

MOSES LAKE CITY COUNCIL

Bill Ecret
Richard Pearce
Brent Reese

Jon Lane
Mayor



Joseph K. Gavinski
City Manager

David Curnel
Karen Liebrecht
Dick Deane

December 28, 2010

AGENDA

Sophia Guerrero, Executive Secretary

Council Chambers

7:00 p.m.

1. Roll Call
2. Pledge of Allegiance
3. IDENTIFICATION OF CITIZENS WANTING TO DISCUSS AGENDA ITEMS
IDENTIFICATION OF CITIZENS WANTING TO DISCUSS NON-AGENDA ITEMS
4. PRESENTATIONS AND AWARDS
 - A. Employee Recognition
5. CONSENT AGENDA
 - A. Approval of Minutes - December 14, 2010
 - B. Approval of Bills and Checks Issued
6. COMMISSION APPOINTMENTS - None
7. CONSIDERATION OF BIDS AND QUOTES - None
8. PETITIONS, COMMUNICATIONS, OR PUBLIC HEARINGS
9. ORDINANCES AND RESOLUTIONS
 - A. Ordinance - Amend 2010 Budget - 2nd Reading
 - B. Ordinance - Amend MLMC Chapter 2.46 Tourism Commission - 2nd Reading
 - C. Ordinance - Amend MLMC Chapter 18.30 - Commercial Zone - 2nd Reading
 - D. Ordinance - Emergency Budget Adjustment 2010 Budget - Single Reading
 - E. Ordinance - Amend MLMC 16.02 - Building Permits - 1st Reading
 - E. Ordinance - Create MLMC 17.56 - Reimbursement Agreement - 1st Reading
 - F. Ordinance - Granting Franchise to Northland Cable - 1st Reading
 - G. Resolution - Accept Donation of Top Soil for Power Point Park - G.O. Construction
10. REQUEST TO CALL FOR BIDS - None
11. REFERRALS FROM COMMISSIONS
 - A. Well 31 Short Plat - Waiver and Deferral Request - Planning Commission
12. OTHER ITEMS FOR COUNCIL CONSIDERATION
 - A. Authorization to Amend & Execute Agreement - Grant County Animal Outreach (tabled)
 - B. Notice of Intent to Annex and Accept Petition to Annex - Americold
13. NON-AGENDA ITEMS AND PUBLIC QUESTIONS AND COMMENTS
14. COUNCIL QUESTIONS AND COMMENTS
15. CITY MANAGER REPORTS AND COMMENTS
 - A. Retreat

Finance
Ronald Cone

Municipal Services
Gary Harer

Police Chief
Dean Mitchell

Parks & Recreation
Spencer Grigg

Fire Chief
Tom Taylor

Community Development
Gilbert Alvarado

City Attorney
Jim Whitaker

MOSES LAKE CITY COUNCIL
December 14, 2010

DRAFT

Council Present: Jon Lane, Bill Ecret, Dick Deane, Karen Liebrecht, Brent Reese, David Curnel, and Richard Pearce

The meeting was called to order at 7 p.m. by Mayor Lane.

PLEDGE OF ALLEGIANCE: Mr. Pearce led the Council in the pledge of allegiance.

PRESENTATIONS AND AWARDS - None

CONSENT AGENDA

Minutes: The minutes of the November 23, 2010 meeting were presented for approval.

Approval of Claims, Prepaid Claims, Checks, and Payroll: Vouchers audited and certified by the Finance Director as required by RCW 42.24.080, and those expense reimbursement claims, certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the Council for approval and is retained for public inspection at city hall. As of December 14, 2010 the Council does approve for payment claims in the amount of \$530,804.76; prepaid claims in the amounts of \$11,500.00, \$2,163.40, \$20,776.46, and \$68,254.20; claim checks in the amount of \$782,685.42; and payroll in the amounts of \$27,434.44 and \$12,695.97.

Accept Work - Nelson Road Lift Station Improvements: Power City Electric, Inc. has completed work on the Nelson Road Lift Station Improvements. The work should be accepted and the 60 day lien period entered into.

National Frozen Foods - Petition for Annexation: National Frozen Foods submitted a Petition for Annexation for property located north of Wheeler Road. The petition should be accepted so the annexation can move forward.

Action Taken: Mr. Pearce moved that the Consent Agenda be approved, seconded by Mr. Reese and passed unanimously.

Grant County Animal Outreach Agreement: An amendment to the agreement with Grant County Animal Outreach was presented. The amendment increases the amount to be paid to Grant County Animal Outreach from \$47,250 to \$50,000. Authorization was requested for the City Manager to sign the amendment to the agreement.

Mr. Ecret wanted to know what the additional funds would be used for.

Joseph K. Gavinski, City Manager, explained that the City contracts with Grant County Animal Outreach for animal control services, which the city would either have to provide, probably at a much greater cost, or try to contract with another agency to provide those services.

Mr. Pearce stated that he would like to see some information on the number of animals coming from the city and what other sources are providing funding to Grant County Animal Outreach.

Dean Mitchell, Police Chief, stated that he receives monthly reports from Grant County Animal Outreach and will provide a summary of that information if the Council wishes.

Mr. Deane felt that the city is getting a good service for the funds the city is expending.

Action Taken: Mr. Pearce moved that the item be tabled, seconded by Mrs. Liebrecht, and passed unanimously.

Burke Marketing/Promotions: The agreements with Burke Marketing/Promotions for the 2011 season were presented. The contracts include the production of 8 show days in the Centennial Amphitheater, 4th of July picnic, two day Moses Lake Blues Festival, Pig Out in McCosh Park, and the MAC holiday show. Authorization was requested for the City Manager to sign the contracts.

Mr. Ecret felt that a summary should be provided to the Council on the success of the different events promoted by Burke Marketing and that it be discussed at retreat prior to entering into another contract.

Mrs. Liebrecht stated that she would also like to review the success of the program and how well it is received by the community.

Joseph K. Gavinski, City Manager, stated that there are three components to these contracts - the concert series, the traffic building events, and the advertising for the different events. He pointed out that booking the different events needs to take place before retreat so any review should be done as soon as possible.

Spencer Grigg, Parks and Recreation Director, pointed out that Mr. Burke obtains discounts because he purchases the media space early and about half the concert series is booked prior to retreat.

There was some discussion by the Council.

Action Taken: Mr. Pearce moved that the City Manager be authorized to sign the contracts and that a report be provided at retreat, seconded by Mr. Deane, and passed with Mr. Ecret opposed.

COMMISSION APPOINTMENTS - None

CONSIDERATION OF BIDS AND QUOTES - None

PETITIONS, COMMUNICATIONS, OR PUBLIC HEARINGS

ORDINANCE - RANDOLPH ROAD ANNEXATION - 2ND READING/PUBLIC HEARING

An ordinance was presented which provides for the annexation of approximately 1,097 acres of property located adjacent to Randolph Road and from Randolph Road northeast to Stratford Road.

The ordinance annexing property commonly known as the Randolph Road annexation to the City of Moses Lake, Washington, and incorporating the same within the corporate limits of the City of Moses Lake was read by title only.

Gilbert Alvarado, Community Development Director, pointed out that the property will be zoned Heavy Industrial.

The public hearing was opened.

Brian McGowan, 5183 Shorecrest, stated that he was concerned about the city's ability to provide fire protection to the proposed annexation area. He suggested that the annexation be tabled until the city has a plan that would enable the Fire Department to meet the required 4 minute response time.

Action Taken: Mr. Reese moved that the public hearing be closed, seconded by Mr. Deane, and passed unanimously.

Action Taken: Mr. Pearce moved that the second reading of the ordinance be adopted, seconded by Mr. Reese, and passed unanimously.

ORDINANCES AND RESOLUTIONS

ORDINANCE - AMEND 12.40 - STREET CONSTRUCTION OR IMPROVEMENT REIMBURSEMENT CHARGES - 2ND READING

An ordinance was presented which establishes the reimbursement charges for the 2009 Lakeshore and Peninsula Drive Reconstruction Project, the 2008 Peninsula Drive Reconstruction Project, and the future street improvements to Lakeshore Drive between Pommer Street and Wanapum Drive.

The ordinance amending Chapter 12.40 of the Moses Lake Municipal Code entitled "Street Construction or Improvement Reimbursement Charges" was read by title only.

A letter from Todd Voth was read which protests the including of his property in the reimbursement area for the Peninsula and Lakeshore improvements.

Gary Harer, Municipal Services Director, stated that the area was platted in 1914 and at that time 40' wide streets were dedicated. The current project requires 60' of right-of-way. When any property in the area was replatted, the property owners were required to dedicate the additional required right-of-way. The city has also obtained right-of-way by donation and purchase. He stated that letters were sent to property owners outlining the project, the need for the additional right-of-way, and the advantages and disadvantages of donating and/or selling the needed property to the city. He mentioned that the city purchased property from 14 property owners, including Mr. Voth. The property owners were informed that if the property was provided to the city, the city would construct the improvements and the reimbursement costs would be established at the current price, which would mean the property owners would not have to pay a higher price in the future for those improvements.

Todd Voth, 1538 Lakeway, stated that in a meeting with the project engineer he was informed that he would not be paying any reimbursements on the 144' of frontage that he sold to the city. He mentioned that he has now been informed that he will be required to pay the reimbursement fee on the property. Since he felt the city provided conflicting information about the reimbursement, he requested that the reimbursement charge on his property be waived.

There was considerable discussion by the Council and it was pointed out that waiving one reimbursement could lead to every property owner requesting a waiver of the reimbursement fee.

Action Taken: Mr. Pearce moved that the second reading of the ordinance be adopted, seconded by Mr. Deane, and passed with Mr. Ecret and Mrs. Liebrecht opposed.

ORDINANCE - AMEND 18.55 - HOME OCCUPATIONS - 2ND READING

An ordinance was presented which provides that a taxicab business with a single vehicle service will be allowed as a home occupation. A taxi business with more than a single vehicle would not be allowed as a home occupation.

The ordinance amending Chapter 18.55 of the Moses Lake Municipal Code entitled "Home Occupations" was read by title only.

Action Taken: Mr. Ecret moved that the second reading of the ordinance be adopted, seconded by Dr. Curnel, and passed unanimously.

ORDINANCE - AMEND 12.12 - SIDEWALK CONSTRUCTION - SINGLE READING

An ordinance was presented which provides that a property owner of property adjacent to a city deeded piece of property will have the same obligation to maintain the area as a property owner immediately adjacent to a piece of dedicated right-of-way.

The ordinance amending Chapter 12.12 of the Moses Lake Municipal Code entitled "Sidewalk Construction" was read by title only.

Joseph K. Gavinski, City Manager, explained that there are a few areas in the city where property has been deeded to the city and used to construct a street. In some instances the property is wider than the street improvements. This creates an area between the sidewalk and the adjacent property owner that is owned by the city and which the property owners refuse to maintain. The proposed amendment requires the adjacent property owner to be responsible for maintaining the area just as the property owner is required to care for the dedicated right-of-way adjacent to a sidewalk.

It was mentioned that this would be no different than requiring a property owner to be responsible for the planter strip.

Action Taken: Mr. Ecret moved that an emergency be declared and the ordinance adopted on a single reading, seconded by Mr. Reese, and passed unanimously.

ORDINANCE - AMEND 18.30 - COMMERCIAL ZONES - 1ST READING

An ordinance was presented which allows eaves, cornices, and awnings to project no more than 2' into the required setback in the C-2, General Commercial and Business, Zone.

The ordinance amending Chapter 18.30 of the Moses Lake Municipal Code entitled "Commercial Zones" was read by title only.

Gilbert Alvarado, Community Development Director, explained that generally in the C-2 Zone the lots are large enough that the buildings will not extend into the setbacks. Allowing the eaves, cornices, and awnings to encroach into the setbacks in the C-2 Zone will allow a building to be constructed close to the sidewalk. This will present a more pedestrian friendly site than those with parking next to the sidewalk.

Action Taken: Mr. Reese moved that the first reading of the ordinance be adopted, seconded by Mrs. Liebrecht, and passed unanimously.

ORDINANCE - AMEND 2010 BUDGET - 1ST READING

An ordinance was presented which amends the 2010 budget.

The ordinance amending the 2010 budget for the City of Moses Lake, Washington was read by title only.

Action Taken: Dr. Curnel moved that the first reading of the ordinance be adopted, seconded by Mr. Reese, and passed unanimously.

ORDINANCE - AMEND 2.46 - TOURISM COMMISSION - 1ST READING

An ordinance was presented which permits the Tourism Commission to meet on an as needed basis but requires at least one meeting a year.

The ordinance amending Chapter 2.46 of the Moses Lake Municipal Code entitled "Tourism Commission" was read by title only.

Joseph K. Gavinski, City Manager, explained that the change in the number of meetings was requested by the Tourism Commission as there are many months where there is nothing to discuss.

Action Taken: Mrs. Liebrecht moved that the first reading of the ordinance be adopted, seconded by Dr. Curnel, and passed unanimously.

RESOLUTION - INTERFUND LOAN

A resolution was presented which provides for an inter-fund loan in the amount of \$200,000 from the Water/Sewer Fund 410 to the Ambulance Fund 498.

The resolution authorizing an inter-fund loan to the Ambulance Fund 498 from the Water/Sewer Fund 410 was read by title only.

Action Taken: Dr. Curnel moved that the resolution be adopted, seconded by Mr. Reese, and passed unanimously.

RESOLUTION - ACCEPT DONATION - SUMMER CONCERT SERIES

A resolution was presented which accepts the donations from businesses and organizations to partially fund the 2010 Summer Concert Series.

The resolution accepting contributions for the City of Moses Lake Centennial Theater Summer Concert Series and Movies in the Parks Program was read by title only.

Action Taken: Mrs. Liebrecht moved that the resolution be adopted, seconded by Dr. Curnel, and passed unanimously.

