

WELCOME
To a Regular Meeting of the
Coeur d'Alene City Council
Held in the Library Community Room at 6:00 P.M.
AGENDA

VISION STATEMENT

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

The purpose of the Agenda is to assist the Council and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of Public Hearings. Any individual who wishes to address the Council on any other subject should plan to speak when **Item G - Public Comments** is identified by the Mayor. The Mayor and Council will not normally allow audience participation at any other time.

December 20, 2022

A. CALL TO ORDER/ROLL CALL

B. INVOCATION: Pastor Tyler Morton with the Church of Jesus Christ of Latter-Day Saints

C. PLEDGE OF ALLEGIANCE

D. AMENDMENTS TO THE AGENDA: Any items added less than forty-eight (48) hours prior to the meeting are added by Council motion at this time.

*****ITEMS BELOW ARE CONSIDERED TO BE ACTION ITEMS**

E. ANNOUNCEMENTS

1. City Council
2. Mayor – Appointments: Alexandria Marienau, and Anneliese Miller to the Historic Preservation Commission.

F. CONSENT CALENDAR: Being considered routine by the City Council, these items will be enacted by one motion unless requested by a Councilmember that one or more items be removed for later discussion.

1. Approval of Council Minutes for the December 6, 2022 Council Meeting.
2. Approval of Bills as Submitted.
3. Approval of Financial Report.
4. Setting of General Services/Public Works Committee meeting for Tuesday, December 27, 2022 at 12:00 noon.
5. Approval of the Annual Road and Street Financial Report for the fiscal year ending September 30, 2022.

As Recommended by the Comptroller

G. PUBLIC COMMENTS: (Each speaker will be allowed a maximum of 3 minutes to address the City Council on matters that relate to City government business. Please be advised that the City Council can only take official action this evening for those items listed on the agenda.)

H. OTHER BUSINESS:

1. **Council Bill 22-1015** - Approving a Franchise Agreement with Fatbeam, LLC, to construct, operate and maintain a Telecommunications System.

Staff Report by: Randy Adams, City Attorney

2. **Council Discussion:** Regarding an Amendment to Municipal Code Chapter 2.72 entitled “Salaries of Elective Officials.”

Staff Report by: Renata McLeod, Municipal Services Director

I. EXECUTIVE SESSION - Pursuant to Idaho Code 74-206 (j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b).

J. ADJOURN:



Coeur d'Alene

CITY COUNCIL MEETING

December 20, 2022

MEMBERS OF THE CITY COUNCIL:
Jim Hammond, Mayor
Council Members McEvers, English, Evans, Gookin, Miller, Wood

ANNOUNCEMENTS

Memo to Council

DATE: December 13, 2022

RE: Appointment to Boards/Commissions/Committees

The following appointments are presented for your consideration for the December 20, 2022, Council Meeting:

ALEXANDRIA MARIENAU Historic Preservation Commission
(Re-Appointment)

ANNELIESE MILLER Historic Preservation Commission
(Re-Appointment)

The data sheets have been placed by the inter-office mailboxes.

Sincerely,

Sherrie Badertscher
Executive Assistant

cc: Renata McLeod, City Clerk
 Hilary Patterson, Liaison to the Historic Preservation Commission

CONSENT CALENDAR

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

December 6, 2022

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room on December 6, 2022, at 6:00 p.m., there being present the following members:

James Hammond, Mayor

Woody McEvers) Members of Council Present
Christie Wood)
Dan Gookin)
Kiki Miller)
Dan English)
Amy Evans) Absent

CALL TO ORDER: Mayor Hammond called the meeting to order.

INVOCATION: Amanda Nicol with Community United Methodist Church of Coeur d'Alene gave the invocation.

PLEDGE OF ALLEGIANCE: Councilmember Gookin led the pledge of allegiance.

Award to Eleanor Moore, Winner of the Streets and Engineering Department's "Name the Storm" contest. Streets and Engineering Director Todd Feusier stated that the Department held a contest in conjunction with the Library for this year's name the storm contest. They had a box at the Library for submittals and 75 were received. The year's selected winner is Eleanor "Nora" Moore, who submitted storm names based on female names, so the department named the first storm of the year after Eleanor, naming it Nora. Mayor Hammond provided the winning prize to Ms. Moore and thanked her for her contribution.

2022-2023 Annual Snow Plan – Mr. Feusier presented the City's annual snow plan. He noted that there will be two (2) shifts during the winter, split between days and nights, consisting of 21 operators. The snow assessment is broken down into three (3) groups consisting of red (3"- 4" of snow), yellow (0-2" snow and/or freezing rain), and green (dry conditions). He explained the plowing priorities were arterials and hillsides. He expressed the importance for cars parked on the street to be removed before plows come through as they create visual problems, and if they don't move by mid-season, they can be buried to the point of looking like a snow pile. He clarified that the City does not plow alleyways as they are not wide enough and the overhead lines are too low for the equipment to get through. Additionally, sidewalk clearing is the responsibility of the abutting property owner. Mr. Feusier reminded citizens that it is illegal to deposit snow upon the streets and sidewalks from private property. He concluded that it is the department's desire to have the entire community plowed within 40 hours, after arterials are

complete, and the website map at <https://maps.cdaid.org/snowplow/> will be updated during snow events when they get to the residential streets. He said additionally, there is a form on the website for snow removal issues at <https://www.cdaid.org/Forms/EmailForm/6> .

DISCUSSION: Mayor Hammond reiterated that it is difficult for the plow drivers to see when there are garbage cans and cars parked on the street. Councilmember Gookin asked why the City does not do an odd even street plow. Mr. Feusier said that it would slow down the city-wide plow times to get to every street, and he didn't feel they had the staff or equipment to change to that schedule. Councilmember Miller noted that that staff is doing a great job trying to keep up, and questioned if there are resources in the community to help those who need assistance with snow removal. Mr. Feusier said that the Sheriff's Office and senior center do not have programs anymore, and encouraged neighbors to help each other. Councilmember Miller noted that the website map doesn't have a notice about inactive times. Mr. Feusier explained that the software is antiquated and doesn't allow for additional text, noting that they are looking at other mapping products where they can add data.

MOTION: Motion by Gookin, seconded by McEvers, to approve the 2022-2023 Annual Snow Plan. **Motion carried**

MAYOR AND COUNCIL COMMENTS:

Councilmember Miller noted that the Library Board approved the board member ethics and conduct policy. Additionally, the Foundations campaign on the early literacy program is very successful. The Historic Preservation Commission has two member openings.

Councilmember Wood requested that the next Council agenda include a discussion for a councilmember to be included in the staff Executive Team meetings.

Mayor Hammond requested the appointment of Sally Shortridge to the Arts Commission.

MOTION: Motion by McEvers, seconded by Wood, to appoint Sally Shortridge to the Arts Commission. **Motion carried.**

CONSENT CALENDAR: Motion by McEvers, second by Wood, to approve the consent calendar.

1. Approval of Council Minutes for the November 15, 2022, Council Meeting.
2. Approval of General Services/Public Works Committee Minutes for the November 21, 2022, Meeting.
3. Approval of Bills as Submitted.
4. Setting of General Services/Public Works Committee Meeting for Monday, December 12, 2022, at 12:00 noon.
5. Setting of Hearings:
 - a. January 3, 2023: Appeal of Design Review Commission Approval of Garden Lofts and Townhouses by Jacquelyn Doyle
 - b. January 17, 2023: ZC-2-22: A Proposed Zone Change from R-3 to R-8 Located at 1095 E. Timber Lane; Applicant: Richard and Susan Bennett

6. Approval of Final Plat for SS-22-14c: Cottage Grove Condominiums Project No. 4.
7. **Resolution No. 22-057** - A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING THE FOLLOWING: AGREEMENT WITH J-U-B ENGINEERS, INC., FOR THE 2022 WATER COMPREHENSIVE PLAN UPDATE IN THE AMOUNT OF \$207,700.00; LEASE AGREEMENT WITH THE KIWANIS CLUB FOR THE TASTE OF COEUR D'ALENE EVENT IN CITY PARK; AND REQUEST BY THE PARKS & RECREATION DEPARTMENT TO APPLY FOR A WATERFRONT IMPROVEMENT FUND GRANT FOR NEW BOAT DOCKS AT THE 3RD STREET MOORING DOCKS.

DISCUSSION: Councilmember Miller noted that she has been in discussions regarding a nonmotorized vehicle boat path and would like it to be explored with this new grant opportunity.

ROLL CALL: Miller Aye; McEvers Aye; Gookin Aye; English Aye; Wood Aye. **Motion Carried.**

PUBLIC COMMENTS:

Mary Anglefire Gotcha, Coeur d'Alene, spoke about her faith and healing.

Roger Ruddick, Coeur d'Alene, noted he lives in the Indian Meadows development, and continues to do so due to its charm. He asked the Council to preserve a unique portion of the City. The Comprehensive Plan preserves certain places within the community based on neighborhood identity, which he believes Indian Meadows has.

