

**AGENDA**

**REGULAR CITY COUNCIL MEETING**

**March 27, 2017**

**5:30 p.m.**

**CITY HALL COUNCIL CHAMBER**

**313 COURT STREET**

**THE DALLES, OREGON**

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATIONS/PROCLAMATIONS

A. School District 21 Enterprise Zone Annual Report – Randy Anderson

6. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Five minutes per person will be allowed. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

7. CITY MANAGER REPORT
8. CITY ATTORNEY REPORT
9. CITY COUNCIL REPORTS
10. CONSENT AGENDA

Items of a routine and non-controversial nature are placed on the Consent Agenda to allow the City Council to spend its time and energy on the important items and issues. Any Councilor may request an item be “pulled” from the Consent Agenda and be considered separately. Items pulled from the Consent Agenda will be placed on the Agenda at the end of the “Action Items” section.

A. Approval of March 13, 2017 Regular City Council Meeting Minutes

**CITY OF THE DALLES**

*"By working together, we will provide services that enhance the vitality of The Dalles"*

11. CONTRACT REVIEW BOARD ACTIONS

- A. Authorization to Purchase Asphalt to be used for Street Maintenance Projects March 28 through June 30, 2017

12. ACTION ITEMS

- A. Authorization to enter into a Cost Recovery Agreement with US Forest Service for environmental studies in support of permitting related to the Dog River Pipeline Replacement Project
- B. Adopt Special Ordinance No. 17-575 Granting a Non-Exclusive Franchise to Zayo Group, LLC to Construct a Fiber Based Service Facility

13. DISCUSSION ITEMS

- A. Alternate Routes for the Riverfront Trail

14. ADJOURNMENT

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This meeting conducted in a handicap accessible room.

Prepared by/  
Izetta Grossman  
City Clerk

**City of The Dalles, Oregon  
and  
Wasco County, Oregon**

**North Wasco County School District 21 - Project funding per IGA dated May 8, 2014**

For the payment of \$240,000 to be received in the 2017-18 school year, the District's plan for the use of annual project fee is as follows:

Repayment to the District's General Fund for qualified expenditures in anticipation of the annual project fee.

Expenses related to High School mascot change.

1	Uniform replacements <sup>1</sup>	\$ 43,764.03
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Proposed expenses relating to curb appeal projects.

1	Replace window coverings in all schools with MechoShade roller screens for solar protection as well as privacy screening	<u>196,235.97</u>
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\$240,000.00

<sup>1</sup> Soccer (boys)	\$ 612.38
Basketball (girls)	8,414.16
Cross Country	1,185.57
Soccer (girls)	4,695.42
Softball	6,234.90
Baseball	7,049.70
Track (boys)	7,309.40
Track (girls)	<u>8,262.50</u>
	<u>\$ 43,764.03</u>



Randal Anderson, Chief Financial Officer  
March 27, 2017



## AGENDA STAFF REPORT

**AGENDA LOCATION:** Item #10 A

**MEETING DATE:** March 27, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Izetta Grossman, City Clerk

**ISSUE:** Approving items on the Consent Agenda and authorizing City staff to sign contract documents.

- A. **ITEM:** Approval of the March 13, 2017 Regular City Council Meeting Minutes.

**BUDGET IMPLICATIONS:** None.

**SYNOPSIS:** The minutes of the March 13, 2017 Regular City Council meeting have been prepared and are submitted for review and approval.

**RECOMMENDATION:** That City Council review and approve the minutes of the March 13, 2017 City Council meeting.

MINUTES  
REGULAR COUNCIL MEETING  
OF  
March 13, 2017  
5:30 p.m.

THE DALLES CITY HALL  
313 COURT STREET  
THE DALLES, OREGON

**PRESIDING:** Mayor Stephen Lawrence

**COUNCIL PRESENT:** Russ Brown, Tim McGlothlin, Taner Elliott, Linda Miller, Darcy Long-Curtiss

**COUNCIL ABSENT:** None

**STAFF PRESENT:** City Manager Julie Krueger, City Attorney Gene Parker, City Clerk Izetta Grossman, Finance Director Angie Wilson, Planning Director Steve Harris, Public Works Director Dave Anderson, Police Chief Patrick Ashmore, Human Resources Director Daniel Hunter, Assistant to the City Manager Matthew Klebes

**CALL TO ORDER**

The meeting was called to order by Mayor Lawrence at 5:30 p.m.

**ROLL CALL**

Roll call was conducted by City Clerk Grossman, all Councilors present.

**PLEDGE OF ALLEGIANCE**

Mayor Lawrence invited the audience to join in the Pledge of Allegiance.

**APPROVAL OF AGENDA**

It was moved by Elliott and seconded by Long-Curtiss to approve the agenda as submitted. The motion carried unanimously.

## **PRESENTATIONS/PROCLAMATIONS**

### **Historical Landmarks Commission Annual Report – Dawn Hert, Senior Planner**

Senior Planner Hert reviewed the staff report.