RESOLUTION - UTILITY EXTENSION POLICY

A resolution was presented which amends the city's utility extension policy to comply with insurance requirements.

The resolution amending Resolution 2513 setting forth a policy with regard to the provision of water and/or sewer utilities outside the corporate limits of the city and setting forth an annexation policy for the City of Moses Lake, Washington was read by title only.

James A. Whitaker, City Attorney, stated that the change under the section "Delivery of City Water and/or Sewer Utilities to Non-Contiguous Lands" was changed due to a court case. The language was amended to state that the non-contiguous lands receiving city water and/or sewer will not be used in any manner inconsistent with the land use controls in place.

Action Taken: Mr. Reese moved that the resolution be adopted, seconded by Mr. Pearce, and passed unanimously.

RESOLUTION - ABANDON EASEMENT - LARSON

Richard Larson requested the abandonment of a 10' easement located on the north end of Lot 1, Sage Bay #3 Short Plat. Northland Cable has facilities in a portion of the easement proposed to be vacated.

The resolution authorizing abandonment of an easement was read by title only.

Gilbert Alvarado, Community Development Director, stated that if the easement were abandoned, the property owner could use the property to place a storage building adjacent to the rear property line. The portion of the easement in use by Northland Cable would not be abandoned.

Action Taken: Mr. Pearce moved that the resolution be adopted, seconded by Mr. Reese, and passed unanimously.

REQUEST TO CALL FOR BIDS -None

REFERRALS FROM COMMISSIONS - None

OTHER ITEMS FOR COUNCIL CONSIDERATION

RESOLUTION - AMBULANCE FUND

After City staff further reviewed the statute with regard to ambulance utility fees and the permitted formula used to establish the fees, it was determined that repayment of any loans or costs to cover deficits or costs to establish a fund balance cannot be calculated into the fee. Therefore, City staff has determined that \$8.25 would be the maximum revised fee that the City can charge. City staff recommended that the ambulance utility fee, beginning January 1, 2011, be established in the amount of \$8.25.

There are interfund loans totaling \$650,000 and the need to establish a fund balance in the amount of about \$250,000. City staff proposes that the interfund loan be repaid and the fund balance be established over a 5 year period. That would mean the General Fund would contribute \$130,000 per year towards repayment of the interfund loans, \$49,300 per year to establish the fund balance, and contribute \$73,500 per year as is required by law. The General Fund's annual total contribution would amount to \$252,800.

The resolution establishing ambulance service utility rates was read by title only.

Joseph K. Gavinski, City Manager, explained the state law as it relates to the ambulance utility fee.

There was some discussion by the Council.

Action Taken: Dr. Curnel moved that the resolution be adopted, seconded by Mr. Reese, and passed unanimously.

SIGN PLACEMENT STANDARDS

The sign standards were revised to allow placement of signs without having to obtain permission by the Council. The revised sign placement standards identify the locations where signs may be located, which is essentially consistent with current practice. Much of the sign placement standards remain the same but the size of the sign was changed from 32 square feet to 16 square feet.

Joseph K. Gavinski, City Manager, stated that the new regulations permit placement of signs without having to obtain permission of the Council. The standards include the locations where signs are allowed and other specifications. He mentioned that the location of the "grassy area adjacent to Pioneer Way and East Broadway Extended" should be changed to read "Grassy area adjacent to West Broadway and East Broadway Extended" as the location is not technically adjacent to Pioneer Way.

There was some discussion by the Council.

Action Taken: Mr. Reese moved that the sign placement standards be amended and approved, seconded by Dr. Curnel, and passed unanimously.

STREET CLOSURE - NEW YEAR'S EVE

The Parks and Recreation Department requested the closure of Third Avenue from Beech to Division and Ash Street from the intersection of Third Avenue to the alley heading north and south all the way to 4th Avenue. The closure would be from 7 p.m. until 10:30 p.m. to accommodate the activities at the Museum and Art Center and on the stage at Sinkiuse Square.

Action Taken: Mrs. Liebrecht moved that the request be granted, seconded by Dr. Curnel, and passed unanimously.

LODGING TAX ADVISORY COMMITTEE

The membership of the Lodging Tax Advisory Committee is to be confirmed on a yearly basis. The current members include Debbie Doran-Martinez, Moses Lake Chamber of Commerce and Tourism Commission, Brenda Teals, Allied Arts, Friends of the Adam East Museum and Art Center, and Tourism Commission, Troy Duzon, Ameristay Inns, and Christine Richie, Comfort Suites and Tourism Commission. Councilman Ecret is the Chairman.

Action Taken: Mr. Pearce moved that the current members of the Lodging Tax Advisory Committee be confirmed, seconded by Mr. Reese, and passed unanimously.

NON-AGENDA ITEMS AND PUBLIC QUESTIONS AND COMMENTSPIONEER PIT STOP - SIGN

John Redford, Pioneer Pit Stop, stated that they were granted permission to place their sign on city right-of-way. Upon review of the approved location it was discovered that there is a city water line that would be impacted. He stated that they would like to relocate the sign closer to the existing sign which will remove it from the right-of-way but it would still be within a city easement. The sign base will be 13' from the sidewalk.

Gilbert Alvarado, Community Development Director, gave some background on the placement of signs in easements and city rights-of-way.

Action Taken: Mr. Reese moved that the request be granted subject to the execution of the license between the city and Pioneer Pit Stop for the use of city property, seconded by Mrs. Liebrecht, and passed unanimously.

COUNCIL QUESTIONS AND COMMENTS - NoneCITY MANAGER REPORTS AND COMMENTSENTRANCE SIGNS

Joseph K. Gavinski, City Manager, stated that information has been received concerning the entry signage proposed by the consultant on the city's downtown development. The proposed signs will cost between \$24,000 and \$28,000. He mentioned that locations have not yet been designated.

There was some discussion and it was felt that the alternate design, without the flags, would be easier to maintain and staff was also requested to look into an electronic sign which could be used to advertise events.

Staff was directed to continue discussion on the signs with the appropriate parties and report back to the Council.

PANHANDLING

Joseph K. Gavinski, City Manager, stated that the City of Spokane Valley has adopted ordinances which control panhandling and monetary solicitation. The ordinances essentially prohibit people from going into the streets.

James A. Whitaker, City Attorney, explained that according to current court cases, certain aspects of begging are protected as free speech.

Mr. Pearce felt that solicitation of vehicle occupants should be prohibited as it is a safety issue for those doing the solicitation.

Mr. Whitaker explained that the attorney for Spokane Valley indicated that their ordinance is traffic/pedestrian safety driven and does not try to address what the people are soliciting for.

Staff was directed to continue work on an ordinance to regulate panhandling.

SNOW REMOVAL

Joseph K. Gavinski, City Manager, stated that the city staff did a good job of snow removal and that private contractors were hired to aid in plowing the residential neighborhood streets.

BUILDING ACTIVITY REPORT

The November 2010 Building Activity Report was presented.

INVESTMENT REPORT

The city received \$11,292.80 in investment income for November 2010.

SALES TAX/TRANSIENT RENTAL INCOME

The city received \$438,011.36 in sales tax and \$46,504.36 in transient rental income in November 2010.

The regular meeting was recessed at 9:32 p.m. and the Council met at 9:35 p.m. in a 30 minute executive session with the City Attorney to discuss litigation and labor relations. The executive session was adjourned at 9:54 p.m. and the regular meeting was reconvened.

LITIGATION

Joseph K. Gavinski, City Manager, presented a Settlement Agreement between the city and the county which would resolve the current law suits between the two entities concerning the Revenue Sharing Agreement and the definition of resource based industries.

Action Taken: Dr. Curnel moved that the City Manager be authorized to execute the Settlement Agreement with the county, seconded by Mr. Deane, and passed unanimously.

SALARIES

Action Taken: Mr. Ecret moved that a 2% raise be approved for Association, non-union, and exempt personnel, and a 5% raise be approved for Police Captains for 2011, seconded by Dr. Curnel, and passed unanimously.

The regular meeting was adjourned at 8:56 p.m.

ATTEST

Jon Lane, Mayor

Ronald R. Cone, Finance Director

December 21, 2010

TO: City Manager for Council Consideration
FROM: Finance Director
SUBJECT: Ordinance - Amend 2010 Budget - 2nd Reading

Attached is an ordinance which amends the 2010 Budget.

The ordinance is presented for Council consideration. This is the second reading of the ordinance.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Ronald R. Cone". The signature is fluid and cursive, with the first name "Ronald" being the most prominent part.

Ronald R. Cone, CPA and CGFM
Finance Director

RRC:jt

ORDINANCE NO. 2597

AN ORDINANCE AMENDING THE 2010 BUDGET
FOR THE CITY OF MOSES LAKE, WASHINGTON

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON DO ORDAIN AS
FOLLOWS:

SECTION 1. GENERAL FUND 000:

Revenue:

Additions:

1. \$ 73,000 to Aquatic Center Fees
2. \$ 9,000 to Aquatic Center Instruction
3. \$ 20,000 to Liquor Board Profit
4. \$ 20,000 to Merchandise Sales
5. \$ 61,800 to Operating Grants
6. \$ 46,000 to Other Charges
7. \$ 10,000 to Reimbursements
8. \$ 46,200 to Transfer in from 490 Sanitation
9. \$195,000 to Utility Taxes

Expenditures:

Additions:

- Community Development
1. \$ 3,000 to Bank Charges
- Legal/Judicial
1. \$ 25,000 to Professional Services
- Miscellaneous Services
1. \$281,000 to Transfer to 101 Contingency Reserve Fund
2. \$100,000 to Transfer to Firemen Pension
- Parks
1. \$ 18,000 to Utility Expense - Electricity
- Police
1. \$ 5,000 to Minor Equipment
2. \$ 5,000 to Operating Supplies
3. \$ 65,800 to Salaries & Benefits

Deductions:

- Miscellaneous
1. \$ 5,800 from Unreserved Fund Balance
- Engineering
1. \$ 16,000 from Lease Purchase
- Parks & Recreation

Expenditure Budget	Additions	Deductions	Amended Budget
\$23,635,600	\$502,800	\$21,800	\$24,116,600

SECTION 2. CONTINGENCY RESERVE FUND 101:

Revenue:

Additions:

1. \$281,000 to Transfer in From 006 Miscellaneous Services

Expenditures:

Additions:

1. \$281,000 to Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$ -0-	\$281,000	\$ -0-	\$281,000

SECTION 3. GRANTS AND DONATIONS FUND 103:

Revenue:

Additions:

1. \$60,600 to Beginning Fund Balance
2. \$ 2,000 to Drug Seizure
3. \$50,500 to Grants
4. \$40,400 to Private Contributions

Expenditures:

Additions:

1. \$16,000 to Advertising
2. \$ 2,500 to Machinery & Equipment
3. \$11,000 to Minor Equipment
4. \$ 2,000 to Miscellaneous
5. \$15,000 to Operating Supplies
6. \$ 4,000 to Registration & Membership
7. \$ 2,000 to Reimbursable Labor
8. \$ 3,000 to Repair and Maintenance Supplies
9. \$98,000 to Salaries & Benefits

Expenditure Budget	Additions	Deductions	Amended Budget
\$355,300	\$153,500	\$ -0-	\$508,800

SECTION 4. STREET FUND 116:

Revenue:

Additions:

1. \$36,000 to Miscellaneous
2. \$44,300 to Street/Curb Permit Fees

Expenditures:

Additions:

1. \$ 1,000 to Miscellaneous
2. \$30,000 to Reimbursable Labor
3. \$25,000 to Repair and Maintenance Supplies
4. \$ 4,000 to Repair & Maintenance Equipment

5. \$18,000 to Ending Fund Balance
6. \$ 2,300 to Utility Expense - Electricity

Expenditure Budget	Additions	Deductions	Amended Budget
\$1,906,300	\$80,300	\$ -0-	\$1,986,600

SECTION 5. EQUIPMENT LEASES FUND 275:

This is an unbudgeted debt service fund and is included as an estimation for reference only.

Expenditures:

Additions:

1. \$4,500 to Principal Capital Lease
2. \$ 500 to Interest Capital Lease

Deductions:

1. \$5,000 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$63,000	\$5,000	\$5,000	\$63,000

SECTION 6. G. O. B. 2006 BOND REDEMPTION FUND 281:

This is an unbudgeted debt service fund and is included as an estimation for reference only.

Expenditures:

Additions:

1. \$500 to Other Debt Service Costs
2. \$100 to Interest G. O. Debt

Deductions:

1. \$600 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$531,700	\$600	\$600	\$531,700

SECTION 7. 2002 REFUNDING BONDS FUND 285:

This is an unbudgeted debt service fund and is included as an estimation for reference only.