Don Schmitt, Coeur d'Alene, noted he lives in the Indian Meadows development, and thinks the Coeur Terre project is good but has concerns about its egress and entrance. He believes that Appaloosa Avenue will become a thoroughfare and a reasonable circle at the end of Arrowhead and Appaloosa with R-8 zoning, would create the same kind of neighborhood that exists today. If 12,000 people funnel through their neighborhood it would not work, noting an existing traffic jam on Atlas Avenue.

Susan Knutson, Coeur d'Alene, noted she lives in the Indian Meadows development, noting that she attended the October 11 Planning and Zoning meeting. She believes the proposed development will negatively affect their neighborhood due to staff requiring five (5) points of egress rather than the two (2) required by code. In speaking to area residents, they express disappointment in the development and fears the Council does not care about this neighborhood. She hoped the Council hears their concerns and will care about their neighborhood.

Laurie Robb, Coeur d'Alene, noted she lives in the Indian Meadows development, and believes it is unique. It is a long-established neighborhood, and the things that make it special will be disturbed by this development. She suggested that the school planned within the development be moved toward Hanley Avenue.

Holiday Saunderson, Coeur d'Alene, noted she has lived off Atlas for almost 23 years, just east of Indian Meadows in the Queen Anne neighborhood. She believes that with all the growth the

traffic on Atlas has already increased too much, and allowing people to cut through the neighborhood will turn their neighborhood into a race track.

Teressa Potts, Coeur d'Alene, noted she lives in the Indian Meadows development, and doesn't want to lose trees and bushes, nor does she want noisy, speedy traffic. She believes that they can design streets to handle the traffic within the Coeur Terre development.

Dan Chapelski, Coeur d'Alene, noted he lives in the Indian Meadows development, and has been a home inspector in the area for the past 20 years. He has been in every neighborhood and chose to move into Indian Meadows as it is a special unique place. If the streets become throughfare through the neighborhood it would change the neighborhood character.

Justin O'Connell, Coeur d'Alene, spoke about the removal of Mount Hink, and suggested that the funding for Meals on Wheels should come from an Arts Commission budget reallocation.

Andrew Hall, Coeur d'Alene, noted he lives in the Indian Meadows development, and their property abuts the field that will be developed with the Coeur Terre development. They currently feel safe to walk, jog, and ride horse through the neighborhood due to the low traffic flow. If the traffic increases it will change the character of the neighborhood. This will set a precedent for future growth.

Katherine Hall, Coeur d'Alene, noted she also lives in the Indian Meadows development and expressed concern about their neighborhood streets becoming through streets for the Coeur Terre development. She wants a safe place to ride bikes and requested Council to preserve their neighborhood.

John Pulsipher, Coeur d'Alene, encouraged the Council to look at the recently completed Comprehensive Plan rather than reexamining codes, as the community was involved in the development of the plan and it has good compromises included within it.

RESOLUTION NO. 22-058

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AUTHORIZING A CONTRACT WITH WELCH COMER FOR AN IMPACT AND ANNEXATION FEE STUDY USING THE IMPACT FEES FUND.

STAFF REPORT: Hilary Patterson, Community Planning Director explained that the City Council directed staff to update the development impact fees due to the fact that the last update to the fees was in 2005. The City's annexation fees also need to be adjusted, as they were last updated in 1998. A Request for Qualifications (RFQ) was issued on July 22, 2022, for the impact and annexation fee update and the Capital Improvement Plan (CIP) updates necessary to update the annexation fees. The City received three (3) Statement of Qualification submittals from the following groups: Welch Comer/FCS/Iteris; Tischler Bise; and Whiskey Rock. A City staff committee conducted a review of the proposals and ranked the Welch Comer team as the top firm to perform the work. Ms. Patterson noted that this is an extensive multi-part project requiring defensible justification, coordination with City staff and the Development Impact Fee

Advisory Committee, KMPO and stakeholder input. She outlined the Development Impact Fee Code and its intent. The negotiated contract with Welch-Comer for updating impact fees, capital improvement plans, and annexation fees is \$153,200. The cost is based on a stipulated-sum agreement that defines all work necessary and limits any cost changes unless the scope of work changes significantly. The funding for this update is recommended to come from the budgetary line item "Impact Fee Fund" using accrued interest income generated through time by holding collected fees prior to capital improvement expenditures. If approved, this approach would allow for 100% of future fee generation to be applied toward much needed capital improvements. The Impact Fee Report Update including CIP updates as needed and the Annexation Fee Update are expected to be completed within 10 months after execution of the agreement. Based on this timeline, the new proposed fees could be brought forward for City Council review by the end of October 2023. Staff and Welch-Comer will make every effort to keep this project on-time and within budget.

DISCUSSION: Councilmember McEvers asked what the timeline is for completion, with Ms. Patterson explaining that they will start gathering data this week, in hopes that fees will be approved within 10 months. She also noted that they plan to include annual incremental increases within the plan. Councilmember Miller asked how long ago did the City update the impact fees, with Ms. Patterson stating it was in 2005. Ms. Patterson noted that the annexation fees has not been updated since the late 1980's. Councilmember Miller noted that other cities have updated their fees and they are substantial higher than Coeur d'Alene, noting that the North Idaho Building Contractors Association stated that they would not object to fees that are fair. Councilmember Gookin noted that he would like to see councilmembers be involved in selection committees. Councilmember English noted that he felt that the Council has all the information and has final decision authority without serving on the selection committee; but does agree they should have a representative on the Executive Team.

MOTION: Motion by Miller, seconded by English, to approve **Resolution No. 22-058**, Providing Authorization to Enter into a Contract with Welch-Comer for the Impact and Annexation Fee Study Using the Impact Fees Fund.

ROLL CALL: Miller Aye; McEvers Aye; Gookin Aye; English Aye; Wood Aye. **Motion carried.**

RESOLUTION NO. 22-059

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AMENDING THE FOLLOWING CITY OF COEUR D'ALENE PERSONNEL RULES: RULE 5: COMPENSATION; RULE 11: ATTENDANCE AND LEAVES; RULE 26: APPOINTED OFFICERS AND DEPARTMENT HEADS; RULE 27: FLSA EXEMPT EMPLOYEES.

STAFF REPORT: Human Resources Director Melissa Tosi explained it is the desire of the City to adopt a bi-weekly payroll effective January 1, 2023, and the following Personnel Rules need to be amended to effect that change. Additionally, these proposed amendments have been discussed by the Executive Team, the Lake City Employees Association (LCEA), Police Association, and Fire Union, who expressed no concerns with the proposed amendments. There

was a unanimous vote in favor of the proposal from all three (3) employee groups. Rule 5 – Compensation: removes semi-monthly pay detail and adds employees bi-weekly pay. Employees will be paid on the Friday following the end of the pay period and most payroll deductions will be taken over twenty-four (24) pay periods, rather than twenty-six (26) pay periods. Rule 11 – Attendance and Leaves: The City of Coeur d'Alene 7-day work week is being amended to begin on Sunday and end on Saturday. For vacation and sick accruals, the accruals will be earned over twenty-four (24) pay periods rather than twenty-six (26) pay periods. This means in the two (2) months when there are extra wage disbursements, employees will not receive accruals in that pay period in order to remain with our current accruals. Rule 26 – Appointed Officer and Department Heads & Rule 27 – FLSA Exempt Employees: For vacation and sick accruals, the accruals will be earned over twenty-four (24) pay periods rather than twenty-six (26) pay periods. This means in the two (2) months when there are extra wage disbursements, employees will not receive accruals in that pay period in order to remain with our current accruals.

DISCUSSION: Councilmember Gookin asked how they were going to deal with bi-weekly payrolls when there is a 27th Friday, with Ms. Tosi noting that the first year that happens is 2027. They are looking toward options and ensured that they will continue to pay people. She explained that they need some assistance with the software company and will bring a recommendation forward to Council soon.

MOTION: Motion by Wood, seconded by McEvers, to approve **Resolution No. 22-059**, Approving Amendments to Personnel Rule 5 – Compensation, Rule 11 – Attendance and Leaves, Rule 26 – Appointed Officer and Department Heads, and Rule 27 – FLSA Exempt Employees, Regarding the Transition to Bi-Weekly Payroll, Effective January 1, 2023.

ROLL CALL: McEvers Aye; Gookin Aye; English Aye; Wood Aye; Miller Aye. **Motion carried.**

RESOLUTION NO. 22-060

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING AMENDMENT NO. 1 TO THE AGREEMENT WITH THE FIREFIGHTERS LOCAL NO. 710, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS (IAFF) TO ALLOW FOR THE IMPLEMENTATION OF A BI-WEEKLY PAYROLL.