Hert gave tribute to Sallie Donovan who passed away in November. Hert said most of the historic documents in the Planning Department have Mrs. Donovan's name on them. Hert reported that Mrs. Donovan wrote the National Historic Inventories, the Historic Design Guidelines and the Pioneer Cemetery Preservation Plan. She said that during her 20 years with the department Mrs. Donovan had been the one to call when it came to historic preservation questions and also provided staff with countless of research and assistance as a volunteer.

Hert said that Mrs. Donovan's husband Bruce shared that "Sallie grew to enjoy The Dalles Pioneer Cemetery projects the most." Hert said considering that she worked all over the states of Oregon and Washington, that statement is great compliment to our community and its preservation efforts at our historic cemetery.

Mayor Lawrence asked if there were rules governing the Certified Local Government designation.

Hert said there were education requirements for the commissioners. She said three of the five commissioners had to meet those qualifications and that every five years we have to provide resumes for the new commissioners.

### **D21 Volunteer Recognition – Rymmel Lovell**

Mayor Lawrence presented Rymmel Lovell with a volunteer of the month certificate of recognition for spearheading the School Museum that is located on the Wahtonka Campus. He thanked her for her dedication to the project. He said she freely shares her wealth of information on each item during tours.

Ms. Lovell thanked Joy Krien for her work on the project and presented Ms. Krien with plant. She said the museum was open May through September.

## **AUDIENCE PARTICIPATION**

Jerry Rodder, homeless advocate said he was back from Florida and was working with a group who were looking to develop a homeless shelter.

Mayor Lawrence said they should work with the Planning Department. He said Councilor McGlothlin

was working on a task force regarding the homeless issue.

### **CITY ATTORNEY REPORT**

City Attorney Parker reported there had been activity on the Granada Block property. He said there would be an executive session at the March 21 Urban Renewal Board meeting.

### **CITY COUNCIL REPORTS**

Councilor Brown said he was concerned about the plan to pave Seventh Street. He said he believed there were less expensive fixes to the surface.

Public Works Director Anderson said the street had no base and the snow this winter had deteriorated it to the point that it would not hold a chip seal. He said the street would have higher traffic with the upcoming work on Sixth Street and the future development planned for the area.

It was the consensus of the Council to have Anderson bring back alternatives to the maintenance of Seventh Street.

Councilor Long-Curtiss reported on attending:

- Gorge Commission Listening Session
- Senator Merkley's Town Hall and Elected Official meeting prior to the town hall
- League of Oregon Cities conference call regarding legislation
  - Franchise Fee bill – 5% cap
  - Enterprise Zone bill – no hearing set
  - Transient Room Tax – The Dalles hadn't turned in the survey
  - Recreational Immunity – League was cautiously optimistic
  - Urban Renewal change - opposed

Councilor Miller reported on attending the Hazardous Waste Committee strategic planning.

Mayor Lawrence reported on attending:

- Senator Merkley's Town Hall
- Dry Hollow Elementary 4<sup>th</sup> Grade – gave the students City of The Dalles pencils
- Port of The Dalles meeting regarding a possible salmon smoking business in the Port

### **Authorize Mayor to sign letter regarding Gorge 2020 Management Plan**

Councilor Long-Curtiss noted that Mid-Columbia should be capitalized.

It was moved by Elliott and seconded by Miller to authorize the Mayor to sign the letter to the Gorge Commission with the noted correction. The motion carried unanimously.

### **CONSENT AGENDA**

It was moved by Brown and seconded by Elliott to approve the Consent Agenda as presented. The motion carried unanimously.

Items approved by Consent Agenda were: 1) Approval of February 27, 2017 Regular City Council Meeting Minutes; 2) Approval of Resolution No. 17-009 Concurring with Mayor's Appointments to Various Committees.

### **CONTRACT REVIEW BOARD ACTIONS**

#### **Adoption of Resolution No. 17-008 Approval of Sole Source Purchase of Tasers through the TASER Assurance Plan**

City Attorney Parker reviewed the staff report. He said no comments were received.

Mayor Lawrence noted that Section 2 of the Resolution in the packet had read "Urban Renewal Agency", and that had been corrected to "City of The Dalles City Council" on the Resolution he would be signing.

It was moved by Miller and seconded by Elliott to adopt Resolution No. 17-008 Approval of Sole Source Purchase of Tasers through the TASER Assurance Plan. The motion carried unanimously.

### **ACTION ITEMS**

#### **Authorization to enter into Intergovernmental Agreement with ODOT to profile and pave East Second Street from the Boat Basin overpass through the roundabout in conjunction with an ODOT project on East Second Street that extends to Hwy 197**

Public Works Director Anderson reviewed the staff report.

Councilor Miller asked how much of the shift at the roundabout was caused by the transformer move.

Anderson said there had been significant shifting prior to the transformer move through the roundabout. He noted that the design is slightly slanted to allow for runoff.

It was moved by McGlothlin and seconded by Brown to authorize the Intergovernmental Agreement with ODOT for the re-paving of East 2nd Street from the Boat Basin overpass through the roundabout, and authorize staff to enter into a Fund Exchange Agreement with ODOT to accept funds provided under the Surface Transportation Program in an amount equal to the actual cost of the project. The motion carried unanimously.

Approve Small Grants to Non-Profits for fiscal year 2017-18

City Manager Krueger reviewed the staff report.

Councilor Long-Curtiss noted that the spreadsheet didn't reflect a total funding of the Youth Empowerment Shelter request. She said if it was the intent to fully fund the request, the total would be \$19,848.

In response to a question City Manager Krueger said the budgeted amount was \$25,000. She said the unused funds would be returned to the General Fund.

It was moved by Long-Curtiss and seconded by Elliott to approve the small grant requests as submitted. The motion carried unanimously.

**ADJOURNMENT**

Being no further business, the meeting adjourned at 6:24 p.m.

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Submitted by/  
Izetta Grossman  
City Clerk

SIGNED: \_\_\_\_\_  
Stephen E. Lawrence, Mayor

ATTEST: \_\_\_\_\_  
Izetta Grossman, City Clerk



## AGENDA STAFF REPORT

### AGENDA LOCATION: Contract Review Board Item #11-A

**MEETING DATE:** March 27, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

**ISSUE:** Authorization to purchase asphalt for street maintenance projects

**BACKGROUND:** The Public Works Department solicits quotes from the two local asphalt suppliers twice annually, the first time in the spring for pricing through June 30 and the second time for pricing from July 1 through the fall. Hot mix asphalt is then purchased from the lowest cost supplier, considering distance from the project and associated hauling costs, that is available when projects are undertaken. There are several reasons that a plant may be unavailable when a project is undertaken – it could be committed to supplying another customer, it could be making a different asphalt mix than is needed for our project, it could be off-line for maintenance or repairs, it may only initiate operations for quantities greater than those used in a project, or it may not be open yet for the season or has closed for the winter.

The quotes received from the two local suppliers covering the first part of the 2017 construction season through June 30<sup>th</sup> were as follows.

<i>Mix type</i>	<i>Granite Construction</i>	<i>Munsen Paving</i>
Oregon ¾" Dense Graded	NA	\$59.00/ton
Oregon ½" Dense Graded, oil 6.0%	NA	\$61.00/ton
Oregon ½" Dense Graded, oil 5.5%	\$57.00/ton	\$59.00/ton
Oregon ⅜" Dense Graded	\$59.00/ton	\$60.00/ton

For FY 2016/17, \$580,511 was budgeted in the Street Fund for purchases of asphalt. In addition, the Water and Wastewater Funds each budgeted \$10,240 and \$19,200 respectively for purchase of asphalt for patching of utility trench cuts. Thus far, \$136,360 has been spent from the Street Fund leaving a balance of \$444,151. The Water Fund has expended \$3,094 leaving a balance of \$7,146. The Wastewater Fund has expended \$5,370 leaving a balance of \$13,830.

**BUDGET IMPLICATIONS:** If approved, it is projected that \$444,151 will be spent from Fund 5, the Street Fund, budget lines 005-0500-000.60-87 and 005-0500-000.75-10, \$5,370 from Fund 51, the Water Fund, budget line 051-5100-000.60-87, and \$13,830 from Fund 55, the Wastewater Fund, budget line code 055-5500-000.60-87, to purchase hot-mix asphalt for street maintenance and trench patching projects between March 27 and June 30, 2017. There are adequate funds budgeted for these purposes.

**COUNCIL ALTERNATIVES:**

1. Staff recommendation: *Move to authorize the purchase of hot-mix asphalt as needed for street maintenance from the lowest-cost supplier available at the time of the projects in an amount not to exceed \$463,351.*
  
2. Deny authorization to purchase the hot-mix asphalt and provide additional direction to staff.



## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #12-A

**MEETING DATE:** March 27, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

**ISSUE:** Authorization to enter into a Cost Recovery Agreement with US Forest Service for studies in support of environmental permitting for the Dog River Pipeline Replacement Project

**BACKGROUND:** One of our largest and most important projects in the City's Water Capital Improvement Plan (CIP) is the replacement of the Dog River Diversion Pipeline. On November 14, 2016, City Council indicated its general support for entering into a Cost Recovery Agreement with the US Forest Service for the completion of additional studies in support of the environmental permitting process for the project; attached is a copy of the Agenda Staff Report from that meeting to provide background on this issue. These analyses are necessary to address public comments received about flows in Dog River downstream of the City's intake and potential effects of the project on Threatened and Endangered Species that may be present. The analyses will also be necessary to support the consultation that the Forest Service must conduct with NOAