall Color: orange, red, scarlet

Plant Approved Cultivars Only :

Bonfire

50' x 40'

Broadly oval

Fast growing; Fall Color: bright orange to red

Commemoration

50' x 35'

Oval to round

Fall Color: orange to orange/red

Endowment

50' x 20'

Columnar

Fall Color: bright yellow

Majesty

50' x 40'

Broadly oval

Fall Color: orange to red

Green Mountain

45' x 35'

Broadly oval

Hardy; Fall Color: red/orange to red

Wright Brothers

50' x 35'

Oval

Resistant to scorch & frost; Fall Color: yellow/orange to red

Austrian Pine

Pinus nigra

55' x 30'

Broadly pyramidal to rounded

Evergreen

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Ponderosa Pine

Pinus ponderosa

60-100' x 30'

Pyramidal, irregular cylinder w/age

Native E; 3-6" cone

Southwestern White Pine

Pinus strobiformus

50'-80' x 30'

Slender, straight, round

Resists blister rust; record 111' in height; 5-10" cone

Western White Pine

Pinus monticola

80' x 35'

Broad

Evergreen

Eastern White Pine

pinus strobus

50-80' x 20-40'

branches

Evergreen, one of the fastest growing pines.











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Bloodgood London Planetree <i>Platanus x acerifolia</i> 'Bloodgood'		50' x 40'	Broadly pyramidal	Fall Color: yellow; more resistant to anthracnose than species
Dawn Redwood <i>metasequoia glyptostroboides</i>		70' x 25'	Narrow, conical	Deciduous conifer, fast growing. Fall color: rusty orange
Bur Oak <i>Quercus macrocarpa</i>		55' x 45'	Broadly oval, irregular, open	Fall Color: yellow to yellow/brown
English Oak <i>Quercus robur</i>		50' x 40'	Broad, round, open crown	Adaptable; Evergreen; Fall Color: rusty orange to red
Plant Approved Cultivars Only :				
Westminster Globe Oak		45' x 45'	Round	1-2" long acorns
Skymaster Oak		50' x 25'	pyramidal	
Forest Green Oak <i>Quercus frainetto</i> 'Schmidt'		50' x 30'	Upright, oval	Glossy deep green leaves; Fall Color: yellow to brown
Pin Oak <i>Quercus palustris</i>		55' x 40'	Pyramidal	Fall Color: rusty orange to red
Red Oak <i>Quercus rubra</i>		Varies	Round	Fall Color: red
Scarlet Oak <i>Quercus coccinea</i>		50' x 40'	Upright spreading, open, oval	Fall Color: red
Shumard Oak <i>Quercus shumardii</i>		50' x 40'	Wide-spreading	Tolerant of wet soil; Fall Color: red/brown
White Oak <i>Quercus alba</i>		45' x 45'	Round	Fall Color: red to red/purple
Shingle Oak <i>Quercus imbricaria</i>		50' x 40'	Broadly oval	Fall Color: yellowish to rusty red
Heritage Oak <i>Quercus x macdonnellii</i> 'Clemons'		50' x 40'	Broadly pyramidal to oval	Dark green glossy foliage; Fall color: yellow
Green Pillar Oak <i>Quercus palustris</i> 'Pringreen'		50' x 15'	Narrowly columnar	Fall color: deep red. Only to be used in narrow planting strips
Pagoda Tree <i>Sophora japonica</i>		50' x 40'	Upright spreading	Fall Color: green-yellow. Creamy white fragrant flowers hang in clusters.
Oriental Spruce <i>Picea orientalis</i>		50-60' x 20'	Compact, narrow pyramidal	Protect from harsh winter winds; 2-4" cone; Evergreen
Serbian Spruce <i>Picea omorika</i>		50-60' x 25'	Narrow, pyramidal	Deep, moist, well-drained soil; 1.25-2" cone; Evergreen
Tuliptree <i>Liriodendron tulipifera</i>		50-60' x 30'	Oval	Fast growing; Fall Colors bright yellow