STAFF REPORT: Human Resources Director Melissa Tosi explained that the proposed Amendment No. 1 to the Agreement with the Firefighters Local No. 710, are specific changes necessary to transition from a semi-monthly to a bi-weekly payroll effective January 1, 2023. Changing from a semi-monthly to bi-weekly payroll will make the timecard inputting, review, approval process easier, and paydays will be consistent and easier for employees to budget around. The amendments have been approved by Local 710. The following are the amendments necessary to provide clarity for the bi-weekly payroll change: Article 16 – Sick Leave & Article – 22 Vacation: For vacation and sick accruals, the accruals will be earned over twenty-four (24) pay periods rather than twenty-six (26) pay periods. This means in the two (2) months when there are extra wage disbursements, employees will not receive accruals in that pay period in

order to remain with our current accruals. Additionally, since pay periods will generally no longer start on the 1st of the month, language that refers to the 1st is being amended to at the beginning of the pay period that includes the 1st. Article 21 – Work Schedule/Overtime: In order to match up our pay periods with the Fire Department’s Fair Labor Standards Act (FLSA) work cycle, the work cycle is being amended to 14 days and being restarted effective January 1, 2023. Article – 23 Wages: Updating the October 1, 2023, market adjustment increase of six percent (6%) to the beginning of the pay period that includes October 1 since the bi-weekly payroll schedule will have October 1 in the middle of a pay period.

MOTION: Motion by Miller, seconded by McEvers, to approve **Resolution No. 22-060**, Approval of Amendment No. 1 to the Agreement with the Firefighters Local No. 710, International Association of Firefighters (IAFF) to agree to a Bi-Weekly Payroll.

ROLL CALL: Gookin Aye; English Aye; Wood Aye; Miller Aye; McEvers Aye. **Motion carried.**

RESOLUTION NO. 22-061

A RESOLUTION OF THE CITY OF COEUR D’ALENE, KOOTENAI COUNTY, IDAHO, APPROVING AMENDMENT NO. 1 TO THE AGREEMENT WITH THE POLICE OFFICER ASSOCIATION (POA) TO AGREE TO A BI-WEEKLY PAYROLL.

STAFF REPORT: Human Resources Director Melissa Tosi noted that Amendment No. 1 to the Agreement with the Police Officer’s Association are necessary to transition from a semi-monthly to a bi-weekly payroll effective January 1, 2023. The amendments have been approved by the Association. The following are the amendments necessary to provide clarity for the bi-weekly payroll change: Article – 8 Wages: Updating the October 1, 2023, and October 1, 2024, Cost of Living Increases to the beginning of the pay period that includes October 1 since the bi-weekly payroll schedule will have October 1 in the middle of a pay period. Article – 13 Overtime: In order to match up our pay periods with the Police Department’s Fair Labor Standards Act (FLSA) work cycle, the work cycle is being restarted effective January 1, 2023. The amendments capture the necessary articles that require updating regarding the mutually agreed upon bi-weekly payroll change that will be implemented effective January 1, 2023, and will create consistency across the City.

MOTION: Motion by Gookin, seconded by Wood, to approve **Resolution No. 22-061**, Approval of Amendment No. 1 to the Agreement with the Police Officer Association (POA) to agree to a Bi-Weekly Payroll.

ROLL CALL: English Aye; Wood Aye; Miller Aye; McEvers Aye; Gookin Aye. **Motion carried.**

RESOLUTION NO. 22-062

A RESOLUTION OF THE CITY OF COEUR D’ALENE, KOOTENAI COUNTY, IDAHO, AUTHORIZING A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH ETD

ENTERPRISES, LLC, FOR LAND ABUTTING THE POLICE DEPARTMENT HEADQUARTERS BUILDING.

STAFF REPORT: City Attorney Randy Adams noted that the Council has approved \$4,500,000 in American Rescue Plan Act (ARPA) funds for the remodel and expansion of the Police Department (Department) Headquarters Building. The Department negotiated a contract with CORE West, Inc., a national firm that specializes in municipal buildings and, specifically, public safety buildings, to act as the Construction Manager/General Contractor (CM/GC) for the project. The Department is currently working to finalize a contract with an architectural firm, Castlellaw + KOM and Treanorhl, to design the project. This project is intended to utilize a vacant parcel of property, approximately 1.6 acres, north of and adjacent to the current site of the Police Headquarters building at 3818 N. Schreiber Way, which parcel is owned by ETD Enterprises, LLC. The purchase of the parcel will facilitate the expansion of the Police building without the need for two (2) separate sites and allow the Department to remain as a single facility. Talks have been underway with the owner of the subject parcel for the last several months. A tentative agreement, subject to Council approval, has been reached for the City to purchase the parcel for the price of \$1,186,532, which is reasonable considering the size and location. A title report has been issued and, with a release provided by Acclivity Financial, it has been determined that title to the parcel is clear. The Department had budget savings in the last fiscal year due to open positions. That savings, per policy, rolled over into Fund Balance for this fiscal year and it is proposed to take the money from Fund Balance to purchase the property.

DISCUSSION: Councilmember Gookin asked if there are legal requirements for purchasing property. Mr. Adams explained that there are no purchasing requirements, as opposed to when a City is selling property. He noted that an appraisal is not necessary but there should be some evidence of reasonableness of price/value. He explained that this is a unique piece of property for the Police Department, as it is next door, and is a once in a lifetime opportunity and felt that the price was in the range of area parcels. Councilmember Wood noted that this has been discussed for a while and noted that the build-out opportunity for this property will be approximately 30 years. City Administrator Tymesen concurred that the value is remarkable for the assemblage of the Department campus and has been in the works for many, many years.

MOTION: Motion by Wood, seconded by Gookin, to approve **Resolution No. 22-062**, Approval of a Real Estate Purchase and Sale Agreement with ETD Enterprises, LLC, for land abutting the Police Station.

ROLL CALL: Wood Aye; Evans Aye; Miller Aye; McEvers Aye; Gookin Aye; English Aye.
Motion carried.

**LEGISLATIVE PUBLIC HEARING FOR FEE INCREASES AS FOLLOWS:
BUILDING DEPARTMENT- PROPOSED INCREASES BASED ON STAFFING COSTS
AND THE ADOPTION OF THE VALUATION CHART PROVIDED BY THE
INTERNATIONAL CODE COUNCIL; FINANCE DEPARTMENT- PROPOSED
INCREASES TO STREET LIGHTING AND NEW CHART FOR GARBAGE FEES (NO
INCREASES); LEGAL- RECOMMENDS FEES ASSOCIATED WITH
ADMINISTRATIVE AND APPEAL HEARING; LIBRARY- PROPOSED FEE FOR**

NON-RESIDENT CARDHOLDERS; MUNICIPAL SERVICES DEPARTMENT- RECOMMENDING SINGLE FEE IN PLACE OF SEVERAL FEES RELATED TO TEMPORARY SIGNS; PARKS AND RECREATION DEPARTMENT- UPDATED CEMETERY FEES BASED ON STAFFING COSTS, AND RECREATIONAL FEES BASED ON STAFFING, EQUIPMENT REPAIR/MAINTENANCE AND RECREATIONAL PROGRAM T-SHIRT COSTS; PLANNING DEPARTMENT- PROPOSED INCREASE TO SHORT-TERM RENTAL PERMITS TO COVER COSTS, SETTING A FEE FOR DEVELOPMENT AGREEMENTS, AND INCREASE TO FEES ASSOCIATED WITH STAFFING COSTS; POLICE DEPARTMENT- PROPOSED INCREASE TO THE HOURLY RATES BASED ON CURRENT OVERTIME AND CONTRACT RATES FOR SECURITY/TRAFFIC CONTROL; WATER DEPARTMENT- UPDATING DAMAGE DEPOSIT FOR THE PORTABLE STATIONS TO COVER THE ACTUAL COST OF REPLACEMENT AND INCREASES BASED ON STAFFING COSTS, EQUIPMENT COST, AND FUEL COSTS.

STAFF REPORT: Municipal Services Director Renata McLeod explained that Idaho Code requires a public hearing for proposed fees in excess of five percent (5%). These proposed changes include some fees that are less than 5%, simply being clarified, and/or removed, which is not required to be included in the public hearing; however, it is staff's desire to keep all changes together for ease of tracking all changes. She noted that the Building Department proposes several fee increases and a valuation chart adoption as provided by the International Code Council. This valuation chart is used by several area cities including Post Falls, Rathdrum and Hayden. Mr. Lantzy presented these fee amendments to the North Idaho Building Contractors Association on November 15, 2022, and there was no opposition. The Finance Department proposes a 5% increase in the street light fee, which equals a \$0.16 increase for 2023 and 2024. The fees are being increased to cover increased costs in electrical and repairs. Additionally, the garbage rates categories need to be organized in accordance to the contract with CDA Garbage, which means a full repeal of the old chart (attached) to be replaced with the proposed chart below; fees will remain the same. The Legal Department would like to include fees related to administrative and appeal hearings to cover staff costs. The Library would like to charge the appropriate fee for non-resident cardholders. They have reviewed several area library's fees (provided below) and recommends a fee that is based on an average property tax for library services, which for Coeur d'Alene comes to approximately \$30.00. The Municipal Services Department issues sign permits and with the March 1, 2022, updates to the Sign Code, the temporary sign category needed clarity on fees. This fee reflects one cost for the entire temporary sign category rather than breaking them down into old non-existent categories. The Parks and Recreation Department has experienced an increase in costs related to staffing, equipment repair/maintenance, and recreational program t-shirt costs. The Planning Department is proposing fees for a Short-Term Rental permit to be increased to cover the cost associated with the use of a host compliance agency. Additionally, the City adopted the code to allow for development agreements and staff has now tracked time spent on such preparation of the agreements and recommends a fee to cover costs. Other fees are recommended to increase based on associated staffing costs. The Police Department reviewed all fees and had the following amendments including removing fees associated with the training facility for services no longer provided and an increase to the hourly rates based on current overtime and contract rates. The Water Department proposes an increase for the call-out water services/tag fees by 5% due to

associated costs including employee's time, equipment, and fuel costs. Bulk water use fees should be increased to cover the increased costs and have not been increased in over five (5) years. Additionally, they are proposing an increased amount to help accommodate the pumping cost and wear and tear of the infrastructure used to supply the bulk water stations to keep them in good working order. Water Radio read set-up fee (MXU) is proposed to increase 5% due to the cost of time and materials to shoot the location (GPS/Mapping) and any parts needed to make sure the equipment is in good working order/communicating with our radio read equipment.