Expenditures:

Additions:

1. \$100 to Principal G. O. Bonds
2. \$300 to Other Debt Service Costs

Deductions:

1. \$400 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$317,300	\$400	\$400	\$317,300

SECTION 8. PARK & RECREATION IMPROVEMENT FUND 314:

Revenue:

Additions:

1. \$9,900 to Beginning Fund Balance

Expenditure:

Additions:

1. \$9,900 to Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$ -0-	\$9,900	\$ -0-	\$9,900

SECTION 9. WATER/SEWER FUND 410:

Revenue:

Additions:

1. \$ 359,300 to Beginning Fund Balance
2. \$ 51,200 to Interfund Loan Interest
3. \$1,000,000 to Interfund Loan Repayment

Expenditures:

Additions:

- Water
1. \$1,000,000 to Transfer to 477 Water Sewer Construction
- Sewer
1. \$1,000,000 to Transfer to 477 Water Sewer Construction
 2. \$ 27,000 to Transfer to 483 Water Sewer Lease
- Water Billing
1. \$ 15,000 to Bank Charges
 2. \$ 300,000 to Interfund Loan Issued
 3. \$ 7,000 to Postage
 4. \$ 3,000 to Repair & Maintenance Equipment
 5. \$ 45,000 to Taxes and Assessments
- Sewer Billing
1. \$ 15,000 to Bank Charges
 2. \$ 15,000 to Taxes and Assessments

Deductions:

- Water Billing
1. \$1,016,500 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$11,856,300	\$2,427,000	\$1,016,500	\$13,266,800

SECTION 10. WATER/SEWER CONSTRUCTION ACCOUNT 477:

Revenue:

Additions:

1. \$ 730,000 to Beginning Fund Balance
2. \$2,000,000 to Transfer in from Water Sewer Fund

Expenditures:

Additions:

1. \$4,000,000 to Interfund Loan Issued

Deductions:

1. \$1,270,000 from CIP Projects

Expenditure Budget	Additions	Deductions	Amended Budget
\$4,603,200	\$4,000,000	\$1,270,000	\$7,333,200

SECTION 11. WATER SEWER LEASES ACCOUNT 483:

This is an unbudgeted debt service account and is included as an estimation for reference only. Revenue:

Additions:

1. \$27,000 to Transfer in from 412 Sewer Billing

Expenditures:

Additions:

1. \$25,000 to Principal Capital Lease
2. \$ 2,000 to Interest Capital Lease

Expenditure Budget	Additions	Deductions	Amended Budget
\$22,300	\$27,000	\$ -0-	\$49,300

SECTION 12. G. O. B. 2006 REDEMPTION ACCOUNT 486:

This is an unbudgeted debt service account and is included as an estimation for reference only.

Expenditures:

Additions:

1. \$500 to Other Debt Service Costs

Deductions:

1. \$500 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$77,200	\$500	\$500	\$77,200

SECTION 13. SANITATION FUND 490:

Revenue:

Additions:

1. \$792,000 to Interfund Loan Repayment

Deductions:

1. \$604,000 from Beginning Fund Balance

Expenditures:

Additions:

1. \$ 10,000 to Advertising
2. \$ 12,000 to Bank Charges
3. \$ 6,000 to Customer Refunds
4. \$ 200,000 to Garbage Contract
5. \$ 450,000 to Interfund Loan Issued
6. \$ 70,000 to Land Fill Dumping Fees
7. \$ 671,000 to Operating Supplies
8. \$ 3,000 to Rental/Lease Buildings

Deductions:

1. \$1,234,000 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$3,748,600	\$1,422,000	\$1,234,000	\$3,936,600

SECTION 14. STORM WATER FUND 493:

Revenue:

Additions:

1. \$100,000 to Interfund Loan Proceeds

Expenditures:

Additions:

1. \$109,700 to Ending Fund Balance

Deductions:

1. \$9,700 from Transfer to 519 Equipment Rental

Expenditure Budget	Additions	Deductions	Amended Budget
\$1,226,000	\$109,700	\$9,700	\$1,326,000

SECTION 15. AIRPORT FUND 495:

Expenditures:

Additions:

1. \$3,000 to Minor Equipment
2. \$1,000 to Repair and Maintenance
3. \$ 700 to Transfer to Central Services
4. \$2,500 to Utility Expense

Deductions:

1. \$7,200 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$86,800	\$7,200	\$7,200	\$86,800

SECTION 16. AMBULANCE SERVICE FUND 498:

Revenue:

Additions:

1. \$1,549,500 to Ambulance Fees
2. \$ 650,000 to Interfund Loan Received
3. \$ 104,900 to Utility Fee

Deductions:

1. \$ 225,600 from Beginning Fund Balance
2. \$ 111,900 from Reimbursable Labor
3. \$1,500,400 from Write Downs

Expenditures:

Additions:

1. \$ 2,500 to Postage
2. \$ 55,000 to Reimbursable Labor
3. \$ 175,000 to Salaries & Benefits
4. \$ 31,000 to Taxes and Assessments
5. \$ 1,800 to Telephone
6. \$ 201,200 to Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$2,184,600	\$466,500	\$ -0-	\$2,651,100

SECTION 17. UNEMPLOYMENT COMPENSATION FUND 501:

Expenditures:

Additions:

1. \$25,000 to Miscellaneous

Deductions:

1. \$25,000 to Miscellaneous

Expenditure Budget	Additions	Deductions	Amended Budget
\$359,400	\$25,000	\$25,000	\$359,400

SECTION 18. CENTRAL SERVICES FUND 517:

Revenue:

Additions:

1. \$ 700 to Transfer in From 495 Airport

Expenditures:

Additions:

1. \$80,000 to Computer Software

2. \$31,000 to Small Equipment

Deductions:

1. \$110,300 from Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$619,600	\$111,000	\$110,300	\$620,300

SECTION 19. EQUIPMENT RENTAL FUND 519:

Revenue:

Additions:

1. \$1,508,900 to Transfer in From Other Departments

Deductions:

1. \$ 98,900 from Transfers in From Other Departments

Expenditures:

Additions:

1. \$ 220,000 to Machinery & Equipment

2. \$ 45,000 to Repair & Maintenance Equipment

3. \$1,145,000 to Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$3,392,500	\$1,410,000	\$ -0-	\$4,802,500

SECTION 20. BUILDING MAINTENANCE FUND 528:

Revenue:

Additions:

1. \$ 55,600 to Beginning Fund Balance

2. \$4,000,000 to Interfund Loan Received

Deductions:

1. \$1,488,500 from G. O. B. Bond Proceeds

2. \$ 925,800 from State Grant

Expenditures:

Additions:

1. \$1,883,000 to Interfund Loan Repayment

Deductions:

1. \$ 241,700 from Building Construction

Expenditure Budget	Additions	Deductions	Amended Budget
\$9,780,000	\$1,883,000	\$241,700	\$11,421,300

SECTION 21. FIREMAN'S PENSION FUND 611:

Revenue:

Additions:

1. \$100,000 to Transfer in From 006 Miscellaneous Services

Expenditures:

Additions:

1. \$100,000 to Ending Fund Balance

Expenditure Budget	Additions	Deductions	Amended Budget
\$291,100	\$100,000	\$ -0-	\$391,100

SECTION 22. All Ending Fund Balances which are included in the preceding budgets which require appropriation by the City Council are appropriated to specific expenditure categories by the City Council as set forth in this ordinance. As Ending Fund Balances are appropriated for expenditures they are shown as both additions and deductions to the respective budgets. However, in this ordinance they may be shown as a net change to the Ending Fund Balance.

SECTION 23. This ordinance shall take effect and be in force five (5) days after its passage and publication as provided by law.

Adopted by the City Council and signed by its Mayor on December 28, 2010.

Jon Lane, Mayor

ATTEST:

Ronald R. Cone, Finance Director

APPROVED AS TO FORM:

James A. Whitaker, City Attorney



December 21, 2010

Honorable Mayor and
Moses Lake City Council

Dear Council Members

Attached is an ordinance which amends Chapter 2.46 of the Moses Lake Municipal Code entitled Tourism Commission. The ordinance permits the Commission to meet on an as needed basis but requires at least one meeting a year.

The ordinance is presented for Council consideration. This is the second reading of the ordinance.

Respectfully submitted



Joseph K. Gawinski
City Manager

JKG:tj

ORDINANCE NO. 2598

AN ORDINANCE AMENDING CHAPTER 2.46 OF THE MOSES LAKE MUNICIPAL
CODE ENTITLED "TOURISM COMMISSION"

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Chapter 2.46 of the Moses Lake Municipal Code entitled "Tourism Commission" is amended as follows:

2.46.050 Meetings: The Tourism Commission shall devote such time as may be necessary to properly discharge all duties devolving upon them. The Commission members shall serve without compensation. The Commission shall organize annually by electing one (1) of its number chair and one (1) vice-chair. Minutes of all meetings shall be filed with the City Manager. the Commission shall meet as often as is necessary to conduct business but shall hold a meeting at least once a year. ~~A meeting of the Commission shall be held at least once each month.~~

Section 2. This ordinance shall take effect and be in force five (5) days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on December 28, 2010.

Jon Lane, Mayor

ATTEST:

Ronald R. Cone, Finance Director

APPROVED AS TO FORM:

James A. Whitaker, City Attorney

December 21, 2010

TO: City Manager for Council Consideration
FROM: Community Development Director
SUBJECT: Ordinance - Amend Chapter 18.30 - 2nd Reading

Attached is an ordinance amending the C-2 Zone to allow building overhangs to extend into the setbacks.

The ordinance is presented for Council consideration. This is the second reading of the ordinance.

Respectfully submitted,


Gil Alvarado
Community Development Director

GA:jt

ORDINANCE NO. 2599

AN ORDINANCE AMENDING CHAPTER 18.30 OF THE MOSES LAKE MUNICIPAL CODE ENTITLED "COMMERCIAL ZONES"

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Chapter 18.30 of the Moses Lake Municipal Code entitled "Commercial Zones" is amended as follows:

18.30.050 Development Standards for Commercial Zones:

- A. Purpose. This section establishes the development standards and site requirements for uses in the commercial zones. The standards and rules are established to provide flexibility in project design, prevent fire danger, provide adequate access and circulation, reduce incompatibilities, and prevent overloading of infrastructure due to the impacts of development.
- B. Explanation of Table. Development standards are listed down the left column of the table and the commercial zones are identified across the top row. The matrix cells contain the requirements of each zone. The footnotes identify particular requirements applicable to a specific use, standard, or zone. Additional requirements for the NC zone are found in MLMC chapter 18.31.

TABLE 2: DEVELOPMENT STANDARDS IN COMMERCIAL ZONES				
Development Standards	C-1	C-2	C-1A	NC
Minimum lot size	NR	NR	NR	See MLMC 18.31.020
Maximum lot size	NR ¹	NR	NR ¹	3 acres
Maximum building height	4 stories or 62' ²	4 stories or 62' ²	4 stories or 62' ²	See MLMC 18.31.040
Minimum Front yard setback ³	NR	15'	NR	See MLMC 18.31.030.A
Maximum front setback	0' ⁴	NR	0' ⁴	See MLMC 18.31.030.A
Exterior side yard setback ³	NR	15'	0'	See MLMC 18.31.030.B
Interior side yard setback ³	NR	NR	NR	See MLMC 18.31.030.B
Rear yard setback ³	NR	NR	NR	See MLMC 18.31.030.C
Landscaping required (MLMC 18.57)	New parking lots only	Yes	New parking lots only	Yes. Additional requirements at MLMC 18.31.060
Buffer requirements	MLMC 18.30.130	MLMC 18.30.130	MLMC 18.30.130	MLMC 18.30.130 and 18.31.060
Signage	MLMC 18.58	MLMC 18.58	MLMC 18.58	MLMC 18.58 and 18.31.090
Outside storage allowed	No	MLMC 18.30.110	No	No
Fencing requirements	MLMC 18.30.120	MLMC 18.30.120	MLMC 18.30.120	MLMC 18.30.120 and 18.31.060

TABLE 2: DEVELOPMENT STANDARDS IN COMMERCIAL ZONES				
Development Standards	C-1	C-2	C-1A	NC
Parking required (MLMC 18.54)	For residential only	Yes	Yes	Yes
Ground floor window standards	MLMC 18.30.150	NR	MLMC 18.30.150	MLMC 18.30.150
Pedestrian requirements	NR	MLMC 18.30.160	NR	MLMC 18.30.160

NR= No Requirement for the zone. Other regulations may apply.

Footnotes for Table 2

1. No maximum lot size; however, any use over two (2) acres requires Planning Commission approval as a conditional use.
2. The Planning Commission may allow buildings or structures to be erected to an additional height after a public hearing and examination of the location and upon due proof to the satisfaction of the Commission that the additional height will not be detrimental.
3. Setbacks:
 - A. Within the setback area shown on Table 2, no building or structure (as defined in 18.06.610) shall be allowed, except flagpoles, street furniture, transit shelters, signage, fencing, slope stability structures, and improvements less than thirty inches (30") above grade, including decks, patios, walks, and driveways. Some of these structures and improvements require a permit. Eaves, cornices, and awnings may project into the required setback no more than two feet (2').
 - B. The setbacks shown in the table are zoning setbacks. Larger setbacks may be required by the State Building Code, State Fire Code, sight distance requirements, or landscaping requirements (MLMC 18.57).
4. Portions of the building may be set back further than the maximum setback to allow for features that encourage pedestrian use and activity along the street, such as building modulation, pedestrian plazas or courtyards, covered or recessed entryways, commercial uses or displays (such as vendors, newsstands, or cafes), public art (such as water features or sculptures), or seating and/or planter areas.

Section 2. This ordinance shall take effect and be in force five (5) days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on December 28, 2010.

ATTEST

Jon Lane, Mayor

Ronald R. Cone, Finance Director

APPROVED AS TO FORM:

James A. Whitaker, City Attorney

December 22, 2010

TO: City Manager for Council Consideration
FROM: Finance Director
SUBJECT: Ordinance - Amend 2010 Budget - Single Reading

An ordinance which amends the 2010 Budget will be presented at the meeting.

The ordinance is presented for Council consideration. The Council should declare an emergency and adopt this ordinance on a single reading.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Ronald R. Cone", written in a cursive style.

Ronald R. Cone, CPA and CGFM
Finance Director

RRC:jt

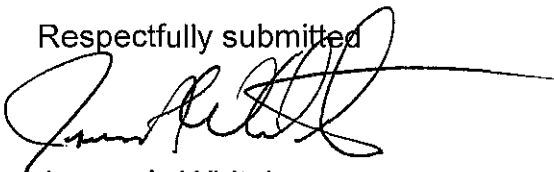
December 21, 2010

TO: City Manager for Council Consideration
FROM: City Attorney
SUBJECT: Ordinance - Amend 16.02 - Building Permits - 1st Reading

Attached for Council consideration is an ordinance which removes an inconsistency between the city code and the State Building Code.

The ordinance is presented for Council consideration. This is the first reading of the ordinance.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'James A. Whitaker', with a long horizontal flourish extending to the right.

James A. Whitaker
City Attorney

JAW:jt

ORDINANCE NO.

AN ORDINANCE AMENDING MOSES LAKE MUNICIPAL CODE CHAPTER 16.02
ENTITLED "BUILDING PERMITS"

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Moses Lake Municipal Code Chapter 16.02 entitled "Building Permits" is amended as follows:

16.02.050 State Building Code Amendments: The following amendments to the State Building Code are adopted and apply within this jurisdiction:

- A. Sections 105.1.1 and 105.1.2, of the IBC, are not adopted.
- B. Section 105.2 (1), of the IBC and the IRC, are amended to read as follows: 1. One-story detached accessory structures, ~~provided the floor area does not exceed one hundred twenty (120) square feet (18.58 m²)~~, provided that only one (1) may be placed on a lot without a permit.
- C. Section 105.2 (6), of the IBC and section 105.2(5), of the IRC, are amended to read as follows: 6(IBC) and 5(IRC). Sidewalks, decks and driveways not more than thirty inches (30") (762mm) above grade and not over any basement or story below and which are not part of an accessible route.
- D. There is created a new section 105.2 (10) to the IRC to read as follows: 105.2 (10) Reroofing a single family dwelling or private garage, provided that no more than twenty-five percent (25%) of the existing roof sheathing is being replaced.
- E. There is created a new section 105.2 (11) to the IRC and Section 105.2 (14) to the IBC to read as follows: 105.2 (11) IRC and 105.2 (14) IBC Replacing siding over existing siding or exterior sheathing.
- F. Section 105.3, of the IBC and the IRC, is not adopted.
- G. Section 108.3, of the IBC and the IRC, is amended to read as follows: 108.3 Building Permit Valuations. The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.
- H. Section 112.1, of the IBC and the IRC, is amended to read as follows:
 - 1. 112.1 General. All references to a Board of Appeals in this code are replaced with references to the city's Hearing Examiner. The Hearing Examiner shall hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code. Any request for an appeal shall be accompanied by the required fees for the Hearing Examiner as established in other ordinances of the city. The Hearing Examiner shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.
 - 2. Limitations of Authority. The Hearing Examiner shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Hearing Examiner be empowered to waive requirements of this code.

- I. Section 112.3, of the IBC and the IRC is not adopted.
- J. There is created a new section 116 to the IBC and the IRC to read as follows: No person shall move any existing building or structure within or into the City without first obtaining from the Community Development Department a relocation permit and a building permit. No person shall effect any demolition of any building or structure or any part thereof which is not exempted by Section 105.2 of the International Building Code without first obtaining from the Community Development Department a demolition permit.
- K. There is created a new section 117 to the IBC and the IRC to read as follows:
Manufactured Home Placement Permit: No person, firm, or corporation as the owner, buyer, or vendor of a manufactured home or as manufactured home park management shall cause or permit any manufactured home, commercial coach, factory-built housing, or commercial structure to be located, placed or set within the corporate limits of the city without first having secured a proper manufactured unit placement permit.
- L. WAC 51-56-0100 adopting section 102.4 of the State Plumbing Code is replaced with the following new subsection:

102.4 Appeals. All references in this Code to the Board of Appeals shall be deemed to refer to the Hearing Examiner of the City of Moses Lake. The Hearing Examiner shall perform the function of the Board of Appeals. Any request for an appeal shall be accompanied by the required fees for the Hearing Examiner as established in other ordinances of the city. The Hearing Examiner may adopt rules of procedure for conducting his business. Such rules of procedure shall be available to the public upon request. All decisions shall be in writing and shall be delivered to the appellant as well as to the city.
- M. Section 109 of the International Mechanical Code is replaced with the following new subsection:

109.1 All references in this Code to the Board of Appeals shall be deemed to refer to the Hearing Examiner of the City of Moses Lake. The Hearing Examiner shall perform the function of the Board of Appeals. Any request for an appeal shall be accompanied by the required fees for the Hearing Examiner as established in other ordinances of the city. Appeals to the Hearing Examiner shall be processed in accordance with the provisions contained in Section 109 of this Code. The Hearing Examiner may adopt rules of procedure for conducting his business. Such rules of procedure shall be available to the public upon request. All decisions shall be in writing and shall be delivered to the appellant as well as to the city.

Section 2. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on January 11, 2010

Jon Lane, Mayor

ATTEST:

Ronald C. Cone, Finance Director

APPROVED AS TO FORM:

James A. Whitaker, City Attorney

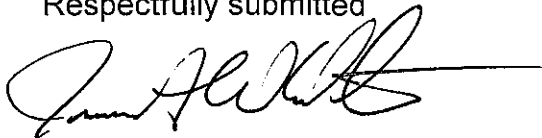
December 14, 2010

TO: City Manager for Council Consideration
FROM: City Attorney
SUBJECT: Ordinance - Create 17.56 - Reimbursement Agreement s- 1st Reading

Attached is an ordinance which creates regulations regarding reimbursement agreements for developers installed improvements. This ordinance was mandated by the City's insurer, WCIA, as part of the City's land use audit.

The ordinance is presented for Council consideration. This is the first reading of the ordinance.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'James A. Whitaker', with a long horizontal line extending to the right.

James A. Whitaker
City Attorney

JAW:jt

ORDINANCE NO.

AN ORDINANCE CREATING CHAPTER 17.56 OF THE MOSES LAKE
MUNICIPAL CODE ENTITLED "REIMBURSEMENT AGREEMENTS"

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Moses Lake Municipal Code Chapter 17.56 entitled "Reimbursement Agreements" is created as follows:

- 17.56.010 Application Authorized – Purpose – Term: Any developer utilizing private funds to install infrastructure (street, water, or sewer [sanitary and/or storm]) improvements and appurtenances may apply to the city to establish a latecomer agreement for recovery of a prorated share of the cost of constructing said public improvement from other properties that will later derive a benefit from said improvements. This chapter is intended to apply to all street system improvements and all utility system improvements where the construction of such improvements are the result of a City ordinance or ordinances that require such improvements as a prerequisite to property development. No reimbursement agreement/latecomers' agreement shall extend for a period longer than fifteen (15) years from the date of final acceptance by the City unless a longer period is allowed pursuant to RCW 35.72.020 or 35.91.020. The City Council shall have discretion to authorize or not to authorize latecomer agreements on a case-by-case basis and to determine the length of the term of any latecomer agreement.
- 17.56.020 Rights and Non-Liability of City: The City has discretion and reserves the right to refuse to enter into any latecomer agreement or to reject any application therefor. All applications for latecomers' agreements shall be made on the basis that the applicant releases and waives any claims for any liability of the City in establishment and enforcement of latecomer agreements. The City shall not be responsible for locating any beneficiary or survivor entitled to benefits by or through latecomer agreements.
- 17.56.030 Application Requirements: All applications for latecomer agreements shall be on forms approved and established by the City and reviewed and approved by the City Attorney. Applicants for latecomer agreements shall comply with the following procedures as a prerequisite to a latecomer agreement with the City:
- A. The owner desiring to contract with the City shall notify the City Engineer, in writing, at least thirty (30) days prior to construction of the facilities, of the owner's request to enter into a latecomer agreement with the City.
 - B. The notice shall contain the following information:
 1. The description of the facilities to be installed.
 2. The description of the area where the facilities are to be installed and a map showing the location thereof.
 3. The cost estimate of the facilities.
 - C. The owner shall submit the final construction costs to the City Engineer within thirty (30) days from the date of final approval of the construction by the City. The matter shall then be submitted to the City Council which shall determine whether or not to

enter into a latecomer agreement with the owner. If the project is approved for a latecomer agreement by the City Council, the city shall have ninety (90) days thereafter to finalize the agreement. In the event the owner fails to comply with the time limitations set forth in this chapter, then and in that event, the owner shall have waived the owner's right to enter into a latecomer agreement with the City.

- D. In addition to the amounts agreed to be collected by the City, the City shall charge a sum equal to fifteen percent (15%) of the agreed amount to defray the cost of labor, bookkeeping and accounting.
- E. The ownership of all water and sewer main lines installed on private property shall be conveyed to the City and the owner shall grant the City an easement therefor. All deeds and easements for said main line shall be submitted to the City within sixty (60) days of the completion of construction. The ownership of all other improvements under the latecomer's agreement shall be conveyed to the City by appropriate deed and/or conveyance document within sixty (60) days of completion of construction.

17.56.040 Eligibility of Applicants: In order to be eligible for processing of latecomer agreements, applicants for latecomer agreements shall be in compliance with all City ordinances, rules, and regulations.

17.56.050 Procedures for Reimbursement Agreements:

- A. If a reimbursement agreement is requested, the property owner shall submit project plans and a site plan, map or diagram of the proposed benefitted area prepared by a licensed professional engineer, ownership reports on properties within the proposed benefitted areas, a cost estimate for the project based upon the plans of a licensed civil engineer from which reimbursable costs shall be estimated, and such other information as the City may require.
- B. Property owners requesting a reimbursement agreement shall submit, along with the application, a non-refundable payment in the amount of one thousand five hundred dollars (\$1,500) to be applied to the City's legal, engineering and administrative costs (including but not limited to staff time, and costs for title reports, appraisers, or other costs) associated with preparing the reimbursement agreement, which costs shall be included as reimbursable costs in the reimbursement agreement; provided, that whenever city engineering, legal, and administrative costs exceed the payment required herein, the City shall not process the application until such costs have been paid in full.
- C. The City Engineer will formulate an assessment reimbursement area (benefit area) based upon a determination of which parcels did not contribute to the original cost of such infrastructure improvement and which connect to or specially benefit from such infrastructure.
- D. The City Engineer, based on information submitted by the owner, will estimate pro rata share of costs. The City Engineer may require engineering costs or construction bids to be provided.
- E. The City Engineer, in the City Engineer's discretion, may utilize the application fee to pay the costs of an appraiser to be retained by the City to assist the City Engineer in formulating an assessment reimbursement area.

- F. The preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options, shall be forwarded by first class mail to the property owners of record as shown on the records of the Grant County Assessor within the proposed assessment area. A hearing shall be held before the City Council, notice of which shall be given to all affected property owners at least twenty (20) days in advance of the City Council meeting. At the hearing, the City Council determines whether to accept, reject, or modify the proposed reimbursement agreement. If the City Council accepts, it shall establish the reimbursement area; provided, that the City Council may only increase the reimbursement area upon new notice to the owners of the affected property. Improvements constructed subsequent to preliminary approval and prior to the final City Council action on a proposed agreement are done at the owner's or developer's own risk. The approval of a preliminary latecomer's agreement does not create or vest any right to a final latecomer's agreement.
- G. Prior to commencing construction of the project, the owner shall submit a construction bid on forms provided by the Public Works Division based upon City-approved plans to the City. Upon completion of the project, a reasonable pro rata share of project costs shall be established by the City, which shall then notify owners of the benefitted properties of the amount of reimbursement connection charges against their property and the date the reimbursement agreement shall be presented to the City Council for public hearing. On the date scheduled, the City Council shall hear from affected parties and thereafter set the terms of the reimbursement agreement and maximum amount and terms of reimbursement from affected properties. The decision of the City Council shall be final and determinative.
- H. The latecomer agreements must be recorded in the Grant County Auditor's office within thirty (30) days of the final execution of the agreement. It shall be the sole responsibility of the latecomer applicant to record said agreement.
- I. Once recorded, the latecomer agreement shall be binding on owners of record within the assessment area who are not party to the agreement.
- J. The latecomer applicant shall be solely responsible for keeping the City informed of their correct mailing address and contact information by providing the City with written notice thereof at least every two (2) years following execution of the latecomer agreement.

17.56.090 Enforcement Responsibility and Future Services: It shall be the responsibility of the owner of the latecomer's agreement to monitor, enforce and notify the City of any connections to improvements which come within the terms of the latecomer's agreement. The City will use its best efforts to collect latecomer's fees but will not accrue any liability for failure to collect fees due. The City has no obligation to provide notice of the latecomer's agreement to any party other than as provided in this chapter. Neither preliminary nor final approval of a latecomer's agreement shall be construed to vest or grant the right to the extension or allocation of water and/or sewer to properties affected by the latecomer's agreement.

17.56.100 Relief – Similar Facilities: The City, through its designated agency, may relieve a parcel of a latecomer's fee if the property has a benefit from either (but not both) of two (2) similar facilities. Relief shall be based upon sound engineering and policy justifications as to which facility(ies) benefit and/or are utilized by the parcel. Absent such justifications, the City shall give the applicant the choice of facilities to utilize.

The assessment due shall be that associated with the utilized facility.

17.56.110 Severability: If any section, subsection, sentence, clause phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or work of the ordinance codified in this chapter.

Section 2. Effective date. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on January 11, 2011.

Jon Lane, Mayor

ATTEST:

Ronald C. Cone, Finance Director

APPROVED AS TO FORM:

James A. Whitaker, City Attorney



December 17, 2010

Honorable Mayor and
Moses Lake City Council

Dear Council Members


Attached is a proposed ordinance granting a franchise to Northland Cable Television, Inc. to operate and maintain a cable system in the City of Moses Lake and setting forth conditions accompanying the grant of franchise.

The current franchise with Northland Cable Television expires on March 31, 2012. Northland has been requesting a new franchise. Therefore, I am providing this proposed ordinance granting the franchise to Northland Cable. This franchise is for a 10 year period and will expire on March 31, 2022.

this proposed franchise is much like the franchise granted last time except that this franchise imposes the 3% utility occupational tax where as the last franchise did not.

The proposed ordinance is presented to you for consideration. This is the first reading of the ordinance.

