

**COEUR D'ALENE CITY COUNCIL
ADDENDUM AGENDA NO. 2
FOR THE MARCH 19, 2013
COUNCIL MEETING**



Addition of the following item:

G. CONSENT CALENDAR

- 4. Resolution No. 13-016
 - f. Temporary Easement Agreement with Coeur d'Alene Mines

Staff Report Received

J. OTHER BUSINESS

- 5. Wastewater Permit Compliance Options

**Presentation by: City Attorney Mike Gridley and
Wastewater Superintendent Sid Fredrickson**

Posted March 15, 2013

CITY COUNCIL STAFF REPORT

DATE: March 19, 2013
FROM: Gordon Dobler, City Engineer
SUBJECT: **Approval of Temporary Construction Easement Agreement**

DECISION POINT

Staff is requesting the City Council to approve a Temporary Construction Easement Agreement between Coeur d'Alene Mines Corporation and the City of Coeur d'Alene.

HISTORY

Due to the McEuen Park Construction Project, the City requires a Temporary Construction Easement across portions of property owned by the Coeur d'Alene Mines Corporation.

FINANCIAL ANALYSIS

This action will have no fiscal impact on the City.

PERFORMANCE ANALYSIS

This request conforms to our standard practice

RECOMMENDATION

Staff recommends a motion to approve the Temporary Construction Easement Agreement.

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of March, 2013, BY AND BETWEEN Coeur d'Alene Mines Corporation, an Idaho Corporation, whose address is P.O. Box 1 Coeur d'Alene, Idaho 83816, its successors and assigns (hereinafter referred to as the "Grantor" or "Coeur"), and the City of Coeur d'Alene, a municipal corporation and political subdivision of the State of Idaho, duly organized and existing pursuant to the laws of the State of Idaho, whose address is 710 E. Mullan Avenue, Coeur d'Alene, Idaho, 83814-3958, its successors and assigns (hereinafter referred to as the "Grantee" or "City").

WHEREAS, for the purpose of roadway widening and improvement construction, as shown on the final construction plans, which were duly approved by a quorum of members of the City Council of the City of Coeur d'Alene on _____, _____, the City requires a Temporary Construction Easement, across portions of real property owned by Coeur and more particularly described in the metes and bounds description in Schedule "A" and also depicted on Exhibit "A," both of which are attached hereto and incorporated herein, for all purposes, and collectively constitute the "Easement Area"; and

WHEREAS, the City has requested of Coeur, and Coeur has agreed to grant, a Temporary Construction Easement (hereinafter referred to as the "Agreement") across the Easement Area under the following terms and conditions.

NOW, THEREFORE, in consideration of the Easement Area, the mutual covenants hereinafter exchanged, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties to this Agreement do hereby incorporate by reference the Recitals set forth above, and the parties hereby covenant and agree as follows:

1. Coeur does hereby grant and convey unto the City, its successors and assigns, free of charge and for the benefit of the City, a non-exclusive and Temporary Easement and Right-Of-Way over, through, across, under and along the Easement Area, to use and occupy the Easement Area during construction, for the purpose of implementing the final construction plans, referenced hereinabove; together with the right of ingress and egress along and over the Easement Area for any and all reasonable purposes deemed by the City to be necessary for the construction, improvement, or use of the City's property;
2. Immediately following completion of construction in accordance with the final construction

plans, referenced hereinabove, or any amendments thereto, but no later than March 12, 2014, the City will cause to be removed from the Easement Area all debris, surplus material and construction equipment, and shall restore the unimproved surface of the Easement Area to a grade agreed upon by the parties, as nearly as practicable. In the event that fences, driveways, and/or landscape are removed or damaged by the City's agents during construction, the City will cause such improvements on and to Coeur's property to be repaired and restored to a condition fully equal to that existing before construction operations were commenced. Following completion of construction, the City will cause the prompt restoration to smooth surface contours and agreed upon grade;

3. The right, privilege, and easement granted herein, for temporary use of the Easement Area shall cease and terminate immediately following the completion of construction, but no later than March 12, 2014. Coeur reserves the right to terminate this Agreement at any time for any reason, in its sole discretion, upon ten (10) days written notice to the City;
4. The City will defend, indemnify and hold harmless Coeur, its respective representatives, contractors, agents, tenants, customers, invitees, vendors and subtenants from and against any claims, damages, actions, penalties, liabilities or judgments, including attorneys' fees and costs of litigation, arising out of or related to the actions or inactions of the City, its representatives, agents or contractors relating to the work to be performed by the City within the Easement Area. This covenant shall survive termination of this Agreement.
5. The City covenants that all work performed within the Easement Area shall be done in a workmanlike fashion, with quality materials and pursuant to all applicable laws. The City or its agent will maintain appropriate insurance policies covering the Easement Area showing Coeur as an additional insured, including, but not limited to, worker's compensation insurance as required by applicable law and general comprehensive liability insurance;
6. The City shall use best efforts to minimize interference with or damage to the Coeur's property and the conduct of business thereon; and shall not interfere with any marketing efforts undertaken by Coeur with respect to the sale or development of the Coeur property;
7. In the event of any litigation to enforce the rights provided for herein, the prevailing party shall be entitled to recover from the losing party its reasonable costs of litigation, including reasonable attorneys' fees. This Agreement shall inure to the benefit of the

successors and assigns of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Idaho;

8. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, discussions, and understanding of the parties in connection herewith.

9. This Agreement shall not be binding unless and until it is executed by both parties.

IN WITNESS WHEREOF, this Agreement is executed by Grantor and Grantee as of the date of their respective signatures, hereinbelow, but shall be deemed **effective**, for all purposes, as of the date written hereinabove.

BY: _____
FOR: City of Coeur d'Alene, GRANTEE

Acknowledgement

State of _____)
)s.s.
County of _____)

I, _____, a notary public, do hereby certify that on this ____ day of March, 2013, _____, personally known to me appeared before me, who being by me first duly sworn, that he signed the attached Temporary Construction Easement Agreement and that the statements therein contained are true.

My Commission Expires on _____

BY: _____
FOR: Coeur d'Alene Mines Corporation, GRANTOR

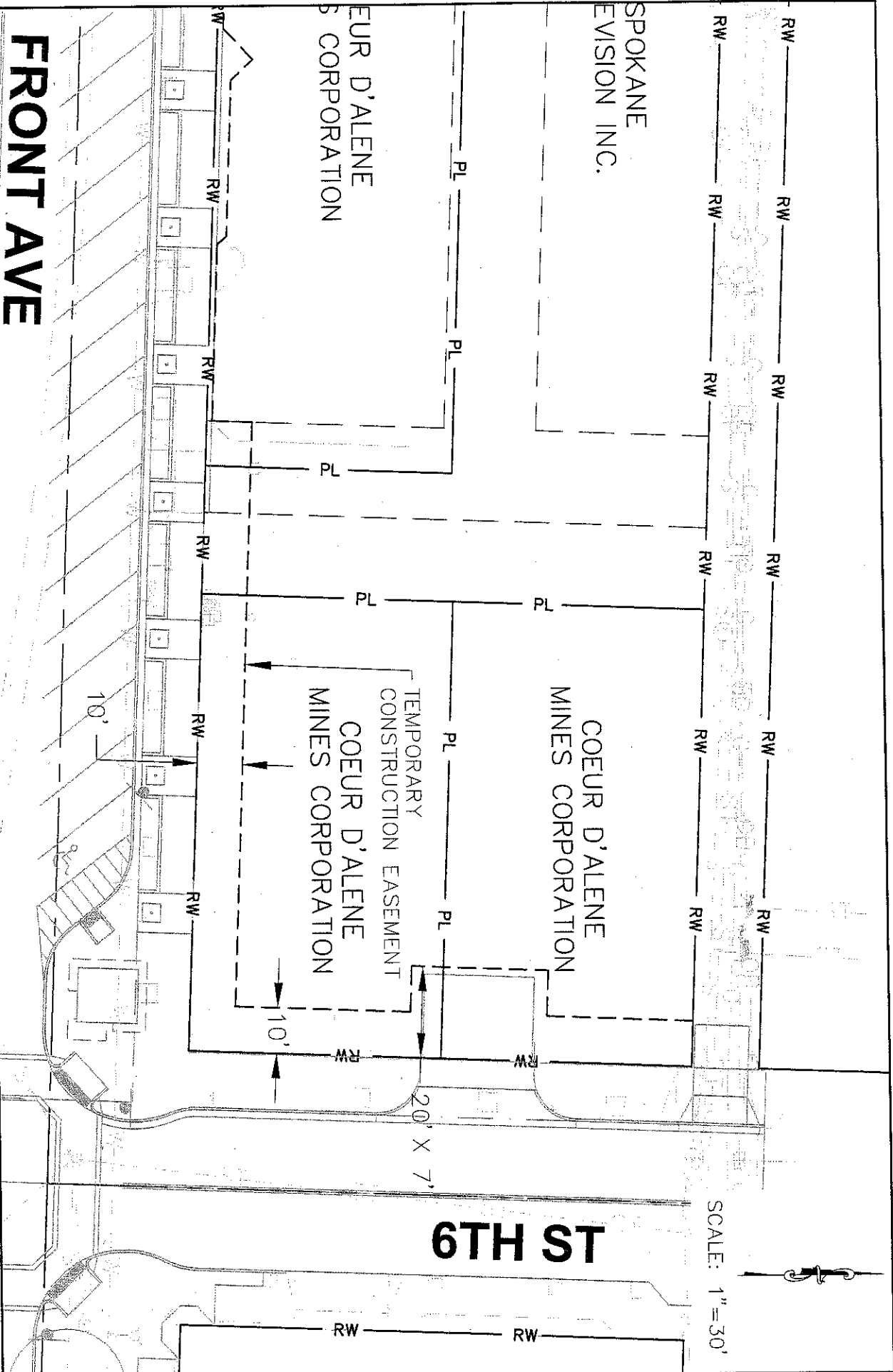
Acknowledgement

State of Idaho)
)S.S.
County of Kootenai)

I, _____, a notary public, do hereby certify that on this ____ day of March, 2013, _____, personally known to me appeared before me, who being by me first duly sworn, that he signed the attached Temporary Construction Easement Agreement and that the statements therein contained are true.

_____ My Commission Expires on _____
SCHEDULE "A"

EXHIBIT "A"



SPOKANE
TELEVISION INC.

COEUR D'ALENE
MINES CORPORATION

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TEMPORARY
CONSTRUCTION EASEMENT
COEUR D'ALENE
MINES CORPORATION

6TH ST

FRONT AVE

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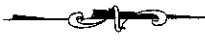
208-864-9382
(toll free) 877-815-5672
(fax) 208-864-5946

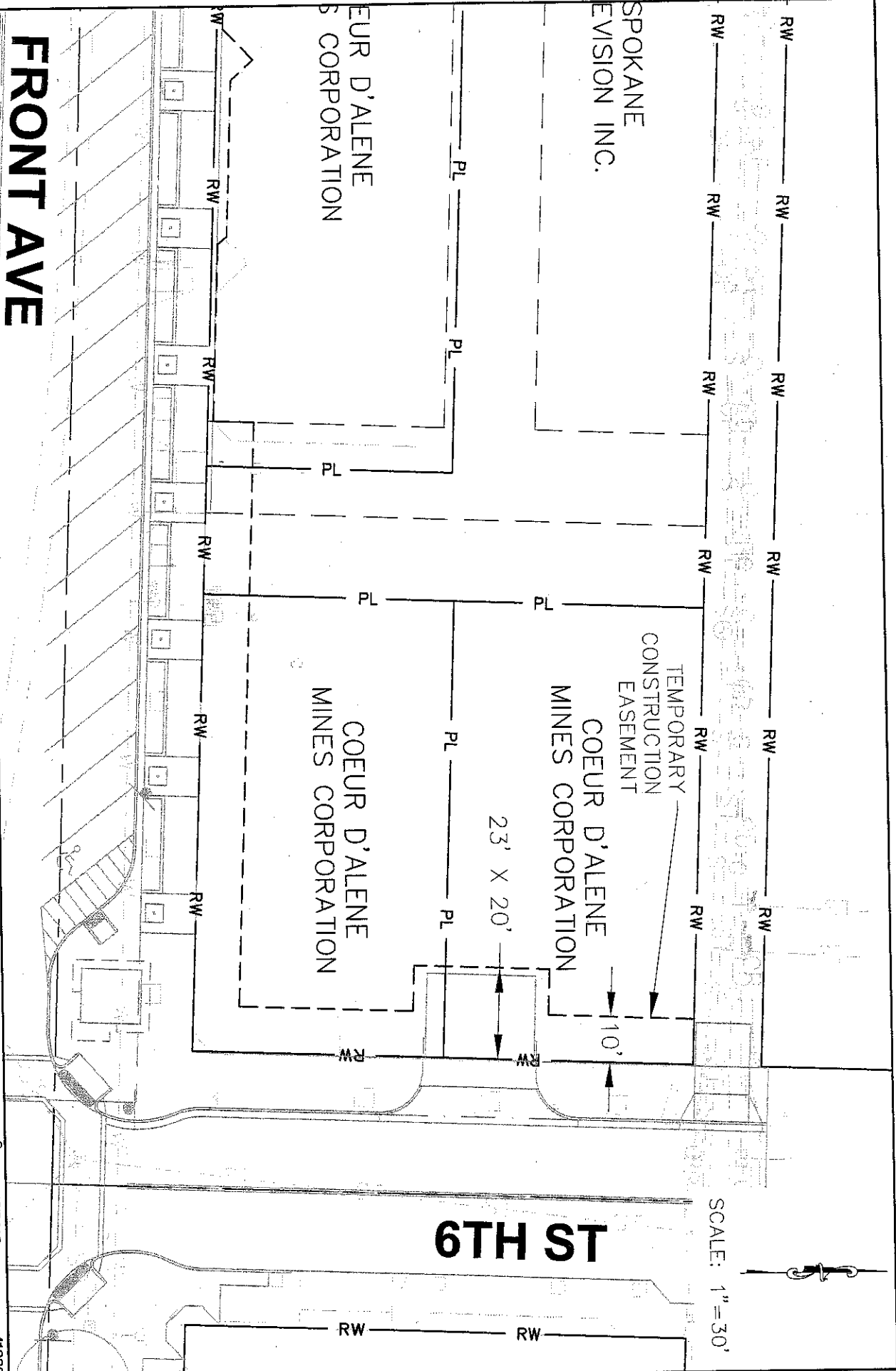
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EXHIBIT A
TEMPORARY CONSTRUCTION EASEMENT
FROM COEUR D'ALENE MINES CORPORATION
PARCEL # C-1800-00R-011-B

PROJECT NO.: 41022
DESIGNED BY: TJF
DRAWN BY: TJF
DWG NAME: 41022EASE_EX02
DATE: 1-15-13
SHEET NO: 1

SCALE: 1" = 30'





FRONT AVE

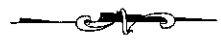
SPokane
TELEVISION INC.

COEUR D'ALENE
MINES CORPORATION

COEUR D'ALENE
MINES CORPORATION

6TH ST

SCALE: 1" = 30'



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EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT
FROM COEUR D'ALENE MINES CORPORATION
PARCEL # C-1800-00R-011-A

PROJECT NO.: 41022

DESIGNED BY: T.J.F.

DRAWN BY: T.J.F.

DWG NAME: 41022EASE-EX02

DATE: 1-15-13

SHEET NO: 1

5TH ST

SPOKANE
TELEVISION INC.

COEUR D'ALENE
MINES CORPORATION

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MINES CORPOR

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MINES CORPOR

SCALE: 1" = 30'

FRONT AVE

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TEMPORARY CONSTRUCTION EASEMENT
FROM COEUR D'ALENE MINES CORPORATION
PARCEL # C-1800-00R-007-A

PROJECT NO: 41022

DESIGNED BY: TJF

DRAWN BY: TJF

DWG NAME: 41022EASE-EX02

DATE: 1-15-13

SHEET NO: 1