DISCUSSION: Councilmember Wood noted that the Parks and Recreation fees would likely be of the most interest to the public, and wondered how the information will get out to the public. Ms. McLeod explained that there was a notice in the paper regarding the hearing and the proposed fees have been on the City's website for approximately 2.5 weeks. There will be an updated fee list on the web, and each department will work on informing the users of their new rates. Councilmember Miller thanked staff for answering questions and still had questions regarding the short-term rental permit fee and wondered if the City could pay Granicus draws when we know the process at the end of March, and doesn't believe it is fair to charge those in compliance more money than those who haven't. Ms. McLeod noted that the Granicus contract has been approved and the fee is due in full. The proposal presented to Council at the time the contract was approved was to pay the fee out of the General Fund, then pay the fund back with the dollars collected at the time of the permit renewals in March. She reiterated that it is the City's intent to have the permit programs pay for all the cost associated with the program. Councilmember Miller noted that she doesn't believe the current permit holders should pay the cost for the non-permitted operators. Councilmember Miller noted that the time block for the facility use has been changed and now the cost has increased to \$300.00 and felt that was too high for our local citizens use of the gazebo. Mr. Tymesen noted that the fee allows a person to reserve the gazebo for a certain date and time; however, if others want to use the gazebo and it is not otherwise reserved, they can use it for free on a first come, first serve basis. Councilmember Miller noted the alcohol permit fee seemed to be a large increase in addition to other fees paid. Mr. Tymesen noted that this provides oversight in the area as not all security is being carried out as needed. Councilmember Miller questioned the need for the legal fee and what would be included in this category. Mr. Adams noted that there is no breakdown, rather these are reasonable estimates for his time spent on appeals, which doesn't occur very often, but he spends a lot of time on preparation for the appeals. Councilmember Miller felt that the cost to appeal a \$100 or \$200 fine seems like it would be a deterrent to appeal and wondered if there would be a return of the fee if the persons case was overturned. Mr. Adams noted that there is no provision for refund if they prevail at a hearing. Councilmember English noted that they had to make a call on the STR program and believes it is a reasonable fee, and believes it will be sustainable over time. Councilmember Gookin asked about the Street Light fees and wondered if the fund balanced. Mr. Tymesen noted that the fund does not cash flow. Councilmember Gookin suggested the Street Light fee go back into the General Fund, as he is concerned about the legality of charging it. Mr. Tymesen noted that the Street Light fund is a \$760,000 expense.

PUBLIC COMMENT:

Tyler Gabriel, Coeur d'Alene, stated that the logic being applied to the short-term rental fees is flawed and fees should be recovered through enforcement. The proposed fee penalizes people that are doing the right thing.

With no other comments received, the Mayor closed public comments.

DISCUSSION CONT: Councilmember Gookin asked what other ways the City can divide the STR permit fees. Ms. McLeod noted that the Granicus contract is approximately \$36,000 and the fee increase was based on the number of permits issued today, as there is no way to know if the future code will lower the number of permits allowed and what level of enforcement will be. Ms. Patterson noted it would be difficult to predict fine data without the final code development as we may require warnings first, and we currently don't know how many units are out there. Mr. Adams concurred you could not count on revenues and would not be in a predictable time due to appeals, noting fine collection is never a certainty as it may end up in collections. Councilmember Gookin asked what the current fine is and how many fines have been issued. Ms. McLeod noted that the fine for violating the Municipal Code is \$100.00 and can be charged daily; however, staff provides people with the notice they need to comply and everyone contacted has come in to get a permit, so no tickets have been issued.

Mayor Hammond suggested pulling the STR fee and bringing it back to Council after we have the data from Granicus. Councilmember McEvers noted that it is not fair that they don't receive a penalty for running the rental unlicensed.

RESOLUTION NO. 22-063

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, ESTABLISHING AND AMENDING CERTAIN CITY FEES PURSUANT TO IDAHO CODE §§ 63-1311 AND 63-1311A.

MOTION: Motion by Miller, seconded by Gookin, to Approve **Resolution No. 22-063**, Establishing Fees for the Building, Finance, Library, Municipal Services, Planning, Police, and Water Departments, minus Planning's Short Term Rental permit increase.

DISCUSSION: Councilmember McEvers asked about the reasoning for pulling the legal services fee for appeals. Councilmember Miller stated that she believes it needs more clarity as to which appeals it applies to rather than applying to all appeals. Councilmember McEvers asked if they felt \$300.00 was too high for a local and are they proposing to make it less for locals. Councilmember Miller felt that it was too high and wasn't sure how best to divide the costs, but feels it was too high for a local citizen already paying taxes. Councilmember English stated he would support the legal fees but still supports the motion.

ROLL CALL: Miller Aye; McEvers Aye; Gookin Aye; English Aye; Wood Aye.
Motion carried.

EXECUTIVE SESSION: MOTION: Motion by Gookin, seconded by Wood, to enter into Executive Session pursuant to Idaho Code 74-206 (j) to consider labor contract matters authorized under section 74-206A (1)(a) and (b).

ROLL CALL: Miller Aye; McEvers Aye; Gookin Aye; English Aye; Wood Aye.

Motion carried.

The City Council entered Executive Session at 7:58 p.m. Those present were the Mayor, City Council, City Administrator, Human Resource Director, and the City Attorney. Council returned to regular session at 8:39 p.m.

ADJOURNMENT: Motion by Gookin, seconded by English, that there being no other business, this meeting be adjourned. **Motion carried.**

The meeting adjourned at 8:39 p.m.

James Hammond, Mayor

ATTEST:

Renata McLeod
City Clerk

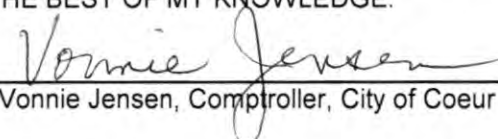
DEC 09 2022

CITY OF COEUR D'ALENE
Treasurer's Report of Cash and Investment Transactions

CITY CLERK

FUND	BALANCE 10/31/2022	RECEIPTS	DISBURSE- MENTS	BALANCE 11/30/2022
<u>General-Designated</u>	\$4,676,488	\$15,954	\$74,100	\$4,618,342
<u>General-Undesignated</u>	14,654,628	1,332,640	6,090,830	9,896,438
<u>Special Revenue:</u>				
Library	34,244	14,298	134,409	(85,867)
CDBG	(76,423)	38,328	16,453	(54,548)
Cemetery	235,060	21,672	25,875	230,857
Parks Capital Improvements	1,069,118	966,569	2,781	2,032,906
Impact Fees	5,949,562	27,630		5,977,192
Annexation Fees	40,744	97		40,841
American Recovery Plan	8,454,589			8,454,589
Cemetery P/C	1,097,616	35,044	26,546	1,106,114
Jewett House	166,448	1,187	32,642	134,993
Reforestation	26,173	62	769	25,466
Street Trees	162,134	2,186	6,275	158,045
Community Canopy	2,733	7		2,740
Public Art Fund	67,659	13,504	26,066	55,097
Public Art Fund - ignite	459,674	5,445	19,480	445,639
Public Art Fund - Maintenance	123,276	294	153	123,417
<u>Debt Service:</u>				
2015 G.O. Bonds	106,800	1,012		107,812
<u>Capital Projects:</u>				
Street Projects	829,464	25,909	25,829	829,544
<u>Enterprise:</u>				
Street Lights	108,807	58,993	57,212	110,588
Water	1,120,216	2,795,920	466,319	3,449,817
Water Capitalization Fees	7,159,940	36,468	1,767,835	5,428,573
Wastewater	13,061,796	3,822,213	805,815	16,078,194
Wastewater - Equip Reserve	1,574,198	27,500	524,636	1,077,062
Wastewater - Capital Reserve	3,500,000	1,000,000		4,500,000
WWTP Capitalization Fees	6,261,142	65,174	2,925,258	3,401,058
WW Property Mgmt	55,403			55,403
Sanitation	1,570,346	599,758	558,563	1,611,541
Public Parking	433,487	309,223	12,976	729,734
Drainage	1,149,994	91,796	60,395	1,181,395
Wastewater Debt Service	646,422	1,540		647,962
<u>Fiduciary Funds:</u>				
Kootenai County Solid Waste Billing	280,361	256,930	280,426	256,865
Police Retirement	401,103	11,500	19,094	393,509
Sales Tax	3,038	1,743	3,038	1,743
BID	324,865	5,965		330,830
Homeless Trust Fund	676	800	676	800
GRAND TOTAL	\$75,731,781	\$11,587,361	\$13,964,451	\$73,354,691

I HEREBY SWEAR UNDER OATH THAT THE AMOUNTS REPORTED ABOVE, ON THE CASH BASIS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



Vonnice Jensen, Comptroller, City of Coeur d'Alene, Idaho

CITY OF COEUR D'ALENE
 BUDGET STATUS REPORT
 TWO MONTH ENDED
 November 30, 2022

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DEC 09 2022

CITY CLERK

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 11/30/2022	PERCENT EXPENDED
Mayor/Council	Personnel Services	\$249,035	\$36,133	15%
	Services/Supplies	10,128	69	1%
Administration	Personnel Services	317,916	40,142	13%
	Services/Supplies	2,570		
Finance	Personnel Services	765,897	128,197	17%
	Services/Supplies	632,500	284,344	45%
Municipal Services	Personnel Services	1,469,170	209,513	14%
	Services/Supplies	1,531,715	259,746	17%
	Capital Outlay			
Human Resources	Personnel Services	366,503	58,116	16%
	Services/Supplies	85,918	36,959	43%
Legal	Personnel Services	1,225,988	201,087	16%
	Services/Supplies	135,450	1,285	1%
Planning	Personnel Services	697,216	116,068	17%
	Services/Supplies	62,050	3,886	6%
	Capital Outlay			
Building Maintenance	Personnel Services	320,137	51,158	16%
	Services/Supplies	284,500	31,678	11%
	Capital Outlay	90,000		
Police	Personnel Services	16,880,007	2,981,769	18%
	Services/Supplies	1,867,520	184,322	10%
	Capital Outlay	3,280,000	53,294	2%
Fire	Personnel Services	11,465,359	2,293,640	20%
	Services/Supplies	873,192	44,324	5%
	Capital Outlay	986,610		
General Government	Services/Supplies	626,300	607,918	97%
	Capital Outlay			
Police Grants	Personnel Services	84,594	12,963	15%
	Services/Supplies			
	Capital Outlay			
CdA Drug Task Force	Services/Supplies		600	
	Capital Outlay			
Streets	Personnel Services	3,534,437	541,126	15%
	Services/Supplies	2,872,401	179,487	6%
	Capital Outlay	1,452,000		
Parks	Personnel Services	2,112,826	287,197	14%
	Services/Supplies	734,550	62,938	9%
	Capital Outlay	194,000	53,005	27%

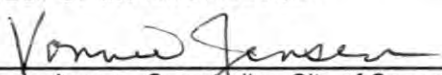
CITY OF COEUR D'ALENE
 BUDGET STATUS REPORT
 TWO MONTH ENDED
 November 30, 2022

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 11/30/2022	PERCENT EXPENDED
Recreation	Personnel Services	599,865	104,336	17%
	Services/Supplies	180,350	11,062	6%
	Capital Outlay	35,000		
Building Inspection	Personnel Services	1,019,158	167,525	16%
	Services/Supplies	42,078	1,081	3%
	Capital Outlay	62,000	58,358	94%
Total General Fund		<u>57,148,940</u>	<u>9,103,326</u>	<u>16%</u>
Library	Personnel Services	1,528,445	226,064	15%
	Services/Supplies	230,000	19,205	8%
	Capital Outlay	190,000	9,618	5%
CDBG	Personnel Services	79,894	12,495	16%
	Services/Supplies	700,349	10,000	1%
Cemetery	Personnel Services	224,911	34,410	15%
	Services/Supplies	138,800	12,763	9%
	Capital Outlay		1,650	
Impact Fees	Services/Supplies	554,446		
Annexation Fees	Services/Supplies	355,000	355,000	100%
Parks Capital Improvements	Capital Outlay	463,614	5,608	1%
Cemetery Perpetual Care	Services/Supplies	86,000	14,049	16%
Jewett House	Services/Supplies	139,700	32,007	23%
Reforestation	Services/Supplies	6,500	(459)	-7%
Street Trees	Services/Supplies	112,000	7,778	7%
Community Canopy	Services/Supplies	1,500		
Public Art Fund	Services/Supplies	468,500	39,392	8%
		<u>5,279,659</u>	<u>779,581</u>	<u>15%</u>
Debt Service Fund		<u>880,083</u>		

CITY OF COEUR D'ALENE
BUDGET STATUS REPORT
TWO MONTH ENDED
November 30, 2022

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 11/30/2022	PERCENT EXPENDED
LaCrosse Ave / NW Blvd	Capital Outlay			
Wilbur / Ramsey Signal	Capital Outlay	400,000		
Traffic Calming	Capital Outlay	65,064		
Kathleen Avenue Widening	Capital Outlay			
Ramsey Road Rehabilitation	Capital Outlay	588,000		
15th Street	Capital Outlay	49,900		
LHTAC Pedestrian Safety	Capital Outlay	605,000	25,829	
Downtown Signal Imprvmnts	Capital Outlay			
Atlas Waterfront Project	Capital Outlay			
NW Blvd Traffic Signals	Capital Outlay			
		1,707,964	25,829	2%
Street Lights	Services/Supplies	760,130	59,678	8%
Water	Personnel Services	2,777,800	388,137	14%
	Services/Supplies	5,399,475	164,496	3%
	Capital Outlay	6,149,400	241,417	4%
Water Capitalization Fees	Services/Supplies	3,850,000		
Wastewater	Personnel Services	3,216,082	504,017	16%
	Services/Supplies	8,477,348	193,765	2%
	Capital Outlay	8,532,000	317,494	4%
	Debt Service	3,513,441		
WW Capitalization	Services/Supplies	2,777,660		
WW Property Management	Services/Supplies			
Sanitation	Services/Supplies	5,520,365	524,435	10%
Public Parking	Services/Supplies	1,864,965	435,396	23%
	Capital Outlay			
Drainage	Personnel Services	243,712	40,628	17%
	Services/Supplies	1,046,146	23,451	2%
	Capital Outlay	1,215,000	328,784	27%
Total Enterprise Funds		55,343,524	3,221,699	6%
Kootenai County Solid Waste		3,110,000	280,361	9%
Police Retirement		196,454	23,124	12%
Business Improvement District		176,000		
Homeless Trust Fund		10,000	676	7%
Total Fiduciary Funds		3,492,454	304,161	9%
TOTALS:		\$123,852,624	\$13,434,596	11%

I HEREBY SWEAR UNDER OATH THAT THE AMOUNTS REPORTED ABOVE, ON THE CASH BASIS, ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


 Vonnie Jensen, Comptroller, City of Coeur d'Alene, Idaho

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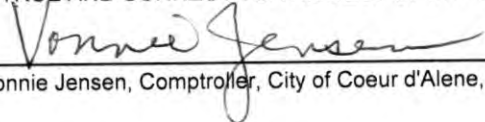
DEC 09 2022

CITY CLERK

**City of Coeur d Alene
Cash and Investments
11/30/2022**

Description	City's Balance
U.S. Bank	
Checking Account	2,810,004
Checking Account	90,540
Checking Account	84,861
Investment Account - Police Retirement	380,177
Investment Account - Cemetery Perpetual Care Fund	1,100,476
Idaho Central Credit Union	
Certificate of Deposit	283,575
Idaho State Investment Pool	
State Investment Pool Account	66,592,678
Spokane Teacher's Credit Union	
Certificate of Deposit	1,006,831
Numerica Credit Union	
Certificate of Deposit	1,004,199
Cash on Hand	
Treasurer's Change Fund	1,350
Total	<u>73,354,691</u>

I HEREBY SWEAR UNDER OATH THAT THE AMOUNTS REPORTED ABOVE
ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



Vonnice Jensen, Comptroller, City of Coeur d'Alene, Idaho

CITY COUNCIL STAFF REPORT

DATE: **DECEMBER 20, 2022**

FROM: **VONNIE JENSEN, COMPTROLLER**

SUBJECT: **ANNUAL ROAD AND STREET FINANCIAL REPORT**

DECISION POINT:

The Council is being asked to review and to approve the Annual Road and Street Financial Report for the fiscal year ending September 30, 2022.

HISTORY:

Idaho Code, Section 40-708, requires the certification of road fund receipts and disbursements be completed and sent to the Idaho State Controller by the 31st of December for the preceding fiscal budget year for cities, counties, and highway districts.

FINANCIAL ANALYSIS:

The certification and timeliness of this report is critical to the City receiving funding from the State's Highway User tax disbursement. The revenue received during fiscal year 2021-22 was \$3,858,406 and \$3,166,179 was received for fiscal year 2020-21.

PERFORMANCE ANALYSIS:

The Annual Road and Street Financial Report is an accounting of the dollars used in maintaining, creating and improving the road network overseen by the City. This report is a collaborative effort with the Street Maintenance Department and the Finance Department.

DECISION POINT:

The Council is being asked to review and to approve the Annual Road and Street Financial Report for the fiscal year ending September 30, 2022.

Annual Road and Street Financial Report

Reporting Entity Name, Mailing Address and Contact Phone Number:		Please return, not later than December 31 , to:
Entity City of Coeur d'Alene		BRANDON D. WOOLF IDAHO STATE CONTROLLER ATTN: HIGHWAY USERS STATEHOUSE MAIL BOISE, ID 83720
Address 710 Mullan Avenue		
City State Zip Coeur d Alene ID 83814		
Contact/Phone (208) 769-2225	Contact/Email: vonniej@cdaid.org	

This certified report of dedicated funds is hereby submitted to the State Controller as required by 40-708, *Idaho code*.

Dated this _____ day of _____, _____.

ATTEST: _____ Commissioner Signature

Clerk/Treasurer Signature Mayor or Commissioner Signature

City Clerk/County Clerk/District Secretary (**type or print name & sign**) **AND** Commissioners or Mayor (**type or print name & sign**)

FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2022 _____

Line 1	BEGINNING BALANCE AS OF OCTOBER 1 PREVIOUS YEAR	0
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RECEIPTS

LOCAL FUNDING SOURCES

Line 2	Property tax levy (for roads, streets and bridges)	
Line 3	Sale of assets	
Line 4	Interest income	500
Line 5	Fund transfers from non-highway accounts.	2,265,867
Line 6	Proceeds from sale of bonds (include LIDs)	
Line 7	Proceeds from issue of notes (include loans)	
Line 8	Local impact fees	675,518
Line 9	Local option registration fee	
Line 10	All other LOCAL receipts or transfers in.	849,504
Line 11	Total Local Funding (sum lines 2 through 10).	3,791,389

STATE FUNDING SOURCES

Line 12	Highway user revenue	
Line 13	Sales tax/Inventory replacement tax	3,858,406
Line 14	Sales tax/Revenue sharing	
Line 15	State Exchanged funds.	
Line 16	All other STATE receipts or transfers.	
Line 17	Total State Funding (sum lines 12 through 16).	3,858,406

FEDERAL FUNDING SOURCES

Line 18a	Secure Rural Schools (Title I Funds)	
Line 18b	Secure Rural Schools (Title III Funds)	
Line 19	Federal-aid Bridge.	
Line 20	Federal-aid Rural	
Line 21	Federal-aid Urban.	56,752
Line 22	Federal Lands Access Funds and All other FEDERAL receipts or transfers	
Line 23	Total Federal Funding (sum lines 18 through 22)	56,752
Line 24	TOTAL RECEIPTS (sum lines 11, 17, 23)	7,706,547

DISBURSEMENTS

NEW CONSTRUCTION (include salary and benefits on each line)		
Line 25	Roads	
Line 26	Bridges, culverts and storm drainage	
Line 27	RR Crossing	
Line 28	Other (signs, signals or traffic control).	99,321
Line 29	Total New Construction (sum lines 25 through 28).	99,321
RECONSTRUCTION/REPLACEMENT/REHABILITATION (include salary and benefits on each line)		
Line 30	Roads (rebuilt, realign, or overlay upgrade).	1,083,709
Line 31	Bridges, culverts and storm drainage	
Line 32	RR Crossing.	
Line 33	Other (signs, signals or traffic control).	372,926
Line 34	Total Reconstruction/Replacement (sum lines 30 through 33).	1,456,635
ROUTINE MAINTENANCE (include salary and benefits on each line)		
Line 35	Chip sealing or seal coating.	304,550
Line 36	Patching	699,165
Line 37	Winter Maintenance	393,658
Line 38	Grading/blading	231,445
Line 39	Bridge.	
Line 40	Other (signs, signals or traffic control).	1,628,805
Line 41	Total Routine Maintenance (sum lines 35 through 40)	3,257,623
EQUIPMENT		
Line 42	Equipment purchase - automotive, heavy, other.	129,933
Line 43	Equipment lease/purchase	103,706
Line 44	Equipment maintenance.	654,486
Line 45	Other (specify).	
Line 46	Total Equipment (sum lines 42 through 45)	888,125
ADMINISTRATION		
Line 47	Administrative salaries and expenses.	338,153
OTHER EXPENDITURES		
Line 48	Right-of-way and property purchases	
Line 49	Property leases	
Line 50	Street lighting	
Line 51	Professional services - audit, clerical, and legal.	
Line 52	Professional services - engineering.	143,769
Line 53	Interest - bond (include LIDs).	
Line 54	Interest - notes (include loans).	
Line 55	Redemption - bond (include LIDs)	
Line 56	Redemption - notes (include loans)	
Line 57	Payments to other local government.	
Line 58	Fund transfers to non-highway accounts.	
Line 59	All other local expenditures	
Line 60	Total Other (sum lines 48 through 59)	143,769
Line 61	TOTAL DISBURSEMENTS (sum lines 29, 34, 41, 46, 47, 60).	6,183,626
Line 62	RECEIPTS OVER DISBURSEMENTS (line 24 - line 61).	1,522,921
Line 63	OTHER ADJUSTMENTS (Audit adjustment and etc.).	
Line 64	CLOSING BALANCE (sum lines 1, 62, 63)	1,522,921
Line 65	Funds on Line 64 obligated for specific future projects & reserves.	1,522,921
Line 66	Funds on Line 64 retained for general funds and operations.	
Line 67	ENDING BALANCE (line 64 minus the sum of lines 65, 66)	0

REPORTING MEASURES

NEW CONSTRUCTION		
Line 68	Total lane miles constructed	1.35
Line 69	Total square feet of bridge deck constructed	
RECONSTRUCTION/REPLACEMENT/REHABILITATION		
Line 70	Total lane miles rebuilt, realigned, or overlay	11.76
Line 71	Total square feet of bridge deck reconstructed or rehabilitated.	
ROUTINE MAINTENANCE		
Line 72	Total lane miles with surface treatments, chip sealed, seal coated etc. on line 35.	5.77
Line 73	Total lane miles graded or bladed on line 38	3.43

PROJECTS

FUTURE PROJECTS & RESERVE DESCRIPTIONS		
Line 74	Available Funds (From line 65).	1,522,921
	Project List	Start Year
		Projected Cost
	15th St - Harrison to Best - Design	49,900
	Traffic Calming	65,064
	LaCrosse Signal	52,634
	Ramsey Road Rehabilitation	588,258
	Reserved 4th Qtr HDA distribution for future project	1,327,224
Line 75	Estimated Cost of future projects.	2,083,080
Line 76	Available for Other Projects (line 74 minus line 75)	(560,159)
Line 77	Deferred maintenance costs over the last 5 years (in dollars).	5,813,919

OTHER BUSINESS

**CITY COUNCIL
STAFF REPORT**

DATE: DECEMBER 20, 2022
FROM: RANDY ADAMS – CITY ATTORNEY
SUBJECT: FRANCHISE AGREEMENT WITH FATBEAM, LLC

DECISION POINT: Should the City approve a new 10-year Franchise Agreement with Fatbeam, LLC, allowing Fatbeam to use the City’s rights-of-way to construct and operate a telecommunications system in Coeur d’Alene?

HISTORY: Fatbeam, LLC, was formed in 2010 as an Idaho Limited Liability Company. The Company obtained a franchise agreement from the City in 2011, allowing it to construct and maintain a fiber optic telecommunications system in the City’s rights-of-way. Fatbeam operates as competitive access provider (CAP). The original franchise agreement and the proposed agreement are similar to City franchise agreements with other providers. The proposed franchise would be for 10 years.

Over the last ten years, Fatbeam has seen continued growth in the Coeur d’Alene market. The Company has expanded its network footprint by 49 miles since its first customer, the Coeur d’Alene School District, signed on in 2012. Fatbeam delivers WAN and Dedicated Internet Access to the School District, surrounding commercial businesses, healthcare entities, other carriers (ISP’s), and the City of Coeur d’Alene. The Company intends to bring top customer service and excellent WAN and DIA services to the entire community for years to come.

FINANCIAL ANALYSIS: The financial impact is similar to other franchise agreements. Fatbeam will continue to pay the City five per cent (5%) of its annual gross revenue in exchange for the use of the rights-of-way, the maximum allowed by law. In 2021, the franchise fees paid by Fatbeam to the City were approximately \$3,000.00. There would be some staff time involved in reviewing the location of their facilities and issuing building permits as the system continues to expand, but this will not be a significant expense to the City.

PERFORMANCE ANALYSIS: Fatbeam increases competition among Telecom Providers and ISP’s which benefits citizens by lowering the cost of telecommunications services. The franchise agreement also provides for a fee that generates revenue for the City’s general fund. The City also benefits from the shared use of conduits and other facilities that results in cost savings to the City and taxpayers.

DECISION POINT/RECOMMENDATION: Council should approve the new 10-year Franchise Agreement with Fatbeam, LLC.

COUNCIL BILL NO. 22-1015
ORDINANCE NO. _____

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

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

SECTION 1 - DEFINITIONS

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

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

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

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

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

1.5 "Days" shall mean calendar days.

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

1.7 "FB" shall mean Fatbeam, LLC.

1.8 "FCC" shall mean the Federal Communications Commission.

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

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

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

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

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

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

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

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

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

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

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

1.20 "Telecommunications Services" shall mean:

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

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

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

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

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

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

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

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

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

SECTION 2 - FRANCHISE

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

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

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

2.4 Authority Granted.

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

B. FB's right to operate and maintain its Telecommunications System is subject to the terms, conditions and requirements of the Franchise Ordinance, this

Franchise and the City Charter and FB's right to construct, erect, install or modify its Telecommunications System is specifically subject to the requirement that FB obtain permits as set forth in this Franchise.

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

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

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

2.5 Limits on Permission.

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

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

C. This Franchise does not extend permission to municipal buildings or other municipally owned or controlled structures. For such locations, FB shall make specific

arrangements directly with the municipal department or division controlling such building or other structure.

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

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

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

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

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

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

2.7 Periodic Public Review of Franchise.

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

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

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

D. After completion of each such review described herein, if the City is satisfied FB has substantially complied with this Franchise during the previous five years and is satisfied the public interest will be served by extending the term of this Franchise, it may, with the consent of FB, extend the term set forth in Section 2.2 of this Franchise by one (1) additional year. In no event, however, shall the total term of this Franchise, including any extensions, exceed twenty-five (25) years.

2.8 Franchise Renewal or New Franchise.

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

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

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

2.10 Revocation.

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

1. The City determines FB is in violation of any material provision of this Franchise and fails to correct the violation after written notice of the violation

and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 9.2 of this Franchise; or

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

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

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

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

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

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

3. Any failure by FB to maintain the liability insurance required under this Franchise;

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

5. Any failure by FB to otherwise fully comply with the requirements of this Franchise.

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

2.11 Receivership. The City shall have the right to declare a forfeiture or otherwise revoke this Franchise one hundred eighty (180) days after the appointment of a receiver, or trustee, to take over and conduct the business of FB, whether in receivership, reorganization,

bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have vacated prior to the expiration of said one hundred eighty (180) days, or unless:

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

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

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

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

B. Renew this Franchise, in accordance with applicable valid law;

C. Invite additional franchise applications or proposals;

D. Terminate this Franchise without further action; and

E. Take such other action as the City deems appropriate.

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

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

SECTION 3 - ENFORCEMENT AND ADMINISTRATION BY THE CITY

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

3.2 Grantee to Have No Recourse. Subject to state and federal law, FB shall have no recourse other than non-monetary declaratory or injunctive relief against the City and shall be

awarded no monetary recovery whatsoever for any incidental or consequential damages, including but not limited to lost profits, arising out of any provision or requirement of this Franchise, nor from the City's regulation under this Franchise, nor from the City's exercise of its authority to grant additional franchises.

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

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

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

C. It has carefully read the terms and conditions contained herein and FB is willing to and does accept all the obligations of such terms and conditions to the extent not inconsistent with state or federal law and further agrees that it will not set up as against the City any claim that any provision of this Franchise is unreasonable, arbitrary, invalid or void subject to its rights herein; and

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

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

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

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

4.1 Use of Streets. FB may, subject to terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the City streets and rights-of-way such lines, cables, conductors, ducts, conduits, vaults, utility

access covers, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Telecommunications System within the City. All installation, construction, alteration and/or maintenance of any and all Telecommunications System Facilities within City streets and rights-of-way incident to FB's provision of Telecommunications Services shall, regardless of who performs installation, construction, alteration and/or maintenance, be and remain the responsibility of FB.

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

- A. Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;
- B. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
- C. Notify the excavator that the Company does not have any underground Facilities in the vicinity of the proposed excavation.

4.1.2 Rights-of-Way Occupancy.

- A. Nothing in this Franchise shall give the Company the right to attach its Cable System to structures or poles owned by the City without consent of the City.
- B. The Company shall:
 - 1. Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;
 - 2. Keep and maintain all transmission lines, equipment and structures in a safe condition, and in good order and repair;
 - 3. Employ professional care;
 - 4. Place any fixtures in any right-of-way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort;
 - 5. Submit a traffic control plan to the City for approval and receive such approval at least 48 hours prior to commencing construction except in the case of emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and

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

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

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

E. The Company shall locate, mark, and map any of its installed cable or Cable System for the City at no expense to the City. The Company shall install underground warning tape at least twelve (12) inches above all fiber optic cable where such installation is done by means of open trenching. Where cable is placed by boring or plowing, all fiber optic cable will be accompanied by a metallic tracer wire and all coaxial trunk and feeder cable shall serve as its own tracer for locating purposes.

4.2 Construction or Alteration.

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

4.2.2 Schedule and Maps.

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

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

C. FB shall provide a map to the City's Engineering Department, or its successor, showing the location of FB's optical fibers in City streets and rights-

of-way on a scale of 3,500 feet per inch or in whatever standard scale the City adopts for general use:

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

4.2.3 Good Engineering.

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

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

4.3 Facilities Placement.

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

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

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

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

4.3.5 Undergrounding. The City finds that overhead lines and aboveground wire facilities and installations in the streets or rights-of-way and other franchised areas adversely impact upon the public use and enjoyment of property in the City, including an aesthetic impact. Therefore, FB shall place underground all of its transmission lines that are located or are to be located above or within City streets or rights-of-way in the following cases where:

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

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

4.4 Coordination with Other Users. FB shall coordinate its activities with other utilities and users of City streets and rights-of-way scrupulously to avoid unnecessary cutting, damage or disturbance of such streets and rights-of-way and shall conduct its planning, design,

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

4.5 Relocation.

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

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

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

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

E. Any person requesting FB to remove or relocate its facilities shall give FB no less than forty-five (45) days advance written notice advising FB of the date or dates removal or relocation is to be undertaken; PROVIDED, that no advance written notice shall be required in emergencies or in cases where public health and/or safety or property is endangered.

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

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

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

4.6 Movement of Buildings. FB shall, upon request by any person holding a building permit, franchise or other approval issued by the City, temporarily remove, raise or lower its transmission or other wires appurtenant to the Telecommunications System to permit the movement of buildings. The expense for such removal, raising or lowering shall be paid by the person requesting the same and FB shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than three (3) business day's notice to FB for such temporary wire changes.

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

4.8 Restoration.

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

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

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

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

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

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

1. Require FB to repave an entire lane or greater affected area within any cut or disturbed location; and/or
2. Require FB to common trench with any other underground installation in City streets or rights-of-way, with cost sharing to be negotiated between the parties involved, or in the absence of agreement, as directed by the City in a non-discriminatory manner.

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

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

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

J. FB shall perform all restoration work promptly.

4.9 City Right to Require Removal of Property.

A. At the expiration of the term for which this Franchise is granted, providing no extension or renewal is granted by the City, or upon the forfeiture or revocation of this Franchise, as provided for in this Franchise, the City shall have the right to require FB to remove, at FB's sole expense, all or any part of the Telecommunications System from all City streets and rights-of-way within the Franchise Service Area, where the abandoned Facilities interfere with reasonable uses of City streets and rights-of-way. If FB fails to do so, the City may perform the work and collect the cost thereof from FB. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of FB effective upon filing of the lien with the Kootenai County Recorder.

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

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

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

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

4.11 City Right of Inspection. The City shall have the right to inspect and approve all installation, construction, alteration or maintenance work performed by FB within the Franchise Service Area and to make such tests as it deems necessary to ensure compliance with the terms and conditions of this Franchise and other pertinent provisions of law, the cost thereof to be paid solely by FB, but no action or inaction by the City shall create any duty or obligation by the City to inspect, test or approve any installation, construction, alteration or maintenance work

performed by FB. In addition, the City may require FB to furnish certification from a qualified independent engineer that FB's Facilities are constructed in accordance with good engineering practice and are reasonably protected from damage and injury.

4.12 After-Acquired Facilities. FB expressly acknowledges and agrees, by acceptance of this Franchise, that any Telecommunications System Facilities located within City streets or rights-of-way which are subsequently acquired by FB or upon addition or annexation to the City of any area in which FB retains or acquires any such Facilities (if acquired prior to this original Franchise grant) and which would have been subject to this Franchise and the permitting authority related thereto shall immediately be subject to the provisions of this Franchise and all permits related thereto.

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

SECTION 5 - SYSTEM DESIGN AND STANDARDS

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

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

SECTION 6 - CUSTOMER SERVICE POLICIES

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

6.2 Response to Customers. FB shall promptly respond to all requests from customers of the Telecommunications System for service, repair, installation, information or any

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

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

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

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

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

SECTION 7 - COMPENSATION AND FINANCIAL PROVISIONS

7.1 Fees.

7.1.1 Payment of Franchise Fee.

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

B. In the event the Franchise is revoked or otherwise terminated prior to its expiration date, the Company shall file with the City, within 90 days of the

date of revocation or termination, a verified revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise fees due up to the date of revocation or termination.

7.1.2 Other Fees.

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

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

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

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

7.3 Financial Records.

A. FB shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. The City shall have the right, as necessary or desirable for effectively administering and enforcing this Franchise, to inspect at any time during normal business hours upon thirty (30) days prior written notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by FB and/or any parent company of FB pursuant to the rules and regulations of the FCC, IPUC and other regulatory agencies, and other like materials FB and/or any parent company of FB which directly relate to the operation of this Franchise.

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

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

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

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

7.5 Insurance.

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

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

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

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

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

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

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

require additional insurance to be acquired by FB. Should the City exercise its right to require additional insurance, the City will provide FB with written notice.

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

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

7.7 Indemnity, No Estoppel, No Duty, Limitation of Liability.

A. FB shall, at its sole expense, protect, defend, indemnify and hold harmless the City, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the City from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising from FB's negligence or willful misconduct causing actual or alleged injury to persons or property, whether or not such property is physically damaged or destroyed; arising out of or alleged to arise out of any third party claim for damages for FB's invasion of privacy, defamation of any person, firm or corporation, or the violation or infringement of any third party copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of FB's failure to comply with any and all provisions of any applicable statute, regulation or resolution of the United States, State of Idaho or any local agency. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve FB from its duty of

defense against liability or of paying any judgment entered against such party. Notwithstanding any provision of this Section to the contrary, FB shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage or liability arises out of or in connection with negligent acts or omissions of the City.

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

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

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

E. NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES OR LOST PROFITS, TIME, SAVINGS, GOODWILL, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, ARISING FROM OR IN CONNECTION TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

SECTION 8 – REPORTING REQUIREMENTS

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

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

reasonable amendments to the forms as are required to ensure that all gross revenues are reported clearly and accurately.

8.2 Annual Reports. Not later than one hundred-twenty (120) days following City's written request, which shall not exceed one (1) time per calendar year, FB shall present, at its sole expense, a written report to the City which shall include:

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

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

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

D. Complete and accurate maps of the Telecommunications System including the location of Facilities.

E. A description of future plans by FB to expand or alter the Telecommunications System and/or expand or alter services provided over the Telecommunications System.

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

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

8.5 Communication with Regulatory Agencies. FB shall simultaneously file with the City a copy of each petition, application, tariff, report or any other communication related to the Telecommunications System transmitted by FB to, or received by FB from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate the

construction or operation of the Telecommunications System, including, specifically, the FCC and the IPUC. In addition, FB and its affiliates shall within ten (10) days of any communication transmitted by FB to, or received by FB from, any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement related to the Telecommunications System, provide the City a copy of the communication, whether specifically requested by the City to do so or not.

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

SECTION 9 – REMEDIES AND PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS

9.1 Remedies for Franchise Violations.

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

1. Drawing upon or foreclosing all or any part of any security provided under this Franchise, including without limitation the Faithful Performance Bond provided for under Section 7.6 herein; PROVIDED, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the violation or default. Should the City take such action as described herein, FB shall be responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs incurred by the City;
2. Commence an action at law for monetary damages or seek other equitable relief;
3. In the case of substantial violation or default, as determined by the City, of a material provision of this Franchise, declare this Franchise to be revoked;
4. Seek specific performance of any provision of this Franchise, which reasonably lends itself to such remedy, as an alternative to seeking damages.

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

9.2 Procedure for Remedying Franchise Violations.

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

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

A. Respond to the City contesting the assertion of noncompliance; or

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

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

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

9.4 Failure to Enforce. FB shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in FB's conduct.

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

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

SECTION 10 – MISCELLANEOUS PROVISIONS

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

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

Notices to the City shall be addressed to the following:

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

Notices to FB shall be addressed to the following:

Fatbeam, LLC
2065 W Riverstone Drive, Suite 202
Attn: Regulatory
Email: regulatory@fatbeam.com

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

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

10.5 Severability. If any section, subsection, sentence, clause, phrase or portion of this Franchise is for any reason declared by a court of competent jurisdiction to be void, invalid or unenforceable, such portion shall be deemed a separate, distinct and independent provision and such declaration shall not affect the validity of the remaining portions thereof. In such event,

the City and FB shall negotiate in good faith to modify this Franchise as may be necessary to meet the requirements of the law and/or to effectuate the intention of this Franchise. In the event that such modifications are barred by any legal requirements governing any party, the City and FB shall use their best efforts to otherwise avoid prejudice to the respective parties' interests and to implement changes to effectuate the intent in entering into this Franchise.

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

10.7 Force Majeure.

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

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

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

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

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

10.11 Franchise Ordinance Acceptance. FB shall execute and return to the City, within sixty (60) days after the date of adoption of the Franchise Ordinance by the Coeur d'Alene City Council, three (3) original Franchise Agreements, by which FB acknowledges that it has carefully read the terms and conditions of the Franchise Ordinance and accepts all of the terms and conditions of the Franchise Ordinance and this Franchise and agrees to abide by the same. In accepting this Franchise, FB shall indicate that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept this Franchise, that the Franchise Ordinance represents the entire agreement between FB and the City and that FB accepts all reasonable risks related to the interpretation of the Franchise Ordinance

and this Franchise. The executed Franchise Agreements shall be returned to the City accompanied by the Letter of Credit as required in Section 7.6 of this Franchise and evidence of insurance as required in Sections 7.5.1 and 7.5.2 of this Franchise. In the event FB fails to submit a Franchise Agreement as provided for herein, or fails to provide the required accompanying documents, this Franchise shall be null and void.

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

10.13 Effective Date. This Franchise and the Franchise Ordinance shall be effective after its adoption by the City Council, approval by the mayor, acceptance by FB and publication as required by law, and the prior agreement between the parties shall be deemed to be in effect until the effective date of this Franchise.

SECTION 11 – TRANSFER OF OWNERSHIP OR CONTROL

A. This Franchise shall not be assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

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

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

D. The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the

rights-of-way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Franchise.

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

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

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

H. Standards. The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Company shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Company.

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

PASSED BY THE CITY COUNCIL and signed and approved this 20th day of December, 2022.

CITY OF COEUR D'ALENE

FATBEAM, LLC

By _____
James Hammond, Mayor

By _____
_____, _____

ATTEST:

Renata McLeod, City Clerk

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, before me, a Notary Public in and for said State, personally appeared _____, known to me to be President of **Fatbeam, LLC**, the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named as Company and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its directors.

WITNESS my hand and official seal.

Dated this ____ day of _____, 2022.

Print Name: _____
NOTARY PUBLIC for the State of _____
residing at _____
My commission expires: _____

MEMORANDUM

DATE: DECEMBER 20, 2022

FROM: RENATA MCLEOD, MUNICIPAL SERVICES DIRECTOR

RE: AMENDMENT TO MUNICIPAL CODE SECTION 2.72.010 SETTING FORTH COUNCIL SALARIES.

DECISION POINT: To direct staff to prepare an Ordinance amending Municipal Code 2.72.010, setting Mayor and City Council salaries.

HISTORY: At the August 15, 2017, City Council meeting, Council approved an amendment to M.C. 2.72.010, increasing the City Council salary amount from \$750.00 to \$1,000 per month, with no increase to the Mayor's salary. Therefore, current salaries are \$1,000 per month for Councilmembers and \$2,700 for the Mayor. At that time Mayor Widmyer requested no increase to the mayoral salary. The Human Resources Department was able gather some updated information salary information for Mayor and Council positions attached as Exhibit "A." Additionally, it is AIC's recommendation that cities include all benefits within the compensation ordinance, which includes health, vision, dental, life insurance, HRA/VEBA, and PERSI as provided to other city employees, which is noted in the current code.

Idaho Code 50-203 states that Mayor and Council compensation shall be fixed by ordinance and published at least seventy-five (75) days before any general city election, which ordinance shall be effective for all said officials commencing on January 1 following said election. Therefore, once an ordinance is published and the increased wages will go into effect until January 1, 2024.

DECISION POINT: To direct staff to prepare an Ordinance amending Municipal Code 2.72.010, setting Mayor and City Council salaries at a specific dollar amount.

Exhibit “A”
 Fiscal Year 21-22 Information

Part-Time Mayor Comparables

City	2022 Salary
Moscow	\$ 2,119.70
Post Falls	\$ 2,056.53
Twin Falls	\$ 1,410.00
Hayden	\$ 1,320.00
Sandpoint	\$ 1,224.00

Average \$ 1,626.05

Coeur d'Alene - P/T \$ 2,700.00

*Lewiston changed from part-time mayor to strong mayor in 2021

Council Comparables

City	2022 Salary
Spokane	\$ 3,969.50
Boise	\$ 2,033.60
Meridian	\$ 1,266.67
Twin Falls	\$ 1,160.00
Pocatello	\$ 1,095.41
Idaho Falls	\$ 1,083.33
Caldwell	\$ 910.00
Post Falls	\$ 856.85
Moscow	\$ 703.28
Lewiston	\$ 734.93
Hayden	\$ 660.00
Sandpoint	\$ 408.00

Average \$ 1,240.13

City of Coeur d'Alene \$ 1,000.00