Respectfully submitted



Joseph K. Gavinski
City Manager

JKG:jt



December 7, 2010

Jon Ulrich, General Manager
Northland Cable Television
P. O. Box T
Moses Lake, WA 98837

RE: Cable Television Franchise Renewal

Dear Mr. Ulrich

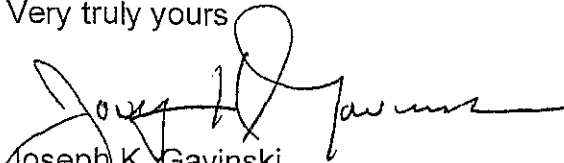
Enclosed is a draft of an ordinance granting a franchise to Northland Cable Television, Inc. to operate and maintain a cable system in the City of Moses Lake and setting forth conditions accompanying the grant of the franchise. This ordinance extends the franchise Northland currently holds with the City of Moses Lake until March 31, 2022.

I have added a section 3.5 and a 3.11 to the current franchise with this draft. Also, I have amended sections 2.8 and 3.1 indicating the imposition of the 3% utility occupational tax the City assesses against cable subscription systems. This 3% utility occupational tax is in addition to the 5% franchise fee.

I intend to present this ordinance to the City Council at the council's December 28, 2010 regular City Council meeting for a first reading of the ordinance. If the City Council passes the ordinance on a first reading, it will then be presented to the City Council for a second reading on January 11, 2011.

If you have any questions or comments with regard to this proposed ordinance granting the franchise, please do not hesitate to contact me.

Very truly yours



Joseph K. Gavinski
City Manager

JKG:jt

cc: Mayor and Council
City Attorney

ORDINANCE NO.

AN ORDINANCE GRANTING A FRANCHISE TO NORTHLAND CABLE TELEVISION, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF MOSES LAKE AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Findings: Northland Cable Television, Inc., DBA Northland Cable Television ("Northland" or "Grantee") desires to operate a cable system in the rights-of-way of the City of Moses Lake ("City" or "Grantor"). Negotiations between Northland and the City have been completed and the franchise process followed in accordance with the guidelines established by applicable law. As a condition of receiving this franchise, Grantee has agreed to abide by the City's current and future lawful policies, ordinances and regulations regarding infrastructure usage, and street-cuts and rights-of-way.

Section 2. Adoption: This ordinance shall be known as the Northland Cable Television, Inc. 2002 Franchise (this "Franchise") and shall provide as follows.

TABLE OF CONTENTS

SECTION 1. DEFINITIONS

SECTION 2. GRANT OF FRANCHISE

- 2.1 Grant
- 2.2 Use of Public Streets and Ways
- 2.3 Term
- 2.4 Effective Date
- 2.5 Franchise Nonexclusive
- 2.6 Grant of Other Franchises
- 2.7 Police Powers
- 2.8 Relations to Other Provisions of Law
- 2.9 Effect of Acceptance

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

- 3.1 Franchise Fee
- 3.2 Payments
- 3.3 Acceptance of Payment and Recomputation
- 3.4 Monthly Reports
- 3.5 Annual Reports
- 3.6 Audits
- 3.7 Interest on Late Payments
- 3.8 Alternative Remedies
- 3.9 Additional Commitments Not Franchise Fees
- 3.10 Costs of Publication
- 3.11 Tax Liability
- 3.12 Payment on Termination

SECTION 4. ADMINISTRATION AND REGULATION

- 4.1 Authority
- 4.2 Rates and Charges
- 4.3 Rate Discrimination

- 4.4 Filing of Rates and Charges
- 4.5 Time Limits Strictly Construed
- 4.6 Performance Evaluation Sessions

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

- 5.1 Insurance Requirements
- 5.2 Indemnification
- 5.3 Workman's Compensation Waiver
- 5.4 Performance Bond

SECTION 6. CUSTOMER SERVICE

- 6.1 Customer Service Standards
- 6.2 Subscriber Privacy
- 6.3 Local Office
- 6.4 Emergency Broadcast

SECTION 7. REPORTS AND RECORDS

- 7.1 Open Records
- 7.2 Confidentiality
- 7.3 Copies of Federal and State Documents
- 7.4 Complaint File and Reports
- 7.5 Inspection of Facilities
- 7.6 False Statements

SECTION 8. PROGRAMMING

- 8.1 Broad Programming Categories
- 8.2 Parental Control Device
- 8.3 Leased Access Channels
- 8.4 Continuity of Service
- 8.5 Community Programming Needs
- 8.6 Service for Disabled

SECTION 9. GENERAL STREET USE AND CONSTRUCTION

- 9.1 Construction
- 9.2 Location of Facilities
- 9.3 Relocation
- 9.4 Restoration of Streets
- 9.5 Maintenance and Workmanship
- 9.6 Reservation of Grantor Street Rights
- 9.7 Use of Conduits by Grantor
- 9.8 Street Vacation
- 9.9 Discontinuing Use of Facilities
- 9.10 Hazardous Substances
- 9.11 Undergrounding of Cable
- 9.12 Codes
- 9.13 Standards

SECTION 10. MEANS OF FRANCHISE TERM EXTENSION

- 10.1 Design
- 10.2 System Functionality
- 10.3 Timing of Construction

SECTION 11. TEST AND COMPLIANCE PROCEDURE

SECTION 12. SERVICE EXTENSION, CONSTRUCTION AND INTERCONNECTION

- 12.1 Equivalent Service
- 12.2 Service Availability
- 12.3 Connection of Public Facilities

SECTION 13. STANDBY POWER

SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

- 14.1 Procedure for Remedying Franchise Violations
- 14.2 Revocation
- 14.3 Removal
- 14.4 Receivership and Foreclosure
- 14.5 No Recourse Against Grantor
- 14.6 Nonenforcement by Grantor
- 14.8 Relationship of Remedies

SECTION 15. ABANDONMENT

- 15.1 Effect of Abandonment
- 15.2 What Constitutes Abandonment

SECTION 16. FRANCHISE RENEWAL AND TRANSFER

- 16.1 Renewal
- 16.2 Transfer of Ownership or Control

SECTION 17. SEVERABILITY

SECTION 18. MISCELLANEOUS PROVISIONS

- 18.1 Preferential or Discriminatory Practices Prohibited
- 18.2 Notices
- 18.3 Binding Effect
- 18.4 Authority to Amend
- 18.5 Governing Law
- 18.6 Guarantee
- 18.7 Captions
- 18.8 Construction of Franchise
- 18.9 Entire Franchise
- 18.10 Time is of the Essence

SECTION 1. DEFINITIONS: For the purposes of this Franchise and all exhibits attached hereto, 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 include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 "Affiliate" when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.2 "Basic Service" means any service tier, which includes the retransmission of local television broadcast signals, or as such service tier may be further defined by federal law.
- 1.3 "Cable Act" means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including

those contained in the Telecommunications Act of 1996, and any future federal cable television legislation.

- 1.4 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.5 "Cable Service" means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, and as otherwise defined or permitted by the FCC from time to time.
- 1.6 "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Cable Service directly to Subscribers; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.7 "Channel" means a portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television channel, as television channel is defined by the FCC in other applicable regulations.
- 1.8 "Downstream" means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 1.9 "FCC" means the Federal Communications Commission or any successor agency thereto.
- 1.10 "Franchise" means the non-exclusive and revocable authorization or renewal thereof for the construction, operation, upgrade, rebuild or maintenance of a Cable System within the Franchise Area such as is granted by this Ordinance, whether such authorization is designated as a franchise, license, resolution, contract, certificate, agreement or otherwise. This Franchise is an agreement between the City of Moses Lake and Northland.
- 1.11 "Franchise Area" means the area within the jurisdictional boundaries of the City of Moses Lake, Grant County, Washington, including any areas annexed by Grantor during the term of this Franchise.
- 1.12 "Grantee" means Northland Cable Television, Inc. DBA Northland Cable Television or its lawful successors and assigns.
- 1.13 "Gross Revenues" means all amounts accrued by Grantee in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Service within the Franchise Area. "Gross Revenues" shall include, without limitation, all amounts for all Cable Services, including, but not limited to, Basic, expanded basic, premium, and pay-per-view services, and installation fees and charges. "Gross Revenues" shall also include any revenue received by any Affiliate of Grantee where such revenue in the ordinary course of business has been paid to Grantee from the operation of its Cable System to provide Cable Service

within the Franchise Area. "Gross Revenues" shall not include Subscriber leased or purchased equipment related to Cable Service reception, advertising sales, customer bad debt, sales taxes, or other taxes, which are collected by Grantee on behalf of and for payment to, the local, state or federal government.

- 1.14 "Headend" means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.
- 1.15 "Interconnect" means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Franchise.
- 1.16 "Person" means any individual, natural person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- 1.17 "School" means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools, and colleges and universities.
- 1.18 "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements (dedicated for compatible uses), rights-of-way and similar public property and areas.
- 1.19 "Subscriber" means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System serving the Franchise Area.
 - A. "Commercial Subscriber" which means any Subscriber other than Residential Subscriber.
 - B. "Residential Subscriber" which means any Person who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.
- 1.20 "Upstream" means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE:

2.1 Grant:

- A. Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, replace, upgrade and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Franchise.
- B. This Franchise is intended to convey limited rights and interests only as to those Streets in which the Grantor may lawfully convey such rights and interests. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee 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 Grantor 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 Grantor's Streets covered by this Franchise, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- C. This Franchise is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted by Grantor.
- D. This Franchise authorizes Grantee to engage in providing Cable Service. This Franchise shall not be interpreted to prevent the Grantor from imposing additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service. However, this Franchise shall not be read as a concession by Grantee that it needs authorization to provide service other than Cable Service.
- E. Grantee promises, as a condition of exercising the privileges granted by this Franchise, Grantee will comply with the terms and conditions of this Franchise.
- 2.2 Use of Public Streets and Ways: Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, must obtain any and all necessary permits from the Public Works Department prior to commencing any construction activities. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the streets within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Franchise.
- 2.3 Duration:
- A. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be from the effective date of this Franchise through March 31, 2022.
- B. If Grantee successfully completes an upgrade as set forth in Section 10, and if such upgrade is confirmed by the City, which confirmation will not be unreasonably withheld, then Grantee shall be entitled to an automatic five (5) year extension of the Franchise term (that is, through March 31, 2017).
- 2.4 Effective Date: The effective date of this Franchise shall be April 1, 2012, unless Grantee fails to file an unconditional written acceptance of this Franchise and post the security required by Section 5.3 hereof by April 30, 2010, in which event this Franchise shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise are hereby terminated.

- 2.5 Franchise Nonexclusive: This Franchise shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit in connection with its exercise of lawful police power. Grantor may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Cable Systems, as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.
- 2.6 Grant of Other Franchises: In the event the Grantor enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Grantor's Streets for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area or is required to extend Cable Service to under the provisions of Section 11.2 of this Franchise, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.
- 2.7 Police Powers: Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Notwithstanding the foregoing, Grantor agrees it will not impose any regulation pursuant to the Cable Act not contained herein during the term of this Franchise. Provided however, in the event of conflicts between provisions of this Franchise and other ordinances of the Grantor, the terms of this Franchise shall prevail except as to health and safety issues.
- 2.8 Relations to Other Provisions of Law: This Franchise and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the Grantor's exercise of its police and other powers and all applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.
- 2.9 Effect of Acceptance: By accepting this Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce this Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise; and (3) agrees that its will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

- 3.1 Franchise Fee: As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the effective date of this Franchise. The Franchise fees are in addition to all other fees, assessments, taxes or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law. The City of Moses Lake, as of the date of the adoption of this ordinance, assesses a three percent (3%) utility occupational tax against cable subscription systems. The tax is subject to change.

- 3.2 Payments: Grantee's Franchise fee payments to Grantor shall be computed monthly. Each monthly payment shall be due and payable no later than thirty (30) days after the last day of the preceding month.
- 3.3 Acceptance of Payment and Recomputation: No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.
- 3.4 Monthly Reports: Each payment shall be accompanied by a written report to Grantor, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.
- 3.5 Annual Reports: Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to the City a statement stating the total amount of gross revenues and all payments, deductions, and computations for the period covered by the payments. Such statement shall be reviewed and certified by an officer of Grantee prior to submission to the City.
- 3.6 Audits: On an annual basis, upon thirty (30) days' prior written notice, at Grantor's sole cost and expense (except as expressly provided below), Grantor shall have the right to conduct an independent audit during normal business hours of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide copies of all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by five percent (5%) or more, Grantee shall pay the reasonable fees of the independent certified public accountant within thirty (30) days from receipt of the audit results. If such audit reflects an overpayment, Grantor refund such overpayment to Grantee within thirty (30) days of the audit results. Any such audit shall take place within thirty-six (36) months following the respective calendar year and for records thereof in question.
- 3.7 Interest on Late Payments: In the event that a Franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the interest rate specified for judgments entered in the Superior Court of the State of Washington.
- 3.8 Alternative Remedies: If any Section, subsection, paragraph, term or provision of this Franchise or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof.
- 3.9 Additional Commitments Not Franchise Fees: No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise (e.g. business license fee) may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under any federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

- 3.10 Costs of Publication: Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by Grantor or applicable law.
- 3.11 Tax Liability: Payment of the franchise fees under this franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the City.
- 3.12 Payment on Termination: If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by a declaration or affidavit of an officer of the Grantee, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available pursuant to security provided by the Grantee in accordance with Section 5.

SECTION 4. ADMINISTRATION AND REGULATION

- 4.1 Authority: Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.
- 4.2 Rates and Charges: All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.
- 4.3 Rate Discrimination: All of Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area. Grantee shall provide equivalent Cable Service to all Residential Subscribers at similar rates and to Commercial Subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:
- A. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
 - B. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
 - C. Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations; or
 - D. Grantee from establishing different and nondiscriminatory rates and charges for residential Subscribers as allowable by federal law and regulations.

4.4 Filing of Rates and Charges:

- A. Upon written request, not more frequent than monthly, Grantee shall provide to Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.
- B. Grantee shall provide upon written or faxed request from Grantor a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

4.5 Time Limits Strictly Construed: Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Franchise and sufficient grounds for Grantor to invoke any relevant provision of this Franchise, subject to the notice and cure provisions of Section 14. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes, power outages, strikes or walkouts, technical failures or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute for such obligation which is reasonably satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

4.6 Performance Evaluation Sessions:

- A. City may hold upon no less than ninety (90) days written notice to Grantee and no more frequently than once per calendar year regular performance evaluation sessions upon the sixty (60) and one hundred twenty (120) month anniversary dates of the effective date of this Franchise. All such evaluation sessions shall be conducted by City and Grantee jointly.
- B. Special evaluation sessions may be held at any time by City during the term of this Franchise upon the same notice as specified in Subsection (A).
- C. All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- D. Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Franchise and compliance with state and federal laws and regulations.
- E. As part of the performance evaluation session, Grantee shall submit to the City a plant survey report, or map, reasonably acceptable to the City which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available, including those areas where the system has been upgraded pursuant to Section 10 of this Franchise if so requested by the City. Such report shall also include the number of miles and location of overhead and underground cable plant. If the City has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the City, at its expense, retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable

System; provided, Grantor promptly provides Grantee with a copy of such report, at Grantee's cost, and that Grantee has a representative present during any such evaluation and verification.

- F. During evaluations under this Section, Grantee shall cooperate with City and shall provide such information and documents that have been filed with the FCC within the most recent three year period.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Insurance Requirements:

- A. General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Franchise or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.
- B. Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:
1. Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars (\$2,500,000) aggregate limit;
 2. Automobile Liability: Two-million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
 3. Employer's Liability: Two-million dollars (\$2,000,000).

5.2 Indemnification

- A. Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief (the "Claims") solely to the extent the Claims arise out of Grantee's or Grantee's agent's negligent acts or negligent omissions; provided, however, the Grantee will not be obligated to indemnify Grantor or its officers, commissions, agents, or employees should Grantor intervene in any proceeding regarding the grant of this Franchise. This indemnity provision shall include damages and liabilities, if and to the extent such damages and liabilities are a result of Grantee's or Grantee's agent's negligent acts or negligent omissions.
- B. Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee written notice within five (5) days of receiving any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. Failure of Grantor to provide such notice shall result in waiver of Grantee's indemnification obligations with respect to such action; suit or other proceeding otherwise covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party, as defined by this Franchise, shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall

accept or decline the tender within ten (10) days of its receipt of the written notice described above. In the event that the Grantee declines defense of the claim in violation of this Section 5.2, the Grantor may defend such claim and seek recovery from Grantee its reasonable expenses for attorneys' fees and other expenses, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

- 5.3 The provisions of Section 5.2 shall apply to claims by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors to which Grantee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Grantee acknowledges that the City would not enter into this Franchise without Grantee's waiver thereof.
- 5.4 Performance Bond: Upon or before the effective date of this Franchise, Grantee shall obtain and maintain during the entire term of this Franchise, including any extensions or renewals thereof, at its own cost and expense, a performance bond that shall be filed with the Grantor in the amount of fifteen thousand dollars (\$15,000) as guarantee for the faithful performance by it of all the provisions of this Franchise. Such bond shall be reviewed at the end of sixty (60) months. The amount of the bond shall be set for the remainder of the Franchise term at the greater of fifteen thousand dollars (\$15,000) or the amount of franchise fees paid in the sixtieth month.

SECTION 6. CUSTOMER SERVICE

- 6.1 Customer Service Standards: The Grantee shall reasonably meet or exceed any customer service standards adopted by the FCC so long as they are commercially reasonable.
- 6.2 Subscriber Privacy: Grantee will comply with privacy rights of Subscribers in accordance with federal and state law.
- 6.3 Local Office: Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer service center located in Grant County within ten miles of Moses Lake's city limits which will be open during normal business hours to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Grantee shall maintain telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number.
- 6.4 Emergency Broadcast: The Grantee shall cooperate to the extent required by FCC rule or the Cable Act with Grant County Emergency Services (GCES) or its successor agency to accommodate Emergency Alert System information or other information the GCES deems appropriate to be broadcast over the Grantee's system compatible with Grantee's equipment.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

- A. Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to City. City shall have access to, and the right to inspect, any books and records of Grantee, which are reasonably related and necessary to the administration or enforcement of the terms of this Franchise. Grantee shall not deny City access to any such records of Grantee on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party related to this Franchise. City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of

such request. One copy of all reports and records required under this or any other Section shall be furnished to City at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that City inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local area office and not made available in copies to City upon written request as set forth above, and if City reasonably determines that an examination of such records is necessary or appropriate to the performance of any of City's duties, administration or enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) working days.

- B. Grantee shall at all times maintain and allow City reasonable access and the right to review a full and complete set of plans, records and "as built" maps in the Grantee's possession showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the City and the Grantee.

- 7.2 Confidentiality: City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each document that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, City shall, so far as consistent with applicable law, advise Grantee in advance so that Grantee may take appropriate steps to protect its interests and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.
- 7.3 Complaint File: Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System as required by the FCC.
- 7.4 Inspection of Facilities: Grantor may, at its own cost and expense, inspect upon reasonable written request any of Grantee's facilities and equipment to confirm performance under this Franchise at any time upon at least five (5) business days notice, or, in case of an emergency, upon demand without prior notice.
- 7.5 False Statements: Any intentional false or misleading statement or representation in any report required by this Franchise may be deemed a material violation of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to City under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories:

- A. Grantee's Cable System shall provide a wide diversity of programming. Grantee shall provide at least the following broad categories of programming to the extent such categories are commercially reasonably available:

1. Educational programming;
 2. Washington State news and information;
 3. Sports;
 4. General entertainment (including movies);
 5. Children/family-oriented;
 6. Arts, culture and performing arts;
 7. Foreign language;
 8. Science/documentary;
 9. Weather information;
 10. Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 11. National, state, and local government affairs.
- B. Grantee shall not delete any broad category of programming within its control.
- C. The parties expressly agree that the programming described in Section 8.1 (A) represent broad categories of video programming within the meaning of 47 U.S.C. 544(b) (2) (B), as may be amended from time to time.
- 8.2 Parental Control Device: Upon request by any Subscriber, Grantee shall make available a parental control or lockout device; traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and annually thereafter.
- 8.3 Leased Access Channels: Grantee shall comply with the FCC's rules and regulations regarding Leased Access Channels.
- 8.4 Continuity of Service:
- A. It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied and Grantee continues to serve the Franchise Area. Subject to the *force majeure* provisions of this Franchise, Grantee shall use commercially reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service.
 - B. In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall reasonably cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.
- 8.5 Community Programming Needs: At the written request of the Mayor, but no more than twice during the term of this Franchise, ninety (90) days after a Performance evaluation session as provided in Section 4.6, the Grantee may furnish to all Subscribers along with their monthly service statement, a list of broad categories of programming, and other services available to Grantee. The menu may be in the format of a mailback survey for determination of the Subscriber's programming preference. The results of the survey are to be provided the City as soon as commercially practical by the Grantee with any proposed change(s) in programming.
- 8.6 Service for Disabled: To the extent technically feasible and in accordance with FCC requirements, Grantee shall retransmit all closed-captioned signals made available by programmers in conjunction with programming in its line-up and which are provided in order to facilitate viewing by handicapped persons. Grantee shall comply with the Americans with

Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations. To the extent technically feasible and in accordance with FCC requirements, Grantee shall maintain the necessary head-end equipment to make Second Audio Program (SAP) features available to Subscribers. Grantee's obligations under this subsection do not extend to providing customer premises equipment.

SECTION 9. GENERAL STREET USE AND CONSTRUCTION

9.1 Construction:

- A. Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.
- B. Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Franchise. When obtaining a permit, Grantee shall inquire about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

9.2 Location of Facilities: Grantee shall use the one call locator service prior to performing any excavation in the Grantor's Streets.

9.3 Relocation: Grantor shall have the right to reasonably require Grantee to change the location of any part of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date reasonably established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

9.4 Restoration of Streets:

- A. Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition.
- B. All of Grantee's work under this Franchise, and this Section in particular, shall be done in strict compliance with this Franchise rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

9.5 Maintenance and Workmanship:

- A. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.
- B. Grantee shall provide and use any equipment necessary to control and carry Grantee's Cable System signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and reasonably presentable condition.

9.6 Reservation of Grantor Street Rights: Nothing in this Franchise shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System shall be relocated in accordance with 9.3.

9.7 Use of Conduits by Grantor: The Grantee and the City shall grant to each other, free of expense, joint use of any and all poles, ducts, conduits or equipment in the streets or other public places owned by either party for any proper purpose, insofar as the same may be done without interfering with the use and enjoyment of either party's own wires and other facilities and provided that all such joint use shall be in full compliance with all rules, regulations, requirements and conditions of the National Electrical Safety Code prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters affecting electrical installations which may be presently in effect or future amendments thereto as well as being subject to the City's obligations to any other franchise holder with which it may have a similar joint use agreement. Additionally, the City may install or affix and maintain wires and equipment owned by the City for municipal purposes in or upon Grantee's equipment in the Streets and other public places without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable City Ordinances and Codes. For the purposes of this Subsection 9.7, "municipal purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor.

9.8 Street Vacation: If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Franchise, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall with thirty (30) day written notice and without expense to Grantor either remove its facilities from such streets and restore street in accordance with 9.4 or negotiate an arrangement with the owner or controller of the vacated Street apart from this Franchise.

9.9 Discontinuing Use of Facilities: Whenever Grantee discontinues using any facility within the Streets, Grantee shall provide written notice to Grantor's with a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare,

safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule approved by Grantor. Until such time as Grantee removes or modifies the facility, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental or educational purposes. For purposes of this Section 9.9, "abandons" shall have the meaning set forth in Section 15.1 of this Franchise.

9.10 Hazardous Substances:

- A. Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.
- B. Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable written notice to Grantee, Grantor and Grantee may jointly inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residues of hazardous substances related thereto.

9.11 Undergrounding of Cable:

A. Wiring:

- 1. Where electric, telephone or other utility or other third party wiring is installed underground at the time of Cable System construction, or when such wiring is subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the Grantor. Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as reasonably interpreted by the Grantor's Director of Public Works. In areas where electric, telephone or other utility or other third party wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear and pre-pay the additional cost in excess of aerial installation.
- 2. The Grantee shall utilize existing poles and conduit wherever commercially reasonable.
- 3. This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment or any other Person without their permission except to the extent permitted under applicable federal and state law.

B. Repair and Restoration of Property:

- 1. The Grantee shall protect public and private property from damage by its Cable System. If damage occurs the Grantee shall promptly notify the property owner

within twenty-four (24) hours of its knowledge of such damage in writing or in person.

2. If public or private property is disturbed or damaged by Grantee, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way shall be repaired and restored in accordance with Section 9.4. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than five (5) business days.
 3. Prior to entering onto private property to construct, operate or repair its Cable System where the property owner has not requested such construction, operation or repair, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.
- C. Movement of Cable System For and By Grantor: To the extent necessary, the Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project or activity of the Grantor's makes the removal, replacement, modification or disconnection necessary or less expensive for the Grantor. Except during an emergency, the Grantor shall provide reasonable written notice to Grantee prior to taking such action and shall provide Grantee with reasonable opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's reasonable satisfaction, the Grantor may cause such work to be done and bill the cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those reasonable costs, the Grantee shall pay the Grantor.
- D. Movement for Other Franchise Holders: If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity at the responsible entity's sole and pre-paid cost and expense.
- E. Movement for Other Permittees: At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.
- F. Tree Trimming: Subject to acquiring prior written permission of the City, the Grantee shall have the authority but not the obligation to trim trees that overhang a public right-of-way of the City so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and accepted

professional tree trimming practices; provided that in an emergency situation Grantee may trim trees to protect its facilities in which circumstance written notice of that the trimming occurred shall be delivered to Grantor.

9.12 Codes: Grantee shall strictly adhere to all building and zoning codes in effect at the time of applicable construction. Grantee shall arrange its lines; cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

9.13 Standards:

- A. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- B. Grantee shall ensure that the drops are properly bonded to the electrical power ground at the home, consistent with the requirements of the National Electric Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

SECTION 10. MEANS OF FRANCHISE TERM EXTENSION

10.1 Design.

- A. Grantee has determined that an appropriate design plan for Cable System upgrade in the Franchise Area will include the following components, which Grantee will provide and construct, in order to take advantage of the five (5) year automatic extension of the Franchise term as provided in Section 2.3 hereof:
 - 1. The System will utilize hybrid fiber/coax architecture. This will utilize deployment of fiber optic cable throughout those portions of the System to be upgraded. The upgraded plant will tie into a hybrid fiber/coaxial Cable System already serving Subscribers.
 - 2. The System will serve no more than 1,500 customers per fiber node.
 - 3. All active electronics will be at minimum 550 MHZ capable equipment.
 - 4. All passive devices will pass a minimum bandwidth of 550 MHZ.
 - 5. Upon completion of the upgrade, the Cable System shall be capable of delivering at least seventy-seven (77) analog and/or digital Channels of video programming services to Subscribers.
 - 6. As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed, FCC technical quality standards. The upgrade shall be completed on or before the end of the seventh (7) year of the current ten (10) year term. The upgraded Cable System will be capable of supporting addressable equipment throughout the System

and shall enable the provision of digitally compressed video services. Grantee's upgraded Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

10.2 System Functionality:

- A. It is the intent of the parties to provide for a process that provides the Grantor with an opportunity to confirm the Cable System design and functionality and ensure the Cable System meets the specifications described herein. Grantee agrees that it shall provide Grantor, upon written request, information that measures the relevant performance and functionality criteria of the Cable System that is generated through the Grantee's established assurance procedures.
- B. At least sixty (60) days before the upgrade of the Cable System begins, Grantee shall provide the Grantor with a proposed timeline for the upgrade and an opportunity to review the proposed system design plan consistent with Grantee's obligations as described in section 10(A). The Grantor shall indicate, in writing, to Grantee, within thirty (30) days of the receipt and review of materials, as to any aspects of the timeline and/or design plan Grantor believes are inconsistent with the requirements set forth herein in Section 10(A). Grantee shall respond within thirty (30) days to the Grantor to resolve any inconsistencies.
- C. Grantee and Grantor may meet to discuss the progress of the upgrade and work cooperatively to speed the construction (e.g. by discussing any problems in obtaining permits) and to minimize the impact upon Subscribers. At each meeting, Grantee will provide a progress report on the upgrade detailing its progress in satisfying the requirements of this Section.
- D. Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

10.3. Timing of Construction: Grantee's decisions on constructing plant for service from each hub or node shall be based solely upon legitimate engineering decisions and cost analysis and shall not take into consideration the income level of the Franchise Area.

SECTION 11. TEST AND COMPLIANCE PROCEDURES

Upon reasonable written request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and any written test reports filed with the FCC may be made available to Grantor upon reasonable written request.

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor copies of the results of such tests that are filed with the FCC upon written request.

SECTION 12. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

12.1 Equivalent Service: It is Grantee's general policy that all residential dwelling units in the Franchise Area served by Grantee's Cable System have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions.

12.2 Service Availability:

- A. With respect to aerial line extensions, Grantee shall extend energized cable from any existing terminus of trunk cable of its Cable System to any area in the City in which aerial power and telephone utility services are available and which has a density of at least eight (8) Dwelling Units along one-quarter (1/4) of a linear mile of cable, provided that the Dwelling Unit nearest to the existing terminus of trunk cable of the Cable System is situated no more than one-eighth (1/8) of a linear mile of cable from the existing terminus of trunk cable of the Cable System.
- B. With respect to underground line extensions, Grantee shall extend energized cable from any existing terminus of trunk cable of its Cable System to any area in the City in which underground power and telephone utility services are available and which has a density of at least ten (10) Dwelling Units along one-quarter (1/4) of a linear mile of cable, provided that the Dwelling Unit nearest to the existing terminus of trunk cable of the Cable System is situated no more than one-eighth (1/8) of a linear mile of cable from the existing terminus of trunk cable of the Cable System.
- C. Construction of the line extensions required by subsection (A) and (B) above shall commence within one hundred twenty (120) days after the (i) the determination of the minimum densities as provided in such clauses and (ii) the receipt by Grantee of a request for service to such a Dwelling Unit along with the associated first month's payment for services and the applicable installation fees. As used in this Section 12.2, the term "Dwelling Unit" shall mean a single-family or multi-family dwelling unit that (x) is fully-constructed and capable of occupancy in accordance with applicable building, housing and zoning codes, and (y) is situated along public easements to which Grantee can gain access.

- 12.3 Connection of Public Facilities: Grantee shall, at no cost to Grantor, provide at least one (1) outlet of Basic and expanded basic programming to all buildings in the Franchise Area owned by Grantor, as designated by the Grantor on the attached Schedule A. In addition, Grantee shall provide, at no cost to the building owner, one (1) outlet of Basic and expanded basic programming to all such future public buildings owned by the Grantor if the drop line to such building does not exceed one-hundred twenty-five (125) cable feet from the terminus of trunk cable of the Cable System or if Grantor agrees to pay the incremental cost of such drop line in excess of one-hundred twenty-five (125) cable feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. The City shall be responsible for all costs of such distribution of the Cable Service provided, to insure it is done in accordance with the technical requirements of the industry to avoid an impact on Grantee's Cable System, and any such distribution wiring shall be tested by Grantee to insure the expansion does not impair the Grantee's Cable System.

SECTION 13. STANDBY POWER

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, for outages affecting more than 10% of Subscribers, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages affecting more than 10% of Subscribers for more

than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than ninety (90) days following the effective date of this Franchise.

SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

14.1 Procedure for Remedying Franchise Violations

- A. If Grantor reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have thirty (30) days from the date of receipt of such notice to:
 1. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection C below; or
 2. Cure the violation; or
 3. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (B) below.
- B. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor or its designee shall set a public hearing within thirty (30) days of Grantor's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable, the same shall be approved by the Grantor.
- C. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor or designee pursuant to subsection (B), the Grantor or designee shall set a public hearing to determine what sanctions shall be applied. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)(1) above, the Grantor or designee shall set a public hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what sanctions shall be applied.
- D. In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor shall also hear any other Person interested therein.
- E. If, after the public hearing, Grantor or designee determines that a violation exists, Grantor or designee may utilize one or more of the following remedies subject to Grantee's rights under federal, state or local law to appeal such determination:
 1. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor or designee shall determine;
 2. Revoke this Franchise, subject to subsection (F) of this Section; and/or

3. Pursue any other legal or equitable remedy available under this Franchise or any applicable law.
 - F. This Franchise shall not be revoked except by City Council after notice and hearing as set forth in this Section and in accordance with the Cable Act and other applicable law.
 - G. The determination as to whether a violation of this Franchise has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.
- 14.2 Revocation: In addition to all other rights and powers retained by the Grantor under this Franchise or otherwise, and subject to the provisions of Section 14.1 the Grantor reserves the right to forfeit and terminate this Franchise and all rights and privileges of the Grantee hereunder in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:
- A. Violation of any material provision of this Franchise or any other Franchise between Grantor and Grantee, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this Franchise or other agreement;
 - B. Attempt to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or its Subscribers or customers;
 - C. Material misrepresentation of fact in the application for or negotiation of this Franchise; or
 - D. If Grantee becomes insolvent, or the subject of a bankruptcy proceeding.
- 14.3 Removal
- A. In the event of termination, expiration or revocation of this Franchise, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense. Grantee shall have one (1) nine (9) month period within which to sell, transfer or convey its Cable System to a qualified purchaser, or to remove its plant, structures and equipment from the Grantor's Streets and other public places as directed by the Grantor. During this period which shall run from the effective date of the final, non-appealable order or decision of the city council or a court of competent jurisdiction imposing termination, the Grantee shall have the ability to operate the Cable System pursuant to the provisions of this Franchise. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
 - B. If Grantee fails to complete any required removal pursuant to Subsection (A) to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the security provided by Grantee.

14.4 Receivership and Foreclosure

- A. At the option of Grantor, subject to applicable law, this Franchise may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
1. The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment; or
 2. The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all violations under the Franchise. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Franchise.
- B. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:
1. Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
 2. The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Franchise.

14.5 No Recourse Against Grantor: Except where otherwise provided herein, Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal or state law.

14.6 Nonenforcement by Grantor: Grantee is not relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Franchise shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation; whether similar or different from that waived.

14.7 Relationship of Remedies: The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

SECTION 15. ABANDONMENT

15.1 Effect of Abandonment: If the Grantee abandons its Cable System serving the Franchise Area during this Franchise term, the Grantor, at its option, may operate the Cable System

or designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until the Franchise is revoked and a new Franchisee is selected by the Grantor.

15.2 What Constitutes Abandonment: The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

- A. The Grantee fails to provide any Cable Service to 90% of its Subscribers in accordance with this Franchise for more than twenty (20) consecutive business days, unless the Grantor or designee authorizes a longer interruption of service which authorization shall not be unreasonably withheld; or
- B. For purposes of this Franchise, "abandons" shall mean the Grantee's intentional surrender, desertion or relinquishment of its Cable System where Grantee fails to provide any Cable Service to 100% of its Subscribers for a period of no less than ninety (90) days.

SECTION 16. FRANCHISE RENEWAL AND TRANSFER

16.1 Renewal

- A. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal law.
- B. In addition to the procedures set forth in said Section 626(a) of the Cable Act, the Grantor agrees to notify Grantee in writing within 90 days of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

16.2 Transfer of Ownership or Control

- A. This Franchise shall not be assigned or transferred, either in whole or in part, either by involuntary sale or by voluntary sale, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed; provided, however, Grantee may from time to time transfer and assign this Franchise to its lender(s) for security purposes.
- B. The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person

- or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented thereto.
- C. The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
 - D. The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all information requested in accordance with the Cable Act and the FCC regulations promulgated thereunder. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree in writing to an extension of time.
 - E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a written notice confirming such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
 - F. In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be directly and solely 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 Grantee as permitted by the Cable Act and the FCC's regulations promulgated thereunder.
 - G. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.
 - H. Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Franchise.

SECTION 17. SEVERABILITY

If any section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 18. MISCELLANEOUS PROVISIONS

- 18.1 Preferential or Discriminatory Practices Prohibited: Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the

term of this Franchise, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

- 18.2 Notices: Throughout the term of the Franchise, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon three (3) days after the date of mailing. At the effective date of this Franchise, such addresses shall be:

Northland Cable Television, Inc.
1201 Third Avenue, Suite 3600
Seattle, WA 98101

With a copy to:

Northland Cable Television, Inc.
Post Office Box T
Moses Lake, WA 98837
Attention: System Manager

All notices to be sent by Grantee to Grantor under this Franchise shall be sent, postage prepaid, and such notices shall be effective upon three (3) days after the date of mailing. At the effective date of this Franchise, such address shall be:

City of Moses Lake
PO Drawer 1579
Moses Lake, WA 98834
Attention: City Manager

- 18.3 Binding Effect: This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.
- 18.4 Authority to Amend: This Franchise may be amended at any time by written agreement between the parties.
- 18.5 Governing Law: This Franchise shall be governed in all respects by the laws of the State of Washington.
- 18.6 Guarantee: The performance of the Grantee shall be guaranteed in all respects by the Grantee until this Franchise expires, is terminated as provided herein or is assigned.
- 18.7 Captions: The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.
- 18.8 Construction of Franchise: The provisions of this Franchise shall be liberally construed to promote the public interest.
- 18.9 Entire Franchise: This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the parties.

18.10 Force Majeure: The performance of either party under this Franchise is excused for such period of time as its performance is rendered impossible by acts of nature, war, terrorist attacks, or labor disputes.

18.11 Time is of the Essence: Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

Section 3. This ordinance shall take effect and be in force five (5) days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on January 11, 2011.

Jon Lane, Mayor

ATTEST:

Ronald R. Cone, Finance Director

APPROVED AS TO FORM:

James A. Whitaker, City Attorney

December 21, 2010

TO: City Manager for Council Consideration

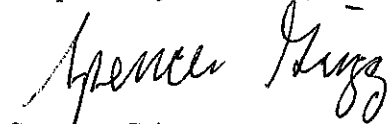
FROM: Parks and Recreation Director

SUBJECT: Donation of Top Soil for Power Point Park

Attached for Council approval is a resolution accepting a donation of 500 cubic yards of top soil that was loaded and delivered by G.O. Construction and is valued at \$5,000. This donation is to be used for the development of Power Point Park.

Moses Lake Parks and Recreation Department would like to thank Greg Ogdon, G.O. Construction, for his generous donation to Moses Lake citizens and visitors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Spencer Grigg". The signature is written in a cursive, flowing style.

Spencer Grigg
Parks and Recreation Director

attachment:

SG:dm

RESOLUTION NO. 3203

A RESOLUTION ACCEPTING A DONATION OF TOP SOIL
VALUED AT \$5,000 FROM GREG OGDON, G.O. CONSTRUCTION,
FOR THE DEVELOPMENT OF POWER POINT PARK.

RECITALS:

1. Greg Ogdon, G.O. Construction, donated top soil valued at five thousand dollars (\$5,000.00) to the City of Moses Lake to be used towards the development of Power Point Park.

RESOLVED:

1. The donation of top soil valued at \$5,000 is accepted.
2. The City of Moses Lake wishes to express its sincere appreciation to Greg Ogdon, G.O. Construction.

Adopted by the City Council on _____.

Jon Lane, Mayor

ATTEST:

Ronald R. Cone, Finance Director

G. O. CONSTRUCTION

General Contractor License # GOCON**015MA

Telephone/FAX
509-933-4344
Cell # 509-859-2234

430 Charlton Road
Ellensburg, WA 98926

Roland,

Thank you

Greg

500 cubic yards @ \$10.00 = \$5,000

G. O. CONSTRUCTION

COMPLETE SITE DEVELOPMENT

Resident/Commercial

- Excavation
- Underground Utilities
- Building Demolition
- Manufactured Homes
(State Certified)
- Concrete Work
- Foundation
- Flatwork
- Speciality Work
(Stamping, etc.)

430 Charlton Road
Ellensburg, WA 98926
(509) 933-4344 Phone/Fax

GREG OGDON
GENERAL CONTRACTOR
GOCON**015MA

December 21, 2010

TO: City Manager for Council Consideration
FROM: Community Development Director
SUBJECT: Well 31 Short Plat - Waiver and Deferral Requests

The City requested a waiver to the requirement to dedicate and build Davy Street along the south side of the Well 31 Short Plat as the street would end at a wetland. The City also requested a deferral of the requirement to construct street and utility improvements on Montana Street.

The Planning Commission recommended to the City Council that the required improvements on both Davy Street and Montana Street be deferred.

Respectfully submitted




A handwritten signature in black ink, appearing to be 'GA' or 'G.A.', written in a cursive style.

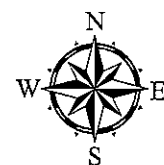
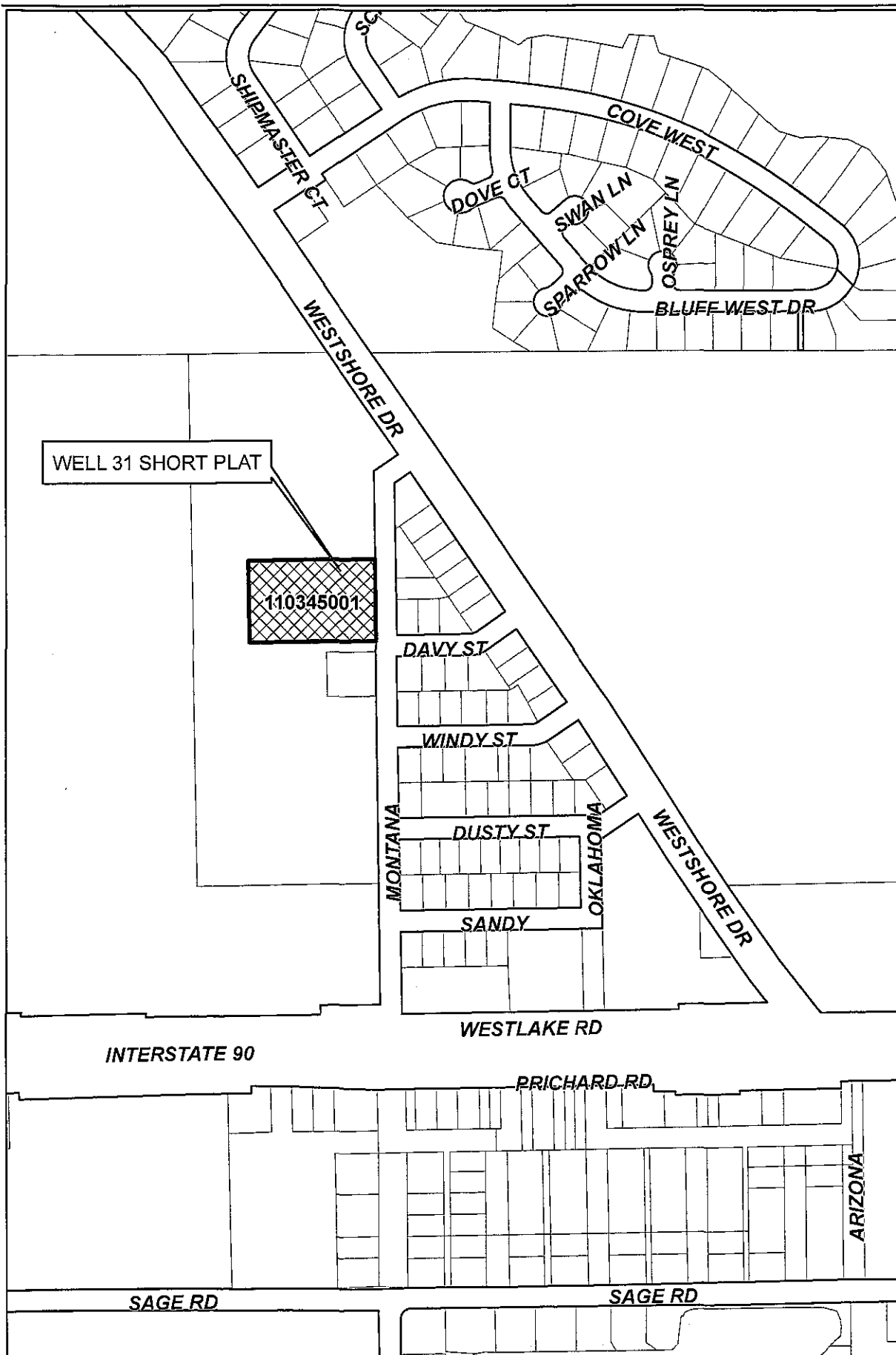
Gilbert Alvarado
Community Development Director

GA:jt



PARCEL MAP 2011

-  WELL 31 S.P.
 LOTS
 NEW PARCELS
STREET STREET NAME



0 200 400
Feet

PARCEL:
OWNER:
ADDRESS:
NOTES:

COUNTY
INFO UPDATED
FEB 22, 2010

DRAWN BY - DATE: BKP - 12/22/2010
Last Ordinance: 2593

Grant County Animal Outreach
PO Box 489
Moses Lake, WA 98837
509-762-9616

November 5, 2010

Joseph Gavinski
City of Moses Lake
321 S. Balsam St.
Moses Lake, WA 98837

Dear Mr. Gavinski;

RE: Contract Amount

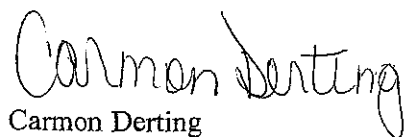
It has come to my attention that it is once again time to renew the contract between Grant County Animal Outreach and City of Moses Lake.

We have had a wonderful and busy year at the shelter. We have gone through many changes and had many of our projects have been completed. With each new change, it has only made the shelter a better environment for both the animals and the people coming to the shelter. Some of the changes over the past year have been new management, sidewalks and new fencing, new toppers in Big Dog Run, garage doors outside of Big Dog Run, and new opportunities for staff to help in the community and animal control.

During the past year, the contract amount was \$47250.00. We are requesting a 5% increase in that amount to equal \$2362.50.

Please take this under consideration and if you have any questions or comments, please feel free to contact me at 509-770-3620.

Sincerely,



Carmon Derting
Shelter Administrator/Manager

AMENDMENT TO AGREEMENT
BETWEEN THE CITY OF MOSES LAKE
AND GRANT COUNTY ANIMAL OUTREACH

1. PARTIES: This amendment to an agreement is made and entered into by and between the City of Moses Lake, Grant County, Washington, a municipal corporation (City), and Grant County Animal Outreach, a Washington non-profit corporation (hereinafter ("GCAO")).
2. PURPOSE: The object of this amendment is to change the following under those services to be provided by the City:

B. The City agrees:

- 1) To rent GCAO the building and property located at 6725 Randolph Road, for one dollar (\$1) per year for each year the contract is in force. The City shall be responsible for property taxes and fees associated with the property. GCAO shall be responsible for the operational expenses associated with running a shelter at the facility including the utilities and maintenance costs.
- 2) To pay GCAO \$50,500 per year as part of its obligation to GCAO for the GCAO impounding, boarding, euthanizing, etc. stray animals brought to the shelter from within the corporate limits of the City for 2008 and \$50,000 every year thereafter. Payment of one half of the yearly contract fee, less any deductions as set forth in (B)(2)(a), shall be made at the award of the contract and thereafter at the beginning of every six (6) month period that this contract is in force.
 - a) The City shall not be responsible for payment of veterinary services requested by GCAO and GCAO shall not be responsible for veterinary services requested by the City.

Dated _____

Dated _____

GRANT COUNTY ANIMAL OUTREACH

CITY OF MOSES LAKE

By _____
President

By _____
Joseph K. Gavinski, City Manager

ATTEST:

By _____
Vice-President

By _____
Ronald R. Cone, Finance Director



December 17, 2010

Honorable Mayor and
Moses Lake City Council

Dear Council Members

Attached is a Notice of Intent to Commence Annexation Proceedings and a Petition for Annexation. The documents have been signed by Michael J. Delaney on behalf of Americold Logistics, LLC and ART Mortgage Borrower. Attached to the Petition for Annexation is a general affidavit with an Exhibit A which authorizes Mr. Delaney to sign these documents on behalf of the annexation petitioners.

This proposed annexation includes two parcels of property owned by Americold adjacent to Road N. There are 38.75 acres of property in the two parcels with an assessed value of approximately \$7.3 million. At this time it is suggested to the Council that it receipt the Notice of Intention to Commence Annexation Proceedings, accept the Notice of Intention to Commence Annexation Proceedings, and accept the Petition for Annexation. If the Council agrees the suggestion, then the Petition for Annexation will be forwarded to the Grant County Auditor with a request for a Sufficiency Certificate. Once the Sufficiency Certificate is received, the City will schedule the first reading of an annexation ordinance for the first meeting in January. If possible, the second reading of the ordinance will be scheduled for the second meeting in January or no later than the first meeting in February.

Americold is anxious to annex the property so that it can properly be connected to city utilities.

Respectfully submitted



Joseph K. Gavinski
City Manager

JKG:jt

NOTICE OF INTENTION TO COMMENCE ANNEXATION PROCEEDINGS

TO: The City Council of the City of Moses Lake

Comes now AmerCold Logistics LLC & ART Mortgage
Borrower 2006-3 LP

and hereby notifies the City Council of the City of Moses Lake that it intends to commence proceedings to have the real property owned by the above referenced entities and described below annexed to the City of Moses Lake, that it is the owner of in excess of ten percent (10%) in value according to the assessed valuation thereof, of the property for which annexation will be petitioned; and that it respectfully requests the City council within sixty (60) days to determine whether the city accepts the proposed annexation.

Legal Description:

SEE ATTACHED.

Dated: December 1, 2010

By Michael J. Delaney EOP and GC.
Owner

AmeriCold Property Descriptions

Full Legal Description Parcel Number: 190469000

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE COUNTY OF GRANT, STATE OF WASHINGTON: THE WEST 1280 FEET, MEASURED ALONG THE NORTH LINE THEREOF, OF FARM UNIT 81, SECOND REVISION OF IRRIGATION BLOCK 41, COLUMBIA BASIN PROJECT, AS PER PLAT FILED SEPTEMBER 29, 1953, RECORDS OF GRANT COUNTY. EXCEPT THE SOUTH 640 FEET, MEASURED ALONG THE EAST LINE THEREOF.

Full Legal Description Parcel Number: 311849000

LOT 1; AMERICOLD SP 7-54

PETITION FOR ANNEXATION

TO: City Council, City of Moses Lake

Date: 12-1-10

We, the undersigned, the legal owners of property, according to the records of the Grant County Assessor, do hereby petition the below described property be annexed by the City of Moses Lake, and be included within the boundaries of said city. Said annexation is sought pursuant to RCW 35A.14.120 - .150.

Legal Description:

See Attached

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Signature

Name and Address and Date

1. Michael J. Delany

Michael J. Delany, 10 Glenlake Pottery,
Sate Turn, Alaska, GA 30328; December 10, 2010

2. _____

3. _____

4. _____

AmeriCold Property Descriptions

Full Legal Description Parcel Number: 190469000

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE COUNTY OF GRANT, STATE OF WASHINGTON: THE WEST 1280 FEET, MEASURED ALONG THE NORTH LINE THEREOF, OF FARM UNIT 81, SECOND REVISION OF IRRIGATION BLOCK 41, COLUMBIA BASIN PROJECT, AS PER PLAT FILED SEPTEMBER 29, 1953, RECORDS OF GRANT COUNTY. EXCEPT THE SOUTH 640 FEET, MEASURED ALONG THE EAST LINE THEREOF.

Full Legal Description Parcel Number: 311849000

LOT 1; AMERICOLD SP 7-54

GENERAL AFFIDAVIT

I, Ronald B. Hutchison, do hereby certify that:

1. I am the duly elected and acting Executive Vice President and Chief Financial Officer of Americold Realty Trust, a real estate investment trust organized and existing in good standing under the laws of the State of Maryland (the "Company").
2. Each of AmeriCold Logistics, LLC ("Logistics") and ART Mortgage Borrower Propco 2006-3 L.P. ("Propco") are wholly-owned, indirect subsidiaries of the Company.
3. Attached hereto as Exhibit A is a true and correct copy of resolutions which were duly adopted by the Board of Trustees of the Company on November 30, 2010.
4. The attached resolutions have not been amended, rescinded or modified and are in full force and effect on the date hereof in the form originally adopted.
5. The following person is an Authorized Officer of the Company, Logistics and Propco in the capacities indicated, and the signature set forth after his name and title is his true and genuine signatures.

Name

Office

Signature

Michael J. Delaney

Executive Vice
President and
General Counsel



Witness, my signature and the seal of the Company this 10th day of December, 2010.



Name: Ronald B. Hutchison

Title: Executive Vice President and Chief Financial Officer

EXHIBIT A

AMERICOLD REALTY TRUST

RESOLUTIONS OF THE BOARD OF TRUSTEES

November 30, 2010

Officer Appointments.

WHEREAS, the Board of Trustees (the "Board") of Americold Realty Trust, a Maryland real estate investment trust (the "Trust"), deems it to be in the best interests of the Trust to update and modify the appointment of the officers of the Trust.

NOW, THEREFORE, BE IT RESOLVED, that all of the persons currently serving as officers of the Trust be, and they hereby are, removed from their office(s) effective immediately;

RESOLVED FURTHER, that each of the following persons be appointed, effective as of the date of the adoption of these resolutions by the Board, to serve as an officer of the Trust with the office(s) set forth below opposite his/her name at the direction and at the pleasure of the Board until the earliest of his/her successor's appointment and qualification, his/her resignation, removal by the Board or his/her death:

<u>NAME</u>	<u>OFFICE</u>
Jozef Opdeweegh	Chief Executive Officer
Ronald B. Hutchison	Executive Vice President and Chief Financial Officer
Tim Oglesby	CIO and Executive Vice President for Process & Technology
Greg Bryan	Executive Vice President for Transportation
Michael J. Delaney	Executive Vice President, General Counsel and Corporate Secretary
Greg Symons	Vice President and Treasurer
Sloane Perras	Vice President, Assistant General Counsel & Assistant Corporate Secretary
Scott Adelsky	Vice President and Corporate Controller
Neal J. Rider	President and Chief Operating Officer of U.S. Business

RESOLVED FURTHER, that the officers of the Trust, or any of them, are hereby authorized, to the extent permitted by law and their relevant office, to execute any and all documents and take any and all actions, in the name and on behalf of the Trust, to cause such officers as are set forth above to hold similar positions at any subsidiary of the Trust in accordance with the provisions set forth above.