



Coeur d'Alene

CITY COUNCIL MEETING

September 6 2011

MEMBERS OF THE CITY COUNCIL:

Sandi Bloem, Mayor

Councilmen Edinger, Goodlander, McEvers, Bruning, Hassell, Kennedy

CONSENT CALENDAR

**MINUTES OF A REGULAR MEETING OF THE CITY
COUNCIL OF THE CITY OF COEUR D'ALENE, IDAHO,
HELD AT THE LIBRARY COMMUNITY ROOM
AUGUST 16, 2011**

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room August 16, 2011 at 6:00 p.m., there being present upon roll call the following members:

Sandi Bloem, Mayor

Woody McEvers) Members of Council Present
John Bruning)
A. J. Al Hassell, III)
Mike Kennedy)
Loren Ron Edinger)

Deanna Goodlander) Members of Council Absent

CALL TO ORDER: The meeting was called to order by Mayor Bloem.

INVOCATION was led by Pastor Paul VanNoy, Candlelight Christian Fellowship.

PLEDGE OF ALLEGIANCE: The pledge of allegiance was led by Councilman McEvers.

PRESENTATION – ROAD MASTER CERTIFICATION: Bruce Drewes, Idaho Technology Transfer Center, presented Street Maintenance staff, Eric Killen and Aman Sterling, with their Road Master Certificates.

PRESENTATION – DOG TOWN USA AWARD: Ernie Slone, Editor of Dog Fancy Magazine, presented the Kootenai County Dog Park Association with a \$5,000.00 check and an award to the City for being a dog friendly city.

PRESENTATION – PANHANDLE PARKS FOUNDATION: Steve Wetzel, President of the Panhandle Parks Foundation, updated the Council on the activities of their foundation. He explained that their organization has become a holding company for various groups raising donations.

PUBLIC COMMENT:

RECYCLING PROGRAM: Steve Roberge, 6488 N. 4th, Dalton Gardens, General Manager of Waste Management Coeur d'Alene, reported on the increasing level of resident participation in the City's recycling program. He noted that to date they have recycled over 3,000,000 pounds of recyclable material. He announced that as of last week, they have begun a commercial recycling program. He noted that they will again be distributing a calendar for next year showing the recycling pickup dates.

CONSENT CALENDAR: Motion by Hassell, seconded by Kennedy to approve the Consent Calendar as presented.

1. Approval of minutes for August 2, 2011.

2. Setting the General Services Committee and the Public Works Committee meetings for Monday, August 22nd at 12:00 noon and 4:00 p.m. respectively.
3. RESOLUTION 11-028: A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE BELOW MENTIONED CONTRACTS AND OTHER ACTIONS OF THE CITY OF COEUR D'ALENE INCLUDING STIMULUS GRANT ACCEPTANCE AND CONTRACT WITH SUN VALLEY TREE SERVICE FOR HAZARD TREE REMOVAL AND MAINTENANCE; INTENT TO LEASE PROPERTY AT 3285 FRUITLAND LANE TO NORTH IDAHO HOUSING COALITION; APPROVING A LEASE AGREEMENT WITH NORTH IDAHO HOUSING COALITION FOR PROPERTY AT 625 HATTIE; APPROVING A GRANT ADMINISTRATION SERVICES AGREEMENT WITH PANHANDLE AREA COUNCIL FOR HUD CDBG FUNDS; APPROVING CHANGE ORDER NO. 7 WITH CONTRACTORS NORTHWEST, INC. FOR THE WASTEWATER TREATMENT PLANT PHASE 5B; APPROVING A CONTRACT WITH H2O WELL SERVICES FOR THE DRILLING OF THE KATHLEEN AVE. 6" TEST WELL.
4. RESOLUTION 11-029: A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO ESTABLISHING A NOTICE OF TIME AND PLACE OF PUBLIC HEARING OF THE PROPOSED AMENDED BUDGET FOR FISCAL YEAR 2010-2011, AND INCLUDING PROPOSED EXPENDITURES BY FUND AND/OR DEPARTMENT, AND STATEMENT OF THE AMENDED ESTIMATED REVENUE FROM PROPERTY TAXES AND THE AMENDED TOTAL AMOUNT FROM SOURCES OTHER THAN PROPERTY TAXES OF THE CITY FOR THE ENSUING FISCAL YEAR AND PROVIDING FOR PUBLICATION OF THE SAME.

WHEREAS, it is necessary, pursuant to Idaho Code 50-1003, for the City Council of the City of Coeur d'Alene, prior to passing an Amended Annual Appropriation Ordinance, to prepare a proposed amended Budget, tentatively approve the same, and enter such proposed amended Budget at length in the journal of the proceedings; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene, that the following be and the same is hereby adopted as an Amended Estimate of Expenditures and Anticipated Revenue of the City of Coeur d'Alene for the fiscal year beginning October 1, 2010:

GENERAL FUND EXPENDITURES:

Mayor and Council-----	\$	209,702	
Administration-----		506,414	
Finance Department-----		685,549	Municipal
Services-----	1,287,249	1,289,749	
Human Resources-----		240,728	
Legal Department-----		1,373,662	1,375,812
Planning Department-----		497,784	
Building Maintenance-----		406,282	1,150,189
Police Department-----		9,396,597	9,478,829
Byrne Grant-----		155,186	171,508
Byrne Grant Equipment-----		249,860	326,768
COPS Grant-----		219,250	
K.C.J.A. Task Force-----		36,700	48,700
ADA Sidewalks-----		214,617	239,917
Fire Department-----		7,102,021	7,491,546
General Government-----		185,750	928,742
Engineering Services-----		1,161,422	1,519,723

Streets/Garage-----	2,092,253	2,204,954
Parks Department-----	1,638,267	1,681,973
Recreation Department-----	755,512	761,912
Building Inspection-----	764,526	

TOTAL GENERAL FUND EXPENDITURES: \$29,179,331 \$31,794,275

SPECIAL REVENUE FUND EXPENDITURES:

Library Fund-----	\$1,231,020	
Community Development Block Grant-----	336,746	
Impact Fee Fund-----	583,000	
Parks Capital Improvements-----	205,000	386,800
Annexation Fee Fund-----	-0-	
Insurance / Risk Management-----	206,925	653,077
Cemetery Fund-----	271,308	
Cemetery Perpetual Care Fund-----	98,500	
Jewett House-----	17,050	
Reforestation-----	2,500	45,500
Street Trees-----	57,000	
Community Canopy-----	1,200	
Arts Commission-----	6,450	
Public Art Funds-----	80,300	
Kootenai Metropolitan Planning Org-----	650,000	

TOTAL SPECIAL FUNDS: \$3,746,999 \$4,417,951

ENTERPRISE FUND EXPENDITURES:

Street Lighting Fund-----	\$ 591,321	641,321
Water Fund-----	6,924,772	6,969,772
Wastewater Fund-----	18,915,393	19,115,393
Water Cap Fee Fund-----	850,000	
WWTP Cap Fees Fund-----	752,580	
Sanitation Fund-----	3,118,772	
City Parking Fund-----	176,957	261,457
Stormwater Management-----	1,573,460	

TOTAL ENTERPRISE EXPENDITURES: \$32,903,255 \$33,282,755

FIDUCIARY FUNDS:----- 2,562,000
STREET CAPITAL PROJECTS FUNDS:----- 7,853,000 7,752,500
DEBT SERVICE FUNDS:----- 1,668,878
GRAND TOTAL OF ALL EXPENDITURES: \$77,913,463 \$81,478,359

BE IT FURTHER RESOLVED, that the same be spread upon the Minutes of this meeting and published in two (2) issues of the Coeur d'Alene Press, seven (7) days apart, to be published on August 23, 2010 and August 30, 2011.

BE IT FURTHER RESOLVED, that a Public Hearing on the Budget be held on the 20th day of September, 2011 at the hour of 6:00 o'clock p.m. on said day, at which time any interested person may appear and show cause, if any he has, why the proposed amended Budget should or should not be adopted.

ROLL CALL: Bruning, Aye; Hassell, Aye; Goodlander, Aye; Edinger, Aye; McEvers, Aye; Kennedy, Aye. Motion carried.

5. Setting of public hearing for V-11-5 – vacation of utility easement in Fairway Forest 3rd Addition.
6. Declaration of sole source procurement for the purchase of chassis mounted Vac-all Unit.
7. Authorizing staff to proceed with the proposed changes to the Planning process.
8. Approval of outdoor eating facility encroachment permit for JAMMS Frozen Yogurt at 213 Sherman Ave.
9. Approval of beer/wine license transfers for Woodsy’s Zip Stops at 3675 N. Gov’t Way and at 9423 N. Veranda
10. Approval of beer/wine license for Franklin Hoagies at 501 N. 4th
11. Setting of public hearings: A-3-11 annexation/zoning of property at 2200 W. Bellerive Lane for September 20, 2001; and, ZC-3-11 zone change at Interlake Medical Center for September 20, 2011.
12. Approval of bills as submitted and on file in the Office of the City Clerk.

ROLL CALL: Hassell, Aye; McEvers, Aye; Bruning, Aye; Kennedy, Aye; Edinger, Aye.
Motion carried.

ANNOUNCEMENTS:

COUNCILMAN BRUNING : Councilman Bruning noted that there will be a hydroplane fundraiser this weekend with proceeds going to the North Idaho Museum. The Resort will be hosting the annual Pacific Northwest wooden boat show on the boardwalk. There will be a vintage car show this weekend as well.

APPOINTMENT – STUDENT REPRESENTATIVES: Motion by Edinger, seconded by Kennedy to appoint following students to various committees: Chelsee Longley to Childcare Commission; Chiamaka Ikefuna to Library Board and Ashley Haynes as alternate; Tangie Lyons to Parking Commission; Kierstie Shellman to Pedestrian/Bicycle Advisory Committee; Jacob Garringer to Planning Commission; Ben Woolley to Recreation and Parks Commission; and, Nickolas Radobenko to the Urban Forestry Committee. Motion carried.

ADMINISTRATOR’S REPORT: City Administrator Wendy Gabriel announced that the City of Coeur d’Alene Arts Commission is seeking artists for its Wastewater Treatment Plant Information packets are available at City Hall or online at www.cdavid.org. Artist proposals are due by 5:00 p.m., August 31. Artists with questions are encouraged to contact Steve Anthony, Arts Commission Liaison, at stevea@cdavid.org. This is our first year under the new election laws whereby the County conducts elections. With that being said, the county has decided that they will NOT provide satellite in-person absentee voting sites as has been done in the past. Therefore, there will not be any absentee voting available at City Hall this election. Any in-person absentee voting must be done at the County elections office on Third Street. Citizens always have the option of requesting a mailed ballot from the County. The Coeur d’Alene City Council has approved a partnership between the Coeur d’Alene Police Department and the Spokane County Sheriff for use of their public safety helicopter. Coeur d’Alene has been awarded a \$32,533 grant for the maintenance of public trees. The purpose of the project is to improve the overall health and value of public trees while improving public safety. It is a goal of the project to preserve and create jobs in Kootenai County and to promote economic recovery. A request for bids for the tree work has been sent to eleven local city-licensed tree services. Ped/Bike Committee “Tip of the Week”: When riding your bike on the street just outside a

parking lane, be on the lookout for “The Door Prize.” This is when a driver opens his door right in front of you and you can’t stop in time. Ride your bike far enough to the left to clear any opening door. The Fire Department was awarded a grant for \$11,000 through the Idaho Department of Homeland Security for equipment for our K-9 Team. The National Recreation and Parks Association has named the City’s Parks Director Doug Eastwood as their President. Mrs. Gabriel reminded residents that September 6th will be the date for the public hearing on the proposed city budget for FY 2011-2012.

COUNCIL BILL NO. 11-1019
ORDINANCE NO. 3418

AN ORDINANCE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AMENDING CABLE FRANCHISE ORDINANCE NO. 3161 BY CONSENTING TO THE FIVE (5) YEAR EXTENSION OF THE CABLE FRANCHISE GRANTED TO TIME WARNER CABLE, LLC., TO OPERATE A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE CITY OF COEUR D'ALENE; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDE FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND PROVIDING AN EFFECTIVE DATE HEREOF.

Motion by Kennedy, seconded by Edinger to pass the first reading of Council Bill No. 11-1019.

ROLL CALL: Edinger, Aye; Hassell, Aye; Kennedy, Aye; McEvers, Aye; Bruning, Aye.
Motion carried.

Motion by Kennedy, seconded by McEvers to suspend the rules as to adopt Council Bill No. 11-1019 by its having had one reading by title only.

ROLL CALL: Edinger, Aye; Hassell, Aye; Kennedy, Aye; McEvers, Aye; Bruning Aye. Motion carried.

RESOLUTION 11-030

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING AN EXTENSION OF FRANCHISE AGREEMENT WITH TIME WARNER CABLE, LLC. EXTENDING THE TERM OF THE FRANCHISE UNTIL JANUARY 26, 2019.

Motion by Kennedy, seconded by Edinger to adopt Resolution 11-030.

ROLL CALL: Bruning, Aye; Edinger, Aye; Hassell, Aye; Kennedy, Aye; McEvers, Aye.
Motion carried.

COUNCIL BILL NO. 11-1014
ORDINANCE NO. 3416

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AMENDING SECTIONS 6.15.010 TO CLARIFY THAT PERSONS LIVING IN THE R-1 ZONE MAY POSSESS UP TO TWO DOMESTIC

LIVESTOCK; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDE FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND AN EFFECTIVE DATE HEREOF.

Motion by Kennedy, seconded by Bruning to pass the first reading of Council Bill No. 11-1014.

ROLL CALL: Kennedy, Aye; McEvers, Aye; Bruning, Aye; Edinger, Aye; Hassell, Aye. Motion carried.

Motion by Edinger, seconded by McEvers to suspend the rules and to adopt Council Bill No. 11-1014 by its having had one reading by title only.

ROLL CALL: Kennedy, Aye; McEvers, Aye; Bruning, Aye; Edinger, Aye; Hassell, Aye. Motion carried.

ORDINANCE NO. 3417
COUNCIL BILL NO. 11-1017

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, BY ADOPTING A NEW CHAPTER DESIGNATED AS 9.50 ENTITLED ELECTRONIC CIGARETTES AND RELATED DEVICES; PROVIDING DEFINITIONS AND PROHIBITING SALES OF E-CIGARETTES TO MINORS, SALES OF E-CIGARETTES FROM MACHINES ACCESSIBLE TO MINORS AND PROHIBITING PURCHASING OR POSSESSION OF E-CIGARETTES BY MINORS; PROVIDING THAT VIOLATIONS OF THIS CHAPTER, OTHER THAN PURCHASING OR POSSESSION BY MINORS, IS A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$1,000 OR BY IMPRISONMENT NOT TO EXCEED 180 DAYS OR BOTH AND PROVIDING THAT PURCHASING OR POSSESSION OF E-CIGARETTES BY MINORS IS AN INFRACTION PUNISHABLE BY A FINE OF \$100; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDE FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND AN EFFECTIVE DATE HEREOF.

Motion by Edinger, seconded by Kennedy to pass the first reading of Council Bill No. 11-1017.

ROLL CALL: Kennedy, Aye; McEvers, Aye; Bruning, Aye; Edinger, Aye; Hassell, Aye. Motion carried.

Motion by Edinger, seconded by McEvers to suspend the rules and to adopt Council Bill No. 11-1017 by its having had one reading by title only.

ROLL CALL: Kennedy, Aye; McEvers, Aye; Bruning, Aye; Edinger, Aye; Hassell, Aye. Motion carried.

RCA-4-11 – ATLAS MILL SITE: City Planner Tami Stroud reported that Washington Trust Bank is requesting approval of a Request to Consider Annexation of a portion of the Atlas Mill

site a +/- 22.23 acre parcel between Seltice Way, the Spokane River, and east of the Mill River development.

Motion by Kennedy, seconded by McEvers to approve the applicant proceeding with the annexation process for the property formerly known as Atlas Mill site. Motion carried.

COUNCIL BILL NO. 11-1020
ORDINANCE NO. 3419

AN ORDINANCE OF THE CITY OF COEUR D'ALENE, VACATING A PORTION OF MELROSE STREET RIGHT-OF-WAY, GENERALLY DESCRIBED AS THE EASTERLY TWENTY FEET (20.0') OF THE SEVENTY FIVE FOOT (75.0') RIGHT-OF-WAY AT THE SOUTHEAST CORNER OF MELROSE STREET AND DAVIDSON AVENUE, COEUR D'ALENE, KOOTENAI COUNTY, IDAHO; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND AN EFFECTIVE DATE HEREOF.

Motion by Kennedy, seconded by McEvers to pass the first reading of Council Bill No. 11-1020.

ROLL CALL: McEvers, Aye; Bruning, Aye; Edinger, Aye; Hassell, Aye; Kennedy, Aye.
Motion carried.

Motion by Kennedy, seconded by McEvers to suspend the rules and to adopt Council Bill No. 11-1020 by its having had one reading by title only.

ROLL CALL: McEvers, Aye; Bruning, Aye; Edinger, Aye; Hassell, Aye; Kennedy, Aye.
Motion carried.

EXECUTIVE SESSION: Motion by Hassell, seconded by McEvers to enter into Executive Session as provided by I.C. 67-2345 : To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated

ROLL CALL: Hassell, Aye; McEvers, Aye; Bruning, Aye; Kennedy, Aye; Edinger, Aye.
Motion carried.

The session began at 7:10 p.m. Members present were the Mayor, City Council, City Administrator, Deputy City Administrator and City Attorney.

Matters discussed were those of personnel matters and litigation. No action was taken and the Council returned to regular session at 8:56 p.m.

ADJOURNMENT: Motion by Edinger, seconded by McEvers that there being no further business, the meeting is adjourned. Motion carried.

The meeting recessed at 8:56 p.m.

Sandi Bloem, Mayor

ATTEST:

Susan Weathers, CMC
City Clerk

RESOLUTION NO. 11-031

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING A STATE AND LOCAL AGREEMENT WITH THE IDAHO TRANSPORTATION DEPARTMENT FOR THE CONSTRUCTION OF GOVERNMENT WAY FROM DALTON AVENUE TO HANLEY AVENUE.

WHEREAS, the City Engineer has recommended that the City of Coeur d'Alene enter into a State and Local Agreement with the Idaho Transportation Department for Construction of Government Way from Dalton Avenue to Hanley Avenue, pursuant to terms and conditions set forth in an agreement, a copy of which is attached hereto as Exhibit "1" and by reference made a part hereof; and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof to enter into such agreement; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the City enter into a State and Local Agreement, in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreement to the extent the substantive provisions of the agreement remain intact.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized to execute such agreement on behalf of the City.

DATED this 6th day of September, 2011.

Sandi Bloem, Mayor

ATTEST:

Susan K. Weathers, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER GOODLANDER Voted _____

COUNCIL MEMBER MCEVERS Voted _____

COUNCIL MEMBER HASSELL Voted _____

COUNCIL MEMBER KENNEDY Voted _____

COUNCIL MEMBER BRUNING Voted _____

COUNCIL MEMBER EDINGER Voted _____

_____ was absent. Motion _____.

CITY COUNCIL STAFF REPORT

DATE: September 6, 2011
FROM: Gordon Dobler, Engineering Services Director
SUBJECT: Approval of State/Local Agreement for Construction of Government Wy, Dalton Ave to Hanley Ave.

DECISION POINT

Staff is requesting Council approval of an agreement with ITD for construction of Government Way, from Dalton Ave to Hanley Ave.

HISTORY

This project has been in design for the past three years, right-of-way acquisition was completed last spring, and the relocation of utilities is just now being completed so construction can begin next spring. In order to proceed we need to execute the State/Local agreement for Construction services with ITD.

FINANCIAL ANALYSIS

The construction estimate, including construction inspection and testing, is \$3,488,260.50. The budgeted amount is \$3,623,000. There is a 7.34% match required, so the total match will be \$253,815. We have budgeted our portion of the match this fiscal year. The source of our funds is impact fees.

PERFORMANCE ANALYSIS

The project includes the widening of Government Way to five lanes, bike lanes both sides and the reconstruction of the signal at Hanley Ave. ITD will bid the project this fall and start construction next spring. The specifications allow 80 working days for construction (16 weeks). We will also need to contract for construction inspection and testing but the cost is already included in construction estimate, so no additional match is required.

RECOMMENDATION

Staff recommends approval of the attached State / Local agreement with ITD.

STATE/LOCAL AGREEMENT
(CONSTRUCTION)
PROJECT NO. A011(526)
GOVERNMENT WAY; DALTON TO HANLEY
KOOTENAI COUNTY
KEY NO. 11526

PARTIES

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **IDAHO TRANSPORTATION DEPARTMENT**, hereafter called the **STATE**, and the **CITY OF COEUR D'ALENE**, acting by and through its Mayor and Council, hereafter called the **SPONSOR**.

PURPOSE

The **SPONSOR** has requested federal participation in the costs of widening and reconstructing Government Way to five lanes, sidewalk, curb/gutter, storm water collection system, water line and signal improvements. This Agreement sets out the responsibilities of the parties in the construction and maintenance of the project.

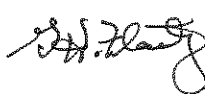
Authority for this Agreement is established by Section 40-317 of the Idaho Code.

The Parties agree as follows:

SECTION I. GENERAL

1. This Agreement is entered into for the purpose of complying with certain provisions of the Federal-Aid Highway Act in obtaining federal participation in the construction of the project.
2. Federal participation in the costs of the project will be governed by the applicable sections of Title 23, U.S. Code (Highways) and rules and regulations prescribed or promulgated by the Federal Highway Administration.
3. Checks for funds owed by the **SPONSOR** shall be made payable to the "Idaho Transportation Department", and mailed to the ~~District One Office at 600 W. Prairie, Coeur d'Alene, ID 83814.~~ *ITD Headquarters, PO Box 7129, Boise, ID 83707-1129, Attention: Jennifer Miller*

1



State/Local Agreement (Construction)
Government Way; Dalton to Hanley
Key No. 11526

4. All information, regulatory and warning signs, pavement or other markings, and traffic signals, the cost of which is not provided for in the plans and estimates, must be erected at the sole expense of the **SPONSOR** upon the completion of the project.
5. The location, form and character of all signs, markings and signals installed on the project shall be in conformity with the Manual of Uniform Traffic Control Devices as adopted by the **STATE**.
6. During construction, the latest edition of the **STATE's** *Guide for Utility Management* will be followed in all matters relating to utilities.
7. This State/Local Agreement (Construction) upon its execution by both Parties, supplements the State/Local Agreement (Project Development) by and between the same parties, dated August 19, 2008.
8. Sufficient Appropriation. It is understood and agreed that the **STATE** is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the **STATE** beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The **STATE** reserves the right to terminate this Agreement if, in its sole judgment, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the **STATE** to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.

SECTION II. That the **STATE** shall:

1. Enter into an Agreement with the Federal Highway Administration covering the federal government's pro rata share of construction costs.
2. Advertise, open bids, prepare a contract estimate of cost based on the successful low bid and notify the **SPONSOR** thereof.

3. Award a contract for construction of the project, based on the successful low bid, if it does not exceed the **STATE'S** estimate of cost of construction by more than ten (10) percent. If the low bid exceeds the estimate by more than 10%, the bid will be evaluated, and if justified, the contract will be awarded and the **SPONSOR** will be notified.
4. Obtain concurrence of the **SPONSOR** before awarding the contract if the **SPONSOR'S** share of the low bid amount exceeds the amount set forth in Section III, Paragraph 1 by more than ten (10) percent.
5. Provide to the **SPONSOR** sufficient copies of the Contract Proposal, Notice to Contractors, and approved construction plans.
6. Designate a resident engineer and other personnel, as the **STATE** deems necessary, to supervise and inspect construction of the project in accordance with the plans and specifications in the manner required by applicable state and federal regulations. This engineer, or his authorized representatives, will prepare all monthly and final contract estimates and change orders, and submit all change orders to the **SPONSOR** for their concurrence. If the **SPONSOR'S** share of any change order exceeds \$1,000.00, the **STATE** will submit a statement to the **SPONSOR** indicating the amount owed by the **SPONSOR**.
7. Notify the **SPONSOR** when construction engineering and inspection (CE&I) costs have reached approximately 85% of the estimated cost for CE&I.
8. Maintain complete accounts of all project funds received and disbursed, which accounting will determine the final project costs.
9. Upon completion of the project, after all costs have been accumulated and the final voucher paid by the Federal Highway Administration, provide a statement to the **SPONSOR** summarizing the estimated and actual costs, indicating an adjustment for or against the **SPONSOR**. Any excess funds transmitted by the **SPONSOR**

and not required for the project will be applied to any outstanding balance the **SPONSOR** may have on a previously completed project. If no such outstanding balance exists, the excess funds will be returned to the **SPONSOR**.

10. Subject to the limitations hereinafter set forth, **STATE** shall indemnify, defend and save harmless **SPONSOR** from and against any and all demands, claims or liabilities of every nature whatsoever, caused by or arising out of any negligent acts by **STATE**, or **STATE's** officers, agents, and employees while acting within the course and scope of their employment, which arise from or which are in any way connected with this project. Any such indemnification hereunder by **STATE** is subject to the limitations of the Idaho Tort Claims Act (currently codified at chapter 9, title 6, Idaho Code). Such indemnification hereunder by **STATE** shall in no event cause the liability of **STATE** for any such negligent act to exceed the liability limits set forth in the Idaho Tort Claims Act. Such indemnification shall in no event exceed the amount of loss, damages, expenses or attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of **SPONSOR**.

SECTION III. That the **SPONSOR** shall:

1. Pay to the **STATE** before the advertisement for bids, the amount of **TWO HUNDRED FIFTY-THREE THOUSAND EIGHT HUNDRED FIFTEEN DOLLARS (\$253,815)**, which is the **SPONSOR'S** estimated share of the cost for construction plus preliminary engineering, and construction engineering & inspection (CE&I) by the **STATE**, and after deducting credit for the **SPONSOR'S** previous deposit as applies to Preliminary Engineering and the **SPONSOR'S** match as applies to the design agreement. The actual cost to the **SPONSOR** will be determined from the total quantities obtained by measurement plus the actual cost of engineering and contingencies required to complete the work. Construction engineering and contingencies will be approximately 15% of the total construction cost.

2. Upon approval of the lowest qualified bid received, if the **SPONSOR'S** share exceeds the amount set forth in Section III, Paragraph 1, transmit to the **STATE** the **SPONSOR's** portion of such excess cost.
3. Authorize the **STATE** to administer the project and make any necessary changes and decisions within the general scope of the plans and specifications. Prior approval of the **SPONSOR** will be obtained if it is necessary, during the life of the construction contract, to deviate from the plans and specifications to such a degree that the costs will be increased or the nature of the completed work will be changed.
4. Designate an authorized representative to act on the **SPONSOR'S** behalf regarding action on change orders. That authorized representative's name is _____, Phone No. _____.
5. When change orders are submitted by the **STATE** for approval pursuant to Section II, Paragraph 6, the **SPONSOR** or its authorized representative shall give approval of same as soon as possible, but no later than ten (10) calendar days after receipt of the change order. If approval is delayed, any claims due to that delay shall be the responsibility of the **SPONSOR**.
6. Upon receipt of either of the statements referred to in Section II, Paragraphs 6 and 9, indicating an adjustment in cost against the **SPONSOR**, promptly remit to the **STATE** a check or warrant in that amount.
7. Maintain the project upon completion to the satisfaction of the **STATE**. Such maintenance includes, but is not limited to, preservation of the entire roadway surface, shoulders, roadside cut and fill slopes, drainage structures, and such traffic control devices as are necessary for its safe and efficient utilization. Failure to maintain the project in a satisfactory manner will jeopardize the future allotment of federal-aid highway funds for projects within the **SPONSOR'S** jurisdiction.

8. Indemnify, save harmless, and defend, regardless of outcome the **STATE** from expenses of, and against suits, actions, claims, or losses of every kind, nature, and description, including costs, expenses, and attorney fees that may be incurred by reason of any negligence of the **SPONSOR** in the work which is the subject of this Agreement.

EXECUTION

This Agreement is executed for the **STATE** by its Highways Program Oversight Engineer, and executed for the **SPONSOR** by the Mayor, attested to by the City Clerk, with the imprinted corporate seal of the City of Coeur d'Alene.

IDAHO TRANSPORTATION DEPARTMENT

APPROVED BY:

Highways Program Oversight Engineer

Approved as to form
Lawrence G. Allen
Deputy Attorney General
July 19, 2011

RECOMMENDED BY:

District Engineer

ATTEST:

CITY OF COEUR D'ALENE

City Clerk

Mayor

(SEAL)

By regular/special meeting
on _____.

hm:11526 SLAConst.docx

**CITY COUNCIL
STAFF REPORT**

DATE: September 6, 2011

FROM: Warren Wilson, Deputy City Attorney

SUBJECT: Resolution 11-032 - Repeal of Request to Consider Annexation Process.

DECISION POINT:

Repeal the Request to Consider Annexation (“RCA”) process.

HISTORY:

Several years ago the RCA process was adopted in an attempt to save both staff and applicant time and money in instances where annexation was not timely. However, the process has proved cumbersome and has not worked as intended. The City Council recently directed staff to begin work on revising several planning processes, including replacing the RCA process with a new annexation policy. Staff has begun work on these projects and repealing the RCA process is the first step in adopting a new annexation policy.

FINANCIAL ANALYSIS:

There is little direct financial impact to this action. Staff time will continue to be spent in preparing a new policy and processing any annexation applications that may be submitted.

PERFORMANCE / QUALITY OF LIFE ANALYSIS:

While a new policy is being drafted, and if the RCA process is repealed, applications for annexation will be handled as they were prior to adoption of the policy. The applicant will submit an application, meet with staff and a hearing before the Planning Commission will be held on the appropriate zoning. Then, the Council will hold a hearing to consider whether the property should be annexed and consider the Planning Commission’s zoning recommendation. Staff anticipates having a new policy ready for consideration and adoption before the end of the year.

DECISION POINT/RECOMMENDATION:

Repeal the Request to Consider Annexation (“RCA”) process.

RESOLUTION NO. 11-032

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO REPEALING THE POLICY FOR PROCESSING REQUESTS TO CONSIDER ANNEXATION SET FORTH IN RESOLUTION NO. 07-078.

WHEREAS, pursuant to Resolution No. 07-078 the City adopted a policy for Processing Requests to Consider Annexation on the 18th day of December, 2007; and

WHEREAS, following a review of its annexation procedures, the City deems it appropriate to repeal such policy; and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof that Resolution No. 07-078 be and the same is repealed; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that Resolution No. 07-078, adopting a policy for processing requests to consider annexations is hereby repealed.

DATED this 6th day of September, 2011.

Sandi Bloem, Mayor

ATTEST:

Susan K. Weathers, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER KENNEDY Voted _____

COUNCIL MEMBER HASSELL Voted _____

COUNCIL MEMBER MCEVERS Voted _____

COUNCIL MEMBER GOODLANDER Voted _____

COUNCIL MEMBER BRUNING Voted _____

COUNCIL MEMBER EDINGER Voted _____

_____ was absent. Motion _____.

**CITY COUNCIL
STAFF REPORT**

DATE: September 6, 2011
FROM: Terry W. Pickel, Assistant Superintendent, Water Department
SUBJECT: Approval of Bid for a 600 kW / 750 kVA Portable Generator

=====

DECISION POINT: Staff requests Council approval of the lowest responsive bid and authorization to purchase a 600 kW / 750 kVA generator set from Western States Equipment Co.

HISTORY: The Water Department is required by IDAPA 58.01.08 to have the capacity to provide auxiliary power to critical wells and pump stations. Upon review, staff identified 5 critical sites where an auxiliary power source is crucial. These sites are: Prairie, Atlas and Annie Wells, the Lower Blackwell and Elm Street Booster Stations. Thus far, the Lower Blackwell and Elm Street Booster Stations have backup power generators available and Atlas Well has an auxiliary drive power plant. The next phase of this project was to purchase a large portable standby generator which could be utilized at either Prairie or Annie Wells as the need arose. Staff eventually plans to have capacity at some of the other wells to connect to this same generator as needed.

FINANCIAL ANALYSIS: Staff solicited bids for a 600 kW / 750 kVA portable standby generator with only two bids received. The bid results are: \$95,060 from Western States Equipment Co. and \$107,000 from EC Power Systems. The preliminary engineer's sizing estimate was approximately \$125,000. The generator purchase was provided for in the 2010-11 Budget with a capital line item balance of \$130,000. The funding source is from rate revenue.

PERFORMANCE ANALYSIS: Upon review of critical supplies needed in an emergency situation, Prairie Well, due to its proximity to commercial and residential areas and larger lot size was selected as a prime location in the High Zone for auxiliary power. Annie Well with its larger lot size conducive to similar are requirements was chosen for the General Zone. These two sites have recently been upgraded with the necessary equipment to connect to the proposed generator. The proposed generator is sized to adequately run the 500 horsepower pump motor at Prairie Well but will very efficiently run any of the wells with lesser power demands.

QUALITY OF LIFE ANALYSIS: The availability of the portable standby generator will further enhance the reliability of the city public water system, thereby bringing us further into compliance with IDAPA 58.01.08 and ensuring a high quality water supply for our customers when emergency situations occur.

DECISION POINT/RECOMMENDATION: Staff is requesting approval by City Council of the lowest responsive bid submitted and authorization to purchase a 600 kW / 750 kVA portable standby generator from Western States Equipment Co.

ANNOUNCEMENTS

OTHER COMMITTEE MINUTES
(Requiring Council Action)

August 22, 2011
GENERAL SERVICES COMMITTEE
MINUTES

COMMITTEE MEMBERS PRESENT

Council Member Ron Edinger
Council Member John Bruning
Council Member Mike Kennedy

STAFF PRESENT

Jon Ingalls, Deputy City Admin.
Amy Ferguson, Executive Assistant
Mike Gridley, City Attorney
Doug Eastwood, Parks Director
Troy Tymesen, Finance Director
Renata McLeod, Proj. Coordinator
Warren Wilson, Deputy City Attorney

Item 1 Proposed Off-Leash Dog Park – Cherry Hill Facility

Doug Eastwood, Parks Director, presented a request for Council approval of the installation of an off-leash dog park at Cherry Hill Park. Mr. Eastwood noted in his staff report that the 2008 Parks Master Plan identifies the need for off-leash dog parks as one of the top three requests within the community. The current off-leash dog park is located at Northshire Park on land that is owned by School District 271. He further noted that preliminary estimates for an off-leash dog park would cost approximately \$10,500. The site would cost very little to maintain and will not have a turf surface or irrigation. A decomposed granite surface would be used, which is being used in dog parks throughout the country.

Mr. Eastwood said that the proposed location is a 30,000 square foot (approx. ¾ acre) area of raw land, that is not being used for anything right now and can be easily corralled or fenced in. As of last week, the Kootenai County Dog Park Association had a budget of nearly \$12,000 and they will be receiving another grant in January. Mr. Eastwood noted that the association has been a great group to work with and they do a great job of self-policing and keeping the area clean. He further noted that this item has been approved by the Parks & Recreation Commission.

Councilman Kennedy asked about the parking situation at Cherry Hill and if they are running into issues with the parking. Mr. Eastwood said that the smaller parking lot would be expanded if the ballpark goes in (about 50 or 60 extra spaces). He thinks that the only time they have experienced parking issues in the larger lot is when they have BMX tournaments. Otherwise, the parking has been adequate.

Mr. Eastwood confirmed that there would be no expense to the city. They have some of the material on hand and some of the chain link fencing. The Kootenai County Dog Park Association will pick up any cash expenses.

MOTION by Bruning, seconded by Edinger, to recommend Council approval of the installation of an off-leash dog park at Cherry Hill Park with support from the Kootenai County Dog Park Association. Motion carried.

[Item #3, Transitional Housing Complaint – 17 Street home (verbal report) was moved forward on the agenda.]

Item 3 Transitional Housing Complaint – 17th Street Home
NO MOTION – FOR INFORMATION ONLY

Mike Gridley, City Attorney, said that the home at issue is located at 306 S. 17th Street, south of Mullan Avenue. The owner is leasing it out to parolees and probationers who are under the supervision of the Department of Corrections. The house is a two-bedroom home in a residential neighborhood, with two to three people living there at any one time. There is a supervising manager, who is there most of the time.

Mr. Gridley said that based upon the number of people in the dwelling, it is probably okay under the city's zoning code. There are some definitional questions they are working through with the zoning code in regard to group homes and transitional facilities and they will also need to look at the Fair Housing Act and state regulations. There are a lot of laws that apply and it is not clear which law takes precedence. Mr. Gridley said that the bottom line is that he thinks that the house is probably legal as it is. It is run as a "clean and sober" house. It came to a neighbor's attention because one of the residents got drunk and ended up in a playhouse area passed out. The police were called and the resident is back in jail. The street is a couple blocks long and there are a number of children on the street. The neighbors are concerned and want to know what their rights are and they want the city to do something.

Mr. Gridley said that upon initial review they don't see a way that the city can go in and just shut the home down. There may be some building and fire code-related issues and they are working through that with the Building and Fire departments. There is currently a registered sex offender staying in the home but provisions have been made to move him to another facility within the next week or two and the home will not house registered sex offenders from now on.

Mr. Gridley noted that right now there is no requirement that anyone notify the city regarding homes housing probationers or parolees. He has spoken with Eric Keil of Probation & Parole and they think that they can change that internally. Mr. Gridley also noted that they have not received a lot of police complaints or calls for service to the home. Further, Mr. Gridley said that if a person with a disability, including alcoholism, asks for reasonable accommodation, that would probably trump some of the city's local laws.

Councilman Kennedy asked about zoning issues. Mr. Gridley said that an argument could be made that they are operating a commercial venture but, then again, anyone who rents out a house and isn't living there could be said to be operating a commercial venture. Federal law says you have to have a very good reason for treating one class of people differently from another class. Registered sex offenders do not have the protection of the Fair Housing Act, up to a point, but the Americans with Disabilities Act recognizes drug and alcoholic addiction as a disability.

Eric Keil, District Manager for District 1, Department of Corrections, was asked to make comments to the committee. Councilman Kennedy noted that he has met with Mr. Keil in the past and one of the things they have learned in their homeless research is that parolees are at a much higher risk of becoming homeless if they don't have structure coming out of their sentences.

Mr. Keil said that District 1 supervises about 1,600 adult felons, and the vast majority are in Kootenai County. He discussed the parole process. The parole commission makes the determination whether or not a felon is ready to be paroled. They submit a case plan, and it is sent to the districts and is investigated by a parole officer for appropriateness. If it checks out, the parole commission issues a date for release. Once the parolee is released they are put through transitional classes and the Department of Corrections continues to supervise them. They are assigned a parole officer who visits the home on a regular basis and also has quite a bit of additional contact with the offender, especially during the first 90

days, at maximum supervision. Non-violent parole supervision is a minimum of one year, and violent parolees are supervised for a minimum of five years. Those offenders who complete the full sentence are not supervised and can live anywhere they choose. Only those who are granted parole are supervised.

Mr. Keil noted that transitional homes are not owned by the Department of Corrections, nor are they contracted. It is a private homeowner who accepts vouchers from the Department of Corrections for the rent.

Councilman Edinger asked who pays the rent after the first month. Mr. Keil said the offender would pay, or they would use the home to transition out into the community and find another place to live after that. Some parolees stay a month, some six months. It is their hope that they secure a job during the first month and then start to pay for themselves. If the offender is still unable to gain employment, the department can make referrals to vocational rehab, St. Vincent dePaul, and assist in getting the parolee into housing where there is some federal funding. They do the best they can to make sure the parolees are not homeless.

Councilman Bruning asked if there was any differentiation between non-violent and violent as far as placing the parolees in these types of transitional facilities. Mr. Keil said they do try to look at the neighborhood and they do have legal restrictions for sex offenders. They look at each individual. He noted that up until recently the home at 306 S. 17th was okay for any offender to live there, but he put an end to that. He has asked prison personnel not to submit plans for sex offenders for that home any more.

Mr. Keil explained that there are two kinds of sex offenders, “registered” and “nonregistered”. The law does not allow more than two “registered” sex offenders in each home. There are no restrictions for unregistered sex offenders. He further noted that there are a lot of child molesters that are not required to register due to plea agreements.

Councilman Bruning asked where the rest of the parolees are if they are not in the transitional homes. Mr. Keil said they are everywhere. The vast majority are not dangerous at all. He further confirmed that the Department of Corrections knows where all of the transitional homes are and knows where all of the felons are living.

Mr. Gridley commented that he thinks there have been some cases where cities have zoned sex offenders out of their city. It is not something that the courts like.

Councilman Kennedy noted that there will be an informal gathering of neighbors, city staff, and Probation & Parole on Friday, at 9:00 a.m., in the Old Council Chambers at City Hall.

Councilman Edinger asked if the home supervisor was there 24 hours a day. Mr. Keil responded that they don't require that a supervisor live in the home. The house at 306 S. 17th Street has a live-in house manager, but most of the houses don't. There is typically a trusted offender that lives there and works closely with a probation officer who monitors things. The homes are visited quite frequently.

Councilman Edinger noted that he has a transitional home in his neighborhood. He asked if they are allowed to have women live there also, such as girlfriends. Mr. Keil said that the house rules are different from house to house but for the most part the offenders aren't allowed to have guests, overnight stays, or children.

Mr. Keil confirmed that the Department of Corrections does not have a policy of notifying the neighbors about the transitional homes.

Todd Butler, 402 S. 18th Street, lives in the neighborhood and is also an architect here in town. He feels that there is a difference between someone renting a home to a single parolee. The city's zoning code has a section called "criminal transitional facility" which requires a special use permit. It seems to fit the definition of the house in their neighborhood, except for the issue of 3 or more residents. Possibly the code could be adjust to say two or more residents. If so, it would allow the requirement of a special use process which would then give the ability for neighborhoods to know when a house like that is being planned, and it would also give the opportunity for discourse and another level of control if something were to go wrong.

Mr. Keil said that the Department of Correction's definition of a transitional home would be something that the department owns and operates. The home being discussed at 306 S. 17th is just a "home offer" to assist the felons in their journey back to society. Mr. Butler said that the home receives guidelines from the state agency, and there are monies coming from the state agency, which makes it cross over in his mind. He thinks there is a difference between the normal tenant/landlord agreement. If nothing else, he thinks that there is a need for residents, taxpayers, and people who live in the neighborhoods to know what they are up against.

Councilman Kennedy asked Mr. Gridley and the legal department to see what they can do with the ordinances to tighten them up and make notification better for the citizens.

Item 2 Council Bill No. 11-1018 – Cable Franchise with Fat Beam

Councilman Kennedy declared a conflict of interest, and left the meeting. Mr. Gridley noted that under Idaho law, there is not any direct conflict but that Councilman Kennedy was just being cautious.

Mr. Gridley presented a request for council approval of a 10-year Franchise Agreement with Fatbeam LLC allowing Fatbeam to use the city's rights of way to construct and operate a telecommunications system in Coeur d'Alene.

Mr. Gridley stated in his staff report that Fatbeam LLC is a new company that is operated by Coeur d'Alene resident Greg Green. Fatbeam has approached the city to obtain a franchise agreement that would allow Fatbeam to construct and maintain a fiber optic telecommunications system in the city's rights of way. Fatbeam will operate as a competitive access provider, which will lease its fiber to school districts, business and enterprises, and Internet Service Providers. The franchise agreement is similar to city franchise agreements with Time-Warner, Avista and others.

The staff report further noted that the financial impact would be similar to other franchise agreements. Fatbeam would pay the city five percent of its annual gross revenue in exchange for the use of the rights of way. There would be some staff time involved in reviewing the location of their facilities and issuing building permits as the system is constructed. The addition of Fatbeam to Coeur d'Alene may increase competition among Telecom providers and ISP's which could benefit citizens by lowering the cost of telecommunications services. The franchise agreement also provides for a fee that may generate significant revenue over time. The city may also benefit from the shared use of conduits and other facilities that will result in cost savings to the city and taxpayers.

Mr. Gridley said that Fatbeam is getting ready to do work this fall and has a contract with the school district. They will be putting in the cable/dark fiber and will either provide internet service or lease it out to others to provide the service. He also noted that Kirk Johnson, the city's IT Network Administrator, has been involved with the negotiations and discussions.

Mr. Green noted that their corporate offices are in Post Falls, and they have an office in Liberty Lake. He also confirmed that 90% of the fiber they build is overhead and goes on existing utility poles. The underground fiber is twice as expensive to build. Mr. Gridley confirmed that in places where there are no already existing poles, they would be required to go underground.

Mr. Green said that they lease the utility poles from the utility providers. The company is registered with the utilities commissions in Idaho, Washington, Oregon, and also the FCC.

MOTION by Edinger, seconded by Bruning, to recommend Council adopt Council Bil No. 11-1018 authorizing a 10-year franchise agreement with Fatbeam LLC allowing Fatbeam to use the city's rights of way to construct and operate a telecommunications system in Coeur d'Alene. Motion carried.

The meeting adjourned at 1:02 p.m.

Respectfully submitted,

Amy C. Ferguson
Public Works Committee Liaison

**PARKS & RECREATION COMMISSION
STAFF REPORT**

August 15, 2011

From: Parks Director, Doug Eastwood

RE: OFF LEASH DOG PARK AT CHERRY HILL

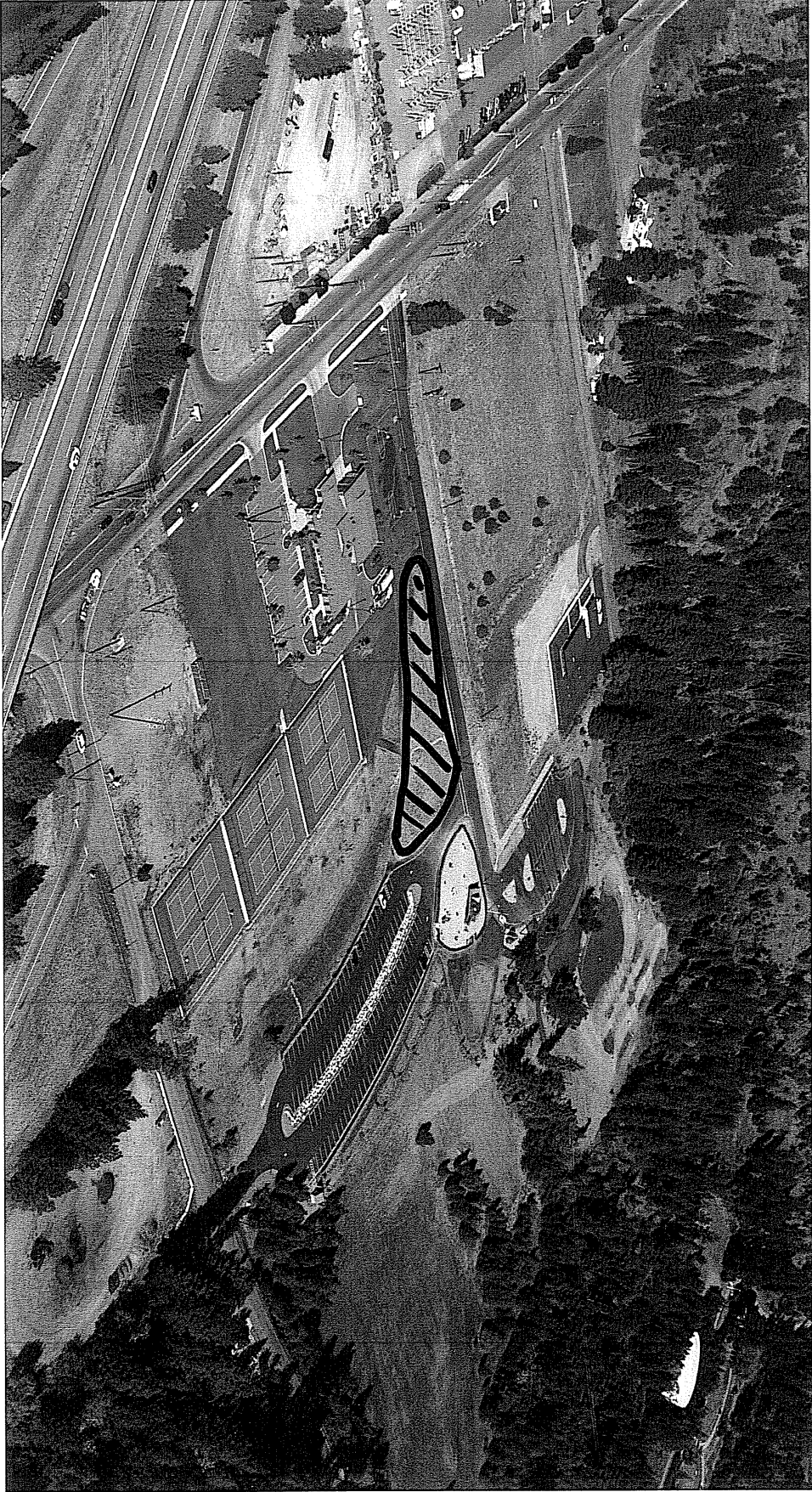
Decision Point: Recommend to City Council the installation of an off-leash dog park at Cherry Hill Park.

History: The 2008 Parks Master Plan identifies the need for off-leash dog parks as one of the top three requests within the community. Nearly half of the households in Coeur d'Alene own a dog and some have more than one dog. We currently have an off-leash dog park site at Northshire Park; called Central Bark. That is a temporary site on land owned by School District 271. We have evaluated several areas within the park system where opportunities exist for off-leash dog parks. Cherry Hill is one of those locations.

Financial Analysis: Preliminary estimates for an off-leash dog park would cost approximately \$10,500. The Kootenai County Dog Park Association has nearly \$7,000 and has offered to raise the rest of the funds to build the dog park at Cherry Hill. This particular site would cost very little to maintain. It will not have a turf surface or irrigation. A decomposed granite (DG) surface would be used. This type of surface is being used in dog parks throughout the country. (Photo attached)

Performance Analysis: The dog owner community has a high interest in helping us provide off-leash sites wherever possible. The willingness to help fund off-leash sites and the successful introduction of the city's first dog park indicates that the need exists and the user group partnership with the Parks Department can help us meet those needs.

Decision Point: Recommend to City Council the installation of an off leash dog park at Cherry Hill with the support from the Kootenai County Dog Park Association.



**GENERAL SERVICES COMMITTEE
STAFF REPORT**

DATE: August 17, 2011

FROM: Mike Gridley – City Attorney

SUBJECT: Cable Franchise Agreement with Fatbeam, LLC

DECISION POINT:

Should the city approve a 10 year Franchise Agreement with Fatbeam LLC allowing Fatbeam to use the City's rights of way to construct and operate a telecommunications system in Coeur d'Alene.

HISTORY:

Fatbeam LLC is a new company that is operated by Coeur d'Alene resident Greg Green. Fatbeam has approached the city to obtain a franchise agreement that would allow Fatbeam to construct and maintain a fiber optic telecommunications system in the city's rights of way. Fatbeam will operate as competitive access provider (CAP), which will lease its fiber to school districts, business and enterprises, and Internet Service Providers (ISP's). The franchise agreement is similar to city franchise agreements with 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. Fatbeam would pay the city five per cent of its annual gross revenue in exchange for the use of the rights of way. 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 Fatbeam to Coeur d'Alene may increase competition among Telecom Providers and ISP's which could benefit citizens by lowering the cost of telecommunications services. The franchise agreement also provides for a fee that may generate significant revenue over time. The city may also benefit from the shared use of conduits and other facilities that will result in cost savings to the city and taxpayers.

DECISION POINT/RECOMMENDATION:

Council should approve the 10 year Franchise Agreement with Fatbeam LLC.

COUNCIL BILL NO. 11-1018
ORDINANCE NO. _____

AN ORDINANCE of the City of Coeur d'Alene, Idaho granting a non-exclusive franchise to Fatbeam, LLC ("FB") to construct, operate and maintain a 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 Fatbeam, LLC, 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 FB 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 FB's Telecommunications System, located in the City's rights-of-way, utilized by FB in the operation of activities authorized by this Franchise. The abandonment by FB 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.

1.8 "Franchise" shall mean the right granted by the Franchise Ordinance and conditioned as set forth herein by which the City authorizes FB 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 FB shall extend its services.

1.10 "Grantee" shall refer to, as incorporated or used herein, Fatbeam, LLC.

1.11 "Gross Operating Revenues" shall have a meaning consistent with any existing or future City Code. Gross Operating Revenues shall include any and all compensation in whatever form, from any source, directly earned by FB or any affiliate of FB or any other person who would constitute an operator of FB's Telecommunications System under applicable local, state and/or federal law, derived from the provision of Telecommunications Services 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 FB 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 FB 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 Fatbeam, LLC, a non-exclusive franchise which authorizes FB, 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 FB. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation or termination of rights previously granted to FB. 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 FB 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. FB'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 FB's right to construct, erect, install or modify its Telecommunications System is specifically subject to the requirement that FB obtain permits as set forth in this Franchise.

C. FB 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 FB 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 FB, 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 FB shall be subject to the exercise thereof by the City at any time.

D. FB 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 FB 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 FB 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 FB 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, FB'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 FB 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. FB stipulates that this Franchise extends no such rights or privileges.

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. FB 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, FB 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. FB stipulates the City may grant similar permission to others.

E. FB shall not permit installations by others in the Franchise Service Area without assuring they have the necessary skills, certifications, insurance, bonds, and permits. FB is responsible for determining if the requirements of the City have been met. FB 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 FB any fee title property rights in or on any public or private property to which FB 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 FB with this Franchise and to identify any violations by FB of any provision(s) of this Franchise. Both the City and FB 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 FB to make available records, documents and other information necessary for the effective completion of such reviews and may inquire in particular whether FB is supplying services equivalent to those proposed by FB 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 FB 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 FB from engaging in a continuous review of the performance of FB. The City may also, at any time, conduct a public hearing on any issue related to compliance by FB with this Franchise or any permit related thereto.

D. After completion of each such review described herein, if the City is satisfied FB 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 FB, extend the term set forth in Section 2.2 of this Franchise by one (1) additional year. In no event, however, shall the total term of this Franchise, including any extensions, exceed twenty-five (25) 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 FB 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 FB's functions, the City and FB 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 FB 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 FB 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) FB 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) FB becomes insolvent, unable or unwilling to pay its debts as they become due, or is adjudged a bankrupt; or

(4) FB fails, refuses, neglects or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding FB'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 FB's payment of any fees or taxes due the City under this Franchise;

(2) Any failure by FB 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 FB to maintain the liability insurance required under this Franchise;

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

(5) Any failure by FB 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 FB of the occurrence and the proposed forfeiture and an opportunity for FB to be heard, the City may, by ordinance or other appropriate document, declare a forfeiture. In a hearing of FB, FB 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 FB 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 FB, 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 FB 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 FB.

3.2 Grantee to Have No Recourse. Subject to state and federal law, FB 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. FB 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 FB 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 FB'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. FB stipulates and agrees that this Franchise is subject to the City Charter of the City of Coeur d'Alene. FB understands the Charter's provisions are incorporated herein, where applicable. FB 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. FB 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, 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 FB's provision of Telecommunications Services shall, regardless of who performs installation, construction, alteration and/or maintenance, be and remain the responsibility of FB.

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 Cable 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. FB 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. FB 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. FB 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, FB 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. FB 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, FB 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. FB shall provide a map to the City's Engineering Department, or its successor, showing the location of FB'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. FB 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 FB's Telecommunications System, such as, but not limited to, trenching, paving, compaction and locations, FB 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. FB 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. FB 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 FB 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. FB 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 FB 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 FB'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 FB 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. FB 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. FB shall, where possible in the case of aboveground lines, make use of existing poles and other facilities available to FB. FB 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, FB 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) FB 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).

FB 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 FB's participation in municipally imposed undergrounding or related requirements as a condition of FB's installation or continued maintenance of overhead facilities authorized under this Franchise. FB hereby agrees to coordinate its underground installation and planning activities with the City's underground plan and policies.

4.4 Coordination with Other Users. FB 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 FB 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 FB 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, FB 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 FB'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 FB 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, FB 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 FB to remove or relocate its facilities located within City streets or rights-of-way, the City will make a reasonable effort to provide FB with an alternate location for its facilities within City streets or rights-of-way.

C. The City shall provide FB 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 FB 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 FB is using a facility which the requesting party has a right or duty to remove, FB 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 FB to remove or relocate its facilities shall give FB no less than forty-five (45) days advance written notice advising FB 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 FB 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 FB's failure, neglect or refusal thereof shall be paid solely by FB. If FB 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 FB 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 FB.

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

H. FB 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 FB's Telecommunications System Facilities.

4.6 Movement of Buildings. FB 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 FB shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than three (3) business day's notice to FB for such temporary wire changes.

4.7 Tree Trimming. FB, 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 FB.

4.8 Restoration.

A. Whenever FB damages or disturbs any area in or near City streets, rights-of-way, paved area or public improvement, FB 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 FB in a hard surface pavement in any City street or right-of-way, FB 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 FB until such time as the area is resurfaced or reconstructed.

D. The City hereby reserves the right, after providing reasonable notice to FB, to remove and/or repair any work done by FB which, in the determination of the City, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid solely by FB.

E. Should FB 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 FB's sole expense and liability, but no action or inaction by the City shall relieve FB 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 FB, 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 FB damages or disturbs any area in or near City streets, rights-of-way, paved area or public improvement, FB stipulates that the City may, without limitation:

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

(2) Require FB 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 FB causes any damage to private property in the process of restoring facilities, FB shall pay the owner of the property for such damage.

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

J. FB 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 FB to remove, at FB'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 FB fails to do so, the City may perform the work and collect the cost thereof from FB. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of FB effective upon filing of the lien with the Kootenai County Recorder.

B. Any order by the City Council to remove any of FB's Telecommunications System Facilities shall be mailed to FB not later than thirty (30) calendar days following the date of expiration of this Franchise. FB 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. FB 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. FB 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, FB 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, FB shall notify the City of the need for such repairs. FB 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 FB 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 FB, 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 FB. In addition, the City may require FB to furnish certification from a qualified

independent engineer that FB's Facilities are constructed in accordance with good engineering practice and are reasonably protected from damage and injury.

4.12 After-Acquired Facilities. FB 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 FB or upon addition or annexation to the City of any area in which FB 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. FB hereby promises to maintain and supply to the City, at FB's sole expense, any information requested by the City to coordinate municipal functions with FB's activities within City streets and rights-of-way. FB 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. FB 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 FB 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.

5.1.2 Construction Timeline. FB shall commence construction of the Telecommunications System during the calendar year 2011 and shall complete initial activation procedures within six (6) months of the effective date of this Franchise.

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 FB 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. FB 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. FB 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. FB 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. FB 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 FB'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, FB 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 FB.

6.5 Complaints. FB hereby acknowledges the City's interest in the prompt resolution of all complaints made to the City regarding FB's operation in City streets and rights-of-way and FB 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 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. FB 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 FB, 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 FB no later than thirty (30) days after FB's receipt of the City's billing thereof.

C. FB 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. FB 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. FB 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 FB and/or any parent company of FB pursuant to the rules and regulations of the FCC, IPUC and other regulatory agencies, and other like materials FB and/or any parent company of FB 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 FB 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 FB and/or any parent company of FB.

C. FB 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 FB in order to verify the accuracy of payments made to the City. FB and each parent company of FB shall cooperate fully in the conduct of such audit. In case of audit, the City director of budget and finance may require FB to furnish a verified statement of compliance with FB's obligations or in response to any questions. Said certificate may be required from an independent certified public accountant at FB's sole expense. All audits will take place on FB's premises or at offices furnished by FB, which shall be a location within the City of Coeur d'Alene. FB 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 FB's facilities or business operations in City.

7.5 Insurance.

7.5.1 Coverages. FB shall maintain, throughout the term of this Franchise, liability insurance insuring FB, 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, FB 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 FB 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, FB 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 FB 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.**

FB 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, FB 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 FB from liability in excess of those limits.

7.5.2 Proof of Insurance. FB 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. FB 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. FB 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, FB and FB's officers, agents and employees, the City may require additional insurance to be acquired by FB. Should the City exercise its right to require additional insurance, the City will provide FB with written notice.

7.5.4 Failure to Procure. FB 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 FB'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 FB for all premiums in connection therewith.

7.6 Performance Bond. Prior to the effective date of this Franchise, FB 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 FB shall well and truly observe, fulfill and perform each term and condition of this Franchise. FB 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 FB or any successor or assign of FB has liquidated all of its obligations with the City that may have arisen from the acceptance of this Franchise by FB 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. FB 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 FB or to limit liability of FB 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. FB 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 FB, 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 FB'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 FB'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 FB 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 FB 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, FB 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 FB, not only as to the amount of such damage, but as to its liability, provided FB has reasonable notice or actually knew, or should have known, of the pendency of such suit. Under such circumstances, FB 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 FB, 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 FB 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, FB 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 FB. Said reports shall contain an accurate statement in summarized form, as well as in detail, of FB'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 FB's fiscal year each year, FB shall present, at its sole expense, a written report to the City which shall include:

(1) Full financial statements for the previous year, including income statement, balance sheet, cash flow statement, and appropriate explanatory footnotes, for Fatbeam, LLC and a full income statement with appropriate explanatory footnotes for the Telecommunications System with specific breakouts for the System within the corporate limits of the City of Coeur d'Alene. All financial statements shall be certified by an officer or other authorized representative of FB to be an accurate reflection of FB's books and records. In the event any audited financial report has not been published by the date due under this Section, then the audited financial report shall be deemed presented on time if presented within thirty (30) days after publication.

(2) A current list of all of FB'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 FB 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, FB 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. FB 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 FB'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. FB 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 FB to, or received by FB 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, FB and its affiliates shall within ten (10) days of any communication transmitted by FB to, or received by FB 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 FB designated as confidential or proprietary by FB, 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 FB 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, FB 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 FB 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 FB has not complied with any term or condition of this Franchise, the City shall notify FB of the exact nature of the alleged noncompliance.

9.2.2 FB's Right to Cure or Respond. FB 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 FB fails to respond to a notice, as described herein, or in the event FB 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 FB twenty (20) calendar days notice of the time and place of such hearing and provide FB 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 FB 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. FB 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 FB's conduct.

9.5 Acts of Nature. FB 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, FB 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 FB 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 FB, or to seek and obtain judicial enforcement of FB'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. FB 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 FB'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: Wendy Gabriel
Facsimile Number: 208-769-2366

Notices to FB shall be addressed to the following:

Fatbeam, LLC
971 S. Clearwater Lp
Post Falls, ID 83854
Attn: Greg Green
Facsimile Number: 208-777-4708

With a copy to:

Fatbeam, LLC
111 Teal Ln
Sagle, ID 83860
Attn: Susan Lamb
Facsimile Number: 678-693-5391

10.3 Compliance with Laws. FB 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 FB 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 FB 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. FB 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 FB.

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 FB is wholly or partially unable to carry out its obligations under this Franchise as a result of a Force Majeure, FB shall provide the City prompt notice of such Force Majeure, describing the same in reasonable detail, and FB'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. FB agrees to use its best efforts to remedy as soon as possible, under the circumstances, FB'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, FB expressly acknowledges and agrees, by acceptance of this Franchise, not to oppose such intervention by the City in any suit or proceeding to which FB is a party related to this Franchise.

10.9 Consent. Wherever the consent or approval of either FB 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. FB 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 FB 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, FB 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 FB and the City and that FB 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 FB 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 FB 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 FB 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 BY THE CITY COUNCIL and signed and approved this 6th day of September, 2011.

CITY OF COEUR D'ALENE

FATBEAM, LLC

Sandi Bloem, Mayor

By: _____
Its: Gregory Green, President

Attest:

City Clerk

STATE OF _____)
) ss.
COUNTY OF _____)

On this 6th day of September, 2011, before me, a Notary Public in and for said State, personally appeared **Gregory Green**, known to me to be President of **Fatbeam, LLC**, 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 _____, 2011.

Print Name: _____

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

My commission expires: _____

PUBLIC HEARINGS

CITY COUNCIL STAFF REPORT

DATE: September 6, 2011
FROM: Christopher H. Bates, Engineering Project Manager 
SUBJECT: V-11-5, Vacation of Utility Easement in Block 2 of the Fairway Forest 3rd Addition

DECISION POINT

The applicant, Richard McDonald, is requesting the vacation of a twenty foot (20') utility easement that extends along the length of his westerly lot line, which is the common lot line of Lots 6 & 7, Block 2 of the Fairway Forest 3rd Addition.

HISTORY

This Fairway Forest 3rd Addition subdivision was platted in 1979, consists of 139 residential lots, and, has been built out for a number of years. The subject property is situated along the easterly portion of the development on the knuckle intersection of Hogan Street and Nicklaus Drive in the Fairway Forest 3rd Addition. The noted property is bounded by the Fairway Forest and Fairway Forest 1st Addition developments on the south, and, by the Prairie Trial bike trail on the east.

FINANCIAL ANALYSIS

There is no financial impact to the City. No additional tax revenue would be generated by the vacation because it is an easement and not property in fee

PERFORMANCE ANALYSIS

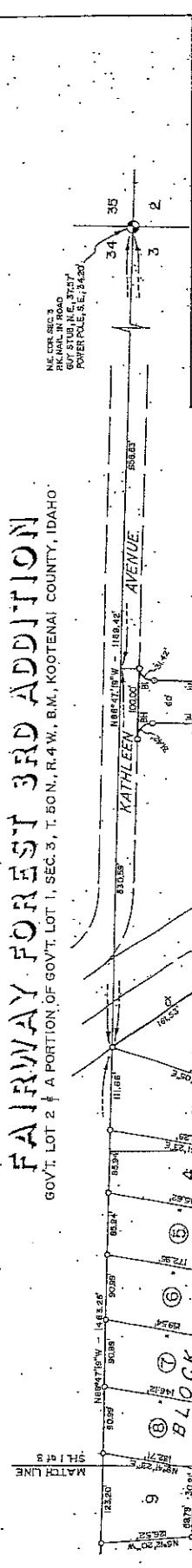
The area requested for vacation is a twenty foot (20') wide easement (10.0' each side of the property line), that extends the length of Lots 6 & 7 and terminates at the southerly boundary of the lots. Of the 139 lots in the noted addition, Lots 6 & 7 are the only lots with a utility easement (side yard or other) on them. Also, this easement terminates at the southerly boundary and does not extend into the developments to the south, therefore, negating any real purpose for the easement. Neither the City nor the private utilities companies have any facilities located in the easement, nor, is there any intention of installing any (verified in writing w/ utilities) due to the built out nature of the area.

RECOMMENDATION

The vacation of the easement will not impact or affect the ownerships or boundaries of either of the adjoining parcels, it will just allow unlimited use of the area that was previously restricted. Staff recommendation to the City Council is that the vacation be approved per Idaho Code Section 50-1306.

FAIRWAY FOREST 3RD ADDITION

GOV'T. LOT 2 1/2 A PORTION OF GOV'T. LOT 1, SEC. 3, T. 50 N., R. 4 W., B.M., KOOTENAI COUNTY, IDAHO



CURVE	RADIUS	DELTA	CHORD	TANGENT	LENGTH
AR	80	97.8947	30.11	22.37	34.09
AS	170	39.1422	17.25	50.74	93.82
AT	230	31.5811	16.00	8.00	16.00
AU	80	34.9533	18.04	46.84	129.77
AV	80	82.2442	27.13	19.48	29.81
AW	170	17.1433	60.59	25.79	80.18
AX	170	42.1107	123.38	65.57	123.77
AY	230	81.0243	38.14	18.11	30.18
AZ	230	107.5244	78.50	40.11	60.30
BA	830	31.3233	12.88	54.85	124.93
BB	20	80.0000	28.26	20.00	31.42
BC	20	80.0000	28.26	20.00	31.42
BD	20	80.0000	28.26	20.00	31.42
BE	20	80.0000	28.26	20.00	31.42
BF	170	87.9449	19.53	14.48	20.00
BG	230	67.5434	23.94	14.06	20.00
BH	20	90.0000	28.26	20.00	31.42
BI	20	90.0000	28.26	20.00	31.42
BJ	230	31.3923	36.72	19.43	36.76
BK	230	31.3923	36.72	19.43	36.76
BL	170	81.3233	35.59	17.65	34.89
BM	20	80.0000	28.26	20.00	31.42
BN	20	80.0000	28.26	20.00	31.42
BO	20	80.0000	28.26	20.00	31.42
BP	170	12.0125	16.61	0.35	16.97
BQ	170	12.0125	16.61	0.35	16.97
BR	230	107.5244	78.50	40.11	60.30
BS	20	31.4233	31.01	18.54	31.04
BT	20	31.4233	31.01	18.54	31.04
BV	20	31.4233	31.01	18.54	31.04
BW	20	31.4233	31.01	18.54	31.04
BX	20	31.4233	31.01	18.54	31.04
BY	20	31.4233	31.01	18.54	31.04
BZ	20	31.4233	31.01	18.54	31.04
CA	20	31.4233	31.01	18.54	31.04
CB	20	31.4233	31.01	18.54	31.04
CC	20	31.4233	31.01	18.54	31.04
CD	230	12.2923	4.97	20.14	30.07
CE	230	12.2923	4.97	20.14	30.07
CF	230	12.2923	4.97	20.14	30.07
CG	230	12.2923	4.97	20.14	30.07
CH	230	12.2923	4.97	20.14	30.07
CI	170	81.3233	35.59	17.65	34.89
CJ	170	81.3233	35.59	17.65	34.89
CK	80	34.9533	18.04	46.84	129.77
CL	80	34.9533	18.04	46.84	129.77
CM	80	34.9533	18.04	46.84	129.77
CN	80	34.9533	18.04	46.84	129.77
CO	80	34.9533	18.04	46.84	129.77
CP	80	34.9533	18.04	46.84	129.77
CQ	80	34.9533	18.04	46.84	129.77
CR	80	34.9533	18.04	46.84	129.77
CS	80	34.9533	18.04	46.84	129.77
CT	80	34.9533	18.04	46.84	129.77
CU	80	34.9533	18.04	46.84	129.77
CV	80	34.9533	18.04	46.84	129.77
CW	80	34.9533	18.04	46.84	129.77
CX	80	34.9533	18.04	46.84	129.77
CY	80	34.9533	18.04	46.84	129.77
CV	20	1.1000	0.11	0.08	0.17

CURVE DATA

LEGEND

- SECTION CORNER
- FOUND POINT AS SHOWN
- SET REBAR & CAP
- (M) MEASURED
- (R) RECORDED

NOTES

- ENCLOSED LOT NUMBERS INDICATE LOTS IN WHICH IT MAY NOT BE POSSIBLE TO MAINTAIN 5' VERTICAL SEPARATION BETWEEN TOP OF BASEMENT SLAB AND SEWER TRUNK LINE INVERT.
2. 4' EASEMENT ALONG EACH LOT LINE IS HEREBY DESIGNATED FOR PUBLIC UTILITIES.

SCALE
1" = 40'

GOV'T. LOT 1

AREA OF REQUEST

FAIRWAY FOREST

SE 1/4, NE 1/4

FAIRWAY FOREST 3RD ADDITION
SEC. 3, T. 50 N., R. 4 W., B.M., KOOTENAI COUNTY, IDAHO

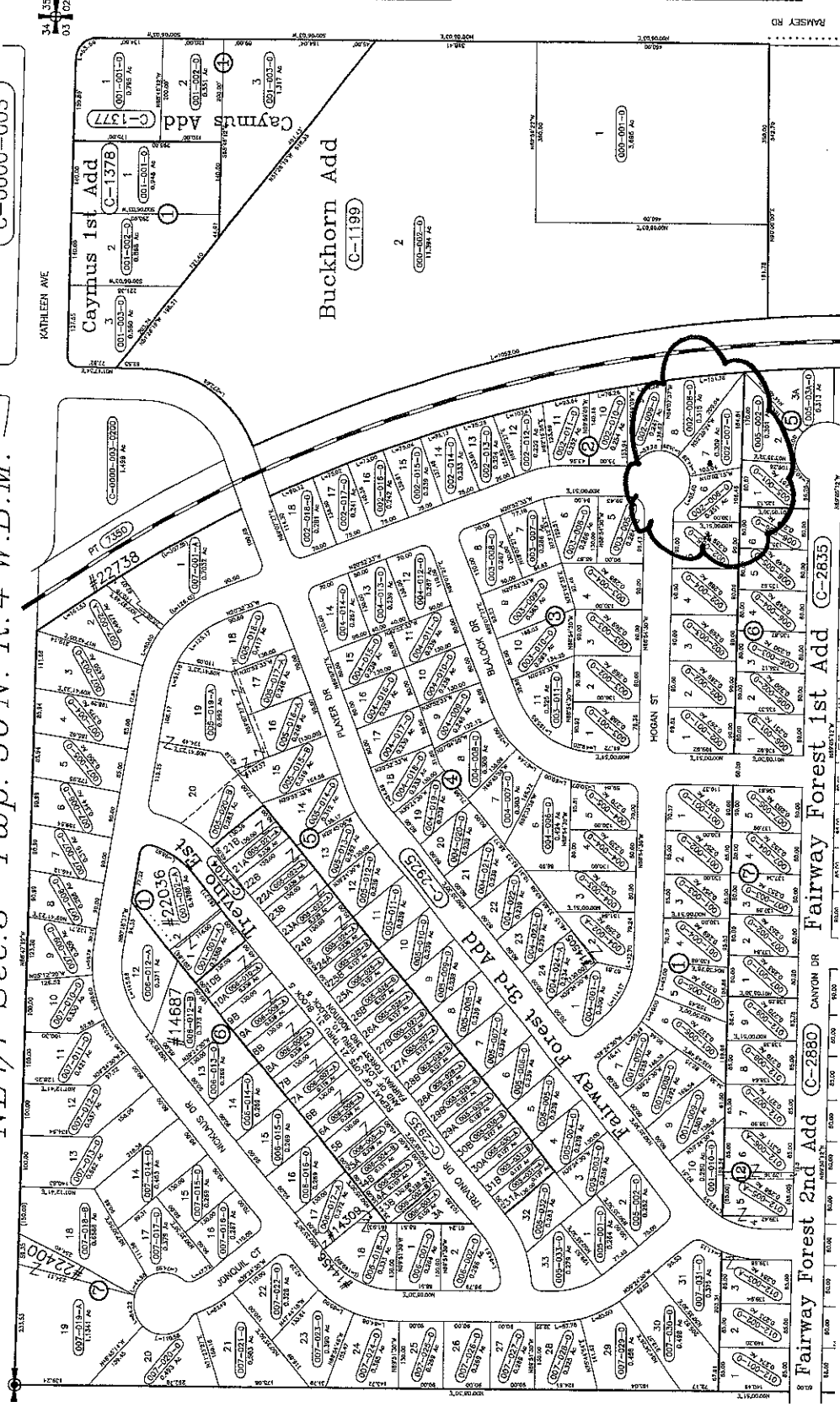
SCALE: 1" = 40'
DATE: 7-26-79
DRAWN: D.M.K.
CHECKED: J.A.B.

MECKEL ENGINEERING & SURVEYING
400 MARK AVE. PHOENIX, AZ 85018

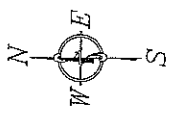
SHEET NO. 2 OF 2

NE 1/4 Sec. 3 Twp. 50 N. R. 4 W. B. M.

C-0000-003



TO BE USED FOR REFERENCE PURPOSES
 QUANTITY IS NOT RESPONSIBLE FOR ANY
 THEIR CONTAINED.



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
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OTENAI COUNTY
 IDAHO

REVISIONS

ACTIVITY	DATE
1. COMMISSION	04-24-09
2. US ADDITION	10-21-04
3. US 1ST ADDITION	04-07-05
4. COMMISSION	09-11-08
5. NO CHANGES	08-11-08

ID: 00-00-00

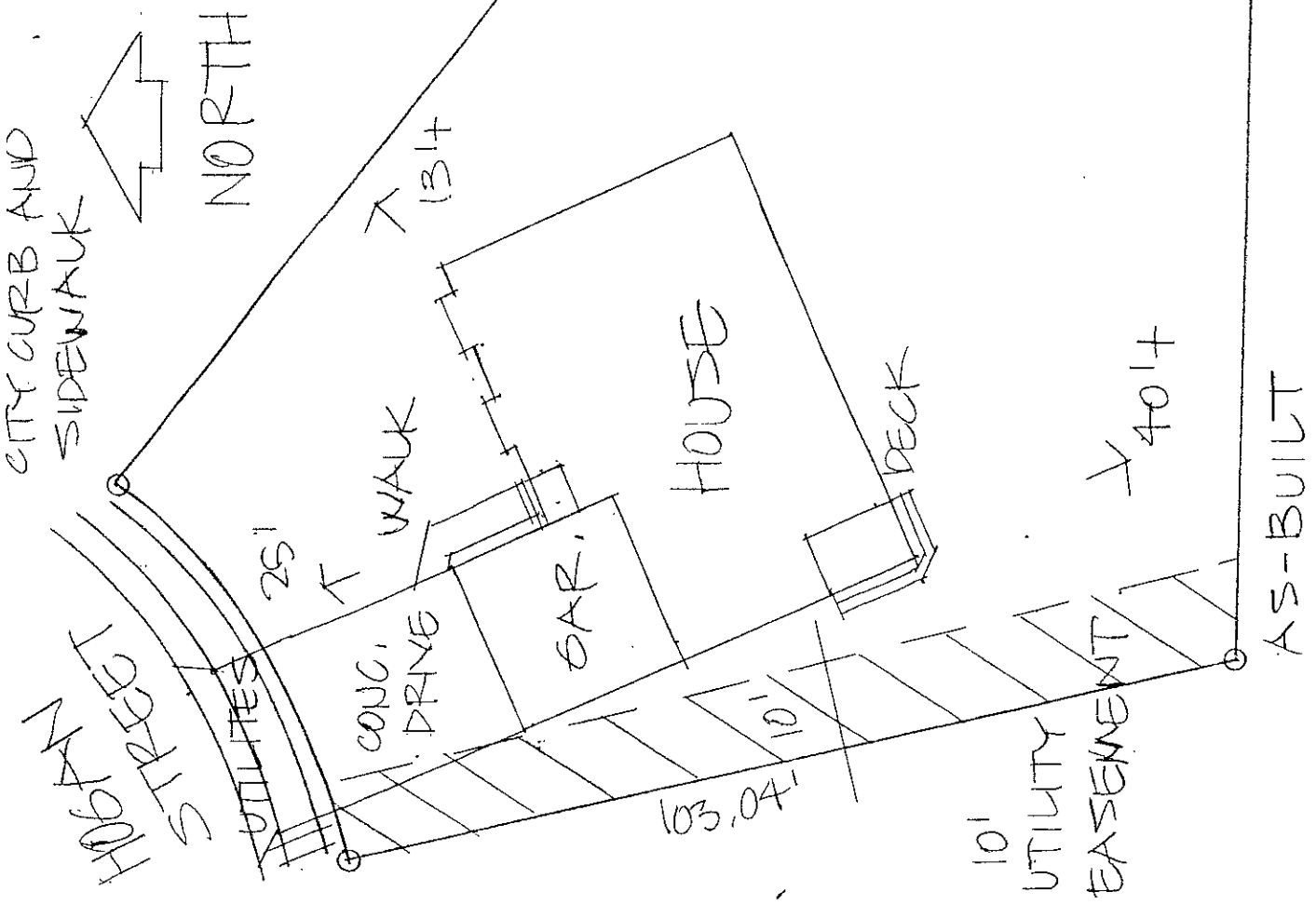
all shown bearings and distances were
 measured and shown as shown on the
 plat. It is the responsibility of the
 person who prepared the plat to provide
 and coordinate geometry. Accuracies shown
 are based on a horizontal datum of 1983
 and are within five feet 50". Any other
 limitations, dimensions in parenthesis
 or printed on the commission.
 1. SURVEY ARE BASED ON ADDRESSABLE ROAD
 AT OR MAY NOT BE PUBLIC.

ADDRESS: 1902 W, HOGAN ST.
COEUR-D'ALENE, ID
83815

LEGAL DESCRIPTION:
LOT 7, BUK 2,
FAIRWAY FOREST, 3RD ADDN.
SEC 3-50N-4W

PARCEL NUMBER:
02925020070

TAX ID 19627



AS-BUILT

PLLOT PLAN
SCALE = 1" = 20'

MCDONALD RESIDENCE

COUNCIL BILL NO. 11-1021
ORDINANCE NO. _____

AN ORDINANCE ENTITLED "THE ANNUAL APPROPRIATION ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011" APPROPRIATING THE SUM OF \$77,972,509 TO DEFRAY THE EXPENSES AND LIABILITIES OF THE CITY OF COEUR D'ALENE FOR SAID YEAR; LEVYING A SUFFICIENT TAX UPON THE TAXABLE PROPERTY WITHIN SAID CITY FOR GENERAL REVENUE PURPOSES FOR WHICH SUCH APPROPRIATION IS MADE; LEVYING SPECIAL TAXES UPON THE TAXABLE PROPERTY WITH SAID CITY FOR SPECIAL REVENUE PURPOSES WITHIN THE LIMITS OF SAID CITY OF COEUR D'ALENE, IDAHO; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED, by the Mayor and City Council of the City of Coeur d'Alene, Kootenai County, Idaho:

Section 1

That the sum of \$77,972,509 be and the same is hereby appropriated to defray the necessary expenses and liabilities of the City of Coeur d'Alene, Kootenai County, Idaho, for the fiscal year beginning October 1, 2011.

Section 2

That the objects and purposes for which such appropriations are made are as follows:

GENERAL FUND EXPENDITURES:

Mayor and Council-----	\$ 209,912
Administration-----	514,369
Finance Department-----	698,735
Municipal Services-----	1,405,776
Human Resources-----	240,757
Legal Department-----	1,471,145
Planning Department-----	458,244
Building Maintenance-----	408,265
Police Department-----	9,587,462
Drug Task Force-----	36,700
ADA Sidewalks-----	219,904
Byrne Grants-----	243,818
COPS Grant-----	170,843
Fire Department-----	7,553,083
General Government-----	131,750
Engineering Services-----	929,243
Streets/Garage-----	2,170,770
Parks Department-----	1,694,573
Recreation Department-----	763,342
Building Inspection-----	707,233
TOTAL GENERAL FUND EXPENDITURES:	<u>\$29,615,924</u>

SPECIAL REVENUE FUND EXPENDITURES:

Library Fund-----	\$ 1,284,625
Community Development Block Grant-----	297,600

Impact Fee Fund-----	925,000
Parks Capital Improvements-----	676,600
Annexation Fees-----	133,000
Insurance / Risk Management-----	234,000
Cemetery Fund-----	249,464
Cemetery Perpetual Care Fund-----	98,000
Jewett House-----	17,790
Reforestation/Street Trees/Community Canopy	79,200
Arts Commission-----	6,650
Public Art Funds-----	189,600
Kootenai Metropolitan Planning Org-----	<u>350,000</u>

TOTAL SPECIAL FUNDS: \$ 4,541,529

ENTERPRISE FUND EXPENDITURES:

Street Lighting Fund-----	\$ 575,021
Water Fund-----	7,394,451
Wastewater Fund-----	17,759,498
Water Cap Fee Fund-----	850,000
WWTP Cap Fees Fund-----	802,750
Sanitation Fund-----	3,229,772
City Parking Fund-----	177,957
Stormwater Management-----	<u>1,417,627</u>

TOTAL ENTERPRISE EXPENDITURES: \$32,207,076

FIDUCIARY FUNDS:----- 2,537,300

CAPITAL PROJECTS FUNDS:----- 7,570,000

DEBT SERVICE FUNDS:----- 1,500,680

GRAND TOTAL OF ALL EXPENDITURES: \$77,972,509

Section 3

That a General Levy of \$15,555,673 on all taxable property within the City of Coeur d'Alene be and the same is hereby levied for general revenue purposes for the fiscal year commencing October 1, 2011.

Section 4

That a Special Levy upon all taxable property within the limits of the City of Coeur d'Alene in the amount of \$2,481,170 is hereby levied for special revenue purposes for the fiscal year commencing October 1, 2011.

Section 5

The provisions of this ordinance are severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the ordinance or part thereof is held inapplicable had been specifically exempt there from.

Section 6

This ordinance shall take effect and be in full force upon its passage, approval and publication in one (1) issue of the Coeur d'Alene Press, a newspaper of general circulation published within the City of Coeur d'Alene and the official newspaper thereof.

APPROVED by this Mayor this 6th day of September, 2011.

Sandi Bloem, Mayor

ATTEST:

Susan K. Weathers, City Clerk