Japanese Zelkova

Zelkova serrata

50' x 40' Upright vase shaped Fall Color: orange; 1/6" drupe

Plant Approved Cultivars Only :

Green Vase 50' x 40' Vase shape w/ arching branches Fall Color: orange
 Halka 50' x 30' Upright vase shape Fall Color: yellow

CITY OF COEUR D'ALENE APPROVED STREET TREE LIST - SMALL TREES

General Tree Guidelines

The minimum size tree acceptable for planting on public properties is 1 1/2" caliper. In most cases trees are to be selected from the medium tree list. **Small trees** should only be selected if there are overhead power lines or if the planting space is less than four feet wide. Large trees are generally too large for residential properties, but are appropriate next to large commercial buildings or expansive properties. When selecting trees, always remember that there must be adequate room within the right-of-way planting location for the expansion of the trunks and roots.

More information on trees, including pictures of selected trees from this list, is available on the city website at <http://www.cdavid.org/>. Urban Forestry can be found under the **A permit is required** before planting within the right-of-way within the City of Coeur d'Alene. Apply for a free permit on the city website, or call 769-2266.











Key to Approved Uses:



Approved for use in Swales



Approved for use under Power Lines

SMALL TREES (25' or less)	USES APPROVED	MATURE SIZE HT X W	TREE FORM	OTHER INFORMATION OF INTEREST
Amur Maackia <i>Maackia amurensis</i>	 	25' x 20'	Upright vase shape	Tolerant; nitrogen-fixer; white flowers
Lindsey's Skyward Bald Cypress <i>Taxodium distichum 'Skyward'</i>	 	25' x 10'	Upright, columnar	Fall Color: rusty orange; deciduous conifer
Accolade Cherry <i>Prunus 'Accolade'</i>		25' x 30'	Broad, low	Almost no fruit; clustered flowers
Amur Chokecherry <i>Prunus maackii</i>		25' x 25'	Upright oval to round	Shiny coppery orange bark; Fall Color: yellow; 1/5" black fruit
Autumn Flowering Cherry <i>Prunus subhirtella 'Autumnalis Rosea'</i>		25' x 22'	Upright, spreading	Blooms spring and fall; Fall Color: yellow/bronze; double flowers
Japanese Cherry <i>Prunus serrulata</i>		25' x 15'	Vase shaped, round	Fall Color: bronze to red
Plant Approved Cultivars Only :				
Kwanzan		30' x 20'	Stiffly vase-shaped	Fall Color: orange/red; rosy pink flowers
Royal Burgundy		20' x 15'	Broadly vase-shaped	Purple leaves; Fall Color: bronze/purple; magenta/pink flowers
Snow Goose Cherry <i>Prunus 'Snow Goose'</i>		20' x 20'	Wider w/ age	Cherry foliage disease resistant; white flowers

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Canada Red Chokecherry*Prunus Padus 'Canada Red'***Cascade Snow Cherry***Prunus 'Berry'*

25' x 20'

Upright, spreading

leaves emerge green, turn purple in summer. Fall Color: red to reddish purple. Basal suckers can be a nuisance.

25' x 20'

Upright and spreading

Fall color: Yellow to bronze-orange. White flowers in clusters.

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E****Crabapple***Malus***Plant Approved Cultivars Only :**

Adams

Adirondack

Centurion

Indian Summer

Prairifire

Professor Sprenger

Purple Prince

Sentinel



20' x 20'

Round, upright

Pink to white flowers

20' x 20'

Round

5/8" red persistent fruit; pink flowers

18' x 10'

Upright

1/2" red persistent fruit; white flowers

20' x 15'

Narrow, upright

5/8" bright red fruit; rose red flowers

18' x 20'

Round

5/8" bright red fruit; rose red flowers

20' x 20'

Upright, spreading, round

purple leaves; Fall Color: red/green; red fruit; bright pink/red flowers

20' x 20'

Upright, spreading

1/2" orange/red fruit; pink & white flowers

20' x 20'

Rounded

Purple foliage; Fall Color: bronze/green; 3/8"-1/2" maroon fruit

20' x 12'

Narrow, upright

Persistent fruit; white flowers w/ pink tint

20' x 20'

Upright, spreading

Fall color: red; pink flowers

Pink Flowering Dogwood*Cornus florida rubra***Kousa Dogwood***Cornus kousa*

20' x 20'

Horizontal, round

Fall Color: red; white flowers

Pagoda Dogwood*Cornus alternifolia*

20' x 20'

Irregular branching, mostly rounded

small white flowers. Fall color: mix of yellow with reddish purple mixing in

Goldenchain tree*Laburnum x watereri*

25' x 20'

Vase shaped

Golden yellow long clusters of hanging flowers

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N****Crimson Cloud Hawthorn***Crataegus laevigata 'Crimson Cloud'*

25' x 18'

Oval w/ upright branches

Resistant to leaf spot; Fall Color: bright red; red flowers

Snowbird Hawthorn*Crataegus x mordenensis 'Snowbird'*

22' x 20'

Upright oval to round

3/8" bright crimson fruit; clustered flowers

Thornless Cockspur Hawthorn*Crataegus crus-galli 'Inermis'*

25' x 25'

Round, spreading

Fall Color: orange, rusty orange; small white flowers

Washington Hawthorn*Crataegus phaenopyrum*

25' x 20'

Broadly oval to round

Fall Color: orange to scarlet; red fruit; white flowers; thorns

Summer Sprite Linden*Tilia cordata 'Halka'*

16' x 8'

Dense, narrow pyramid

Natural dwarf; Fall Color: yellow

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E****Apollo Maple***Acer saccharum 'Barrett Cole'*

25' x 10'

Narrow, columnar

Dwarf; Fall Color: yellow/orange to red



















Paperbark Maple

25' x 20'

Upright, spreading

Trifoliate leaf, cinnamon bark; Fall Color: red

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<i>Acer griseum</i>		25' x 20'	Oval to round	Fall Color: yellow to orange/red; bright red samaras
Tartarian Maple <i>Acer tartaricum</i>				
Red Cascade Mountainash <i>Sorbus americana 'Dwarfcrowne'</i>		18' x 8'	Compact, oval	Fall Color: yellow to orange; small orange/red fruit; white flowers
Merrill Loebner Magnolia <i>Magnolia x loebneri 'Merrill'</i>		25' x 25'	Rounded	Fall Color: medium-dark green. Cream white flowers
Royal Star Magnolia <i>Magnolia stellata 'Royal Star'</i>		20' x 15'	Rounded form	Fall Color: Green. White spring flowers
Gambel Oak <i>Quercus gambelii</i>		25'x25'	Rounded	Fall Color: yellow orange to orange red
Jack Pear <i>pyrus calleryana 'Jaczam'</i>	 	16' x 10'	Compact upright oval	Fall Color: yellow; white flowers
Persian Parrotia <i>Parrotia persica</i>		25' x 20'	Irregular shape	Fall color: showy red, orange and red. Pest free and tolerant of various conditions.
Allegheny Serviceberry <i>Amelanchier laevis</i>	 	25' x 15'	Upright oval	Fall Color: orange; edible 3/8" fruit; white clustered flowers
Apple Serviceberry <i>Amelanchier x grandiflora</i>	 	25' x 15'	Rounded	Fall color: yellow to orange; edible small fruit; white clustered flowers
Japanese Tree Lilac <i>Syringa pekinensis or reticulata</i>	 	20' x 15-20'	Upright spreading	Fall Color: Yellow; creamy white clusters of flowers
Eastern Redbud <i>Cercis canadensis</i>	 	25' x 30'	Low branching, flat topped	Fall Color: yellow; rosy pink pea flowers
City Sprite Zelkova <i>Zelkova serrata</i>		24' x 18'	Compact oval to vase shape	Fall Color: yellow
Wireless Zelkova <i>Zelkova serrata 'Schmidtlow'</i>		25' x 35'	Wide low spreading form	Fall Color: yellow



Coeur d'Alene's approved street tree list

(Proposed revision 2017)

Additional Species

- More species to choose from
- Silverbell, sweetgum, magnolia, parrotia, serviceberry, Pagoda tree, & cucumber magnolia (good urban trees for our zone)

Species to remove from list

- Purple robe black locust
- All Fraxinus (ash) species





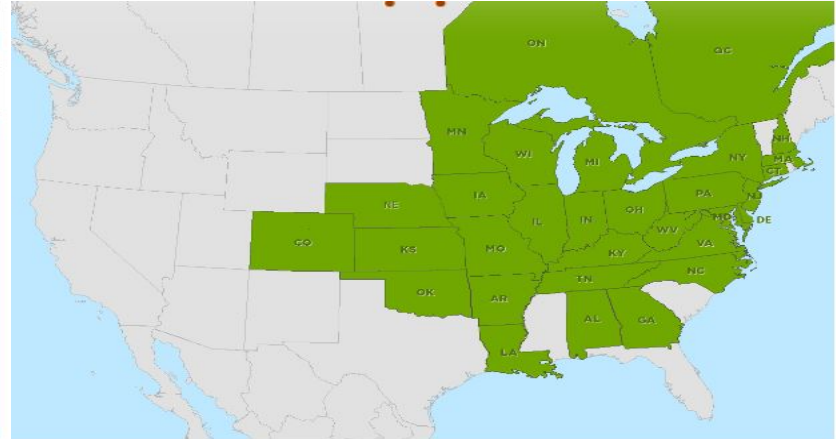
Emerald Ash Borer

First discovered in 2002 In
Michigan, Ontario soon after



2002

Widespread damage by 2016



2016

Emerald Ash Borer

- Significant damage
- All Fraxinus (ash) species
- Large ½” beetle, larvae causes damage
- D-shaped exit holes
- Came from Asia, no predators here



Does the General Services want to recommend approval of the revision of the approved street tree list?



**GENERAL SERVICES COMMITTEE
STAFF REPORT**

DATE: 5/8/2017

FROM: Monte McCully, City of Coeur d'Alene Trails Coordinator

SUBJECT: 2017 Trails and Bikeways Master Plan (action required)

DECISION POINT:

The Coeur d'Alene Parks Department is requesting General Services to recommend to City Council the adoption of the 2017 Trails and Bikeways Master Plan.

HISTORY:

The Coeur d'Alene Parks Department adopted the current Trails and Bikeways Master Plan in 2010. There have been many changes to the city since then and an update to the plan was needed. The Coeur d'Alene Ped/Bike Committee and the Parks Department partnered on coming up with the recommendations and changes that would go in this plan and the 2017 update to the Trails and Bikeways Master Plan has been completed. This plan inventories all trails and bikeways facilities as well as provides suggested recommendations for future trails and trail connectivity. The community is seeking safer ped/bike corridors that connect neighborhoods to schools, parks, and other points of interest.

FINANCIAL ANALYSIS:

Adopting the plan does not oblige the City to allocate funds for implementation of the plan. When a project is identified it is either funded by applying for grants, obliging new annexations and developments to put in facilities or requesting it be put in the budget for the following year.

PERFORMANCE ANALYSIS:

Adopting the Bikeways and Trails Master Plan will provide a blueprint for pedestrian and bicycle facilities for the next five to ten years.

DECISION POINT/ RECOMMENDATION

The Coeur d'Alene Parks Department is requesting General Services to recommend to City Council the adoption of the 2017 Trails and Bikeways Master Plan.

A copy of the 2017 Trails and Bikeways Master Plan has been placed near the Council mailboxes, or can be viewed online at:

<http://www.cdavid.org/3197/departments/parks/draft-2016-trails-and-bikeways-master-plan-update->

**GENERAL SERVICES COMMITTEE
STAFF REPORT**

DATE: 5/08/2017

FROM: Monte McCully, City of Coeur d'Alene Trails Coordinator

SUBJECT: Art in Motion Sidewalk Stencils (action required)

DECISION POINT:

The Coeur d'Alene Parks Department is requesting General Services to recommend to City Council the approval to use a sidewalk stencil to guide pedestrians along the art walk trail.

HISTORY:

The Art in Motion Ad Hoc committee met 3 years ago and designed 4 different brochures that guide people to our city's art pieces. The brochures outline 2 different walking tours and 2 different biking tours. The committee raised sponsors to print the brochure and has been updating the brochure and reprinting it every year. This year the idea came up to paint a small 12 to 18 inch symbol on the ground along the walking trail at 2 to 3 locations on every block. This will help guide people to each art piece much like the Muddy and Millie symbols we painted several years ago.

FINANCIAL ANALYSIS:

The Arts Commission has already agreed to fund a reprint of the brochure, the construction of the symbol and the paint required to paint the symbols. The Ad Hoc Committee will work together to paint the symbols. There will be staff time involved for one employee for an estimated 3 hours.

PERFORMANCE ANALYSIS:

The art symbols will help pedestrians find and view our art pieces. This will help enhance the downtown experience in Coeur d'Alene for both residents and visitors.

DECISION POINT/ RECOMMENDATION

The Coeur d'Alene Parks Department is requesting General Services to recommend to City Council the approval to use a sidewalk stencil to guide pedestrians along the art walk trail.

MEMORANDUM

DATE: May 4, 2017

FROM: SAM TAYLOR, DEPUTY CITY ADMINISTRATOR

RE: Expansion of the downtown time limited parking zone

DECISION POINT: Staff recommends the City Council adopt an ordinance amending CMC 10.24.020(B) extending the two-hour time limit parking zone on Sherman Avenue to 8th Street.

HISTORY: For many years the City has provided free two hour parking in the downtown core. These two hour time limits are enforced by our contractor, Diamond Parking.

Ensuring a healthy rotation of vehicles by enforcing two hour parking allows more residents and visitors to park downtown, thus supporting our local small businesses.

Diamond Parking's contract with the City outlines the downtown core in an expansive swath, which includes all along Sherman Avenue to 8th Street. However, the City's two hour parking zone ends at 7th Street, per City code section 10.24.020(B).

New businesses along Sherman Avenue continue to enhance economic development downtown, but between 7th and 8th streets there is no time limit, and the City has been made aware this is impacting vehicle turnover – and therefore inhibits local businesses from getting enough customers to be sustainable.

Staff believes it was the City Council's intent when adopting Diamond Parking's enforcement zone to ensure a two hour time limit extended along Sherman all the way to 8th Street.

For this reason, staff recommends CMC 10.24.020(B) be amended to ensure this this section of Sherman Avenue is treated the same as the rest of the downtown area.

It is likely the City will also install one or two 15-minute limited spaces in this area, too, to encourage turnover where there are fast-food-type eateries. The Downtown Association has worked with a business owner in this area supportive of this. Authority to designate 15-minute time zones is already granted to the City Engineer in Chapter 10.24 CMC.

The Parking Commission unanimously recommends adoption of the amendment to the City code to provide for two hour parking along this section of Sherman Avenue.

FINANCIAL: As Diamond Parking's contract already includes this portion of Sherman Avenue for enforcement, there is no modification or increased cost required for enforcement to occur. The City must designate the enforcement areas, however, for Diamond to work in this area.

DECISION POINT/RECOMMENDATION: Staff recommends the City Council adopt an ordinance amending CMC 10.24.020(B) extending the two-hour time limit parking zone on Sherman Avenue to 8th Street.

10.24.020: LIMITED TIME PARKING SPACES AND ZONES:

A. No owner or operator of any vehicle shall on any day, except Sundays and holidays, between the hours of nine o'clock (9:00) A.M. and six o'clock (6:00) P.M., allow or cause said vehicle to be continuously parked longer than fifteen (15) minutes in any parking space posted for fifteen (15) minute parking.

B. No owner or operator of any vehicle shall allow or cause such vehicle to be continuously parked for a period of more than two (2) hours on any day between the hours of nine o'clock (9:00) A.M. and six o'clock (6:00) P.M., except Sundays and holidays, along the following described portions of streets and avenues within the city:

Sherman Avenue from Second Street to ~~Seventh~~ Eighth Street;

The east side of First Street from Sherman Avenue to Indiana Avenue;

The west side of First Street from Sherman Avenue to the south side of the intersection of First Street and Coeur d'Alene Avenue;

Second Street from Sherman Avenue to Wallace Avenue;

Third Street from Front Avenue to Indiana Avenue;

Fourth Street from Front Avenue to Indiana Avenue;

Fifth Street from Front Avenue to Coeur d'Alene Avenue;

Sixth Street from Front Avenue to Lakeside Avenue;

The north side of Indiana Avenue between Third Street and Fourth Street;

Lakeside Avenue from First Street to Seventh Street;

The south side of Front Avenue from Fifth Street to Sixth Street;

The north side of Front Avenue from Third Street to Seventh Street;

Coeur d'Alene Avenue from First Street to Fifth Street.

Such other spaces and/or zones and for such amount of time as may hereafter be established by duly passed resolution of the city council.

Holidays shall be the following nationally recognized days: Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King Jr./Idaho Human Rights Day, Presidents' Day, Memorial Day, Independence Day, Labor Day and Columbus Day. (Ord. 3508, 2015)

**CITY COUNCIL
STAFF REPORT**

DATE: May 8, 2017
FROM: Michael C. Gridley, City Attorney
SUBJECT: 816 Sherman Lease Amendment

DECISION POINT:

Whether the City should amend the lease agreement for 816 Sherman to extend the term for an additional 6 months.

HISTORY:

The current lease agreement expires on May 31, 2017 for the building occupied by the entire Legal department. The lease extension will expire on November 30, 2017. The City Hall Reconstruction Project should be completed in October when both departments will move back to City Hall.

FINANCIAL ANALYSIS:

The rent is \$2,500 per month for the 6 month extension.

PERFORMANCE ANALYSIS:

The current space serves the needs of the Legal Civil and Criminal departments and is close to City Hall. There is no other comparable space near City Hall.

DECISION POINT/RECOMMENDATION:

The Legal Department recommends that Council approve the 6 month extension of the 816 Sherman lease agreement with Commercial Property Management, LLC.



Commercial Property Management, LLC

April 24, 2017

Mike Gridley
City Attorney
City of Coeur d'Alene
PO Box 489
Coeur D Alene, ID 83816

Dear Mike:

This letter will serve as an Amendment to your Lease for your space at 816 Sherman Avenue, Suites 3, 4, & 5 Coeur d'Alene, Idaho 83814. Your lease will be extended for 6 months starting June 1, 2017 and ending November 30, 2017.


All terms and conditions of the original Lease agreement to remain the same except for the following:

The Premises: The Lessor hereby Leases unto Lessee the Premises known as 816 Sherman Avenue, Suites 3, 4, & 5 and basement, Coeur d'Alene, Idaho 83814.

Rent: \$2,500.00 per month

Please sign the acknowledgement below, and return to our office. Please contact me at 208/665-6473 or 208/640-9470, if you have any questions.

Sincerely,
Commercial Property Management LLC


Jim Koon
Manager
(208) 665-6473 or (208) 640-9470

City of Coeur d'Alene (Mayor)

By: _____
Steve Widmyer

Date: _____

Attest by City Clerk

By: _____
Renata McLeod

Date: _____

Magnuson Properties Partnership (Owner)

By: _____

Date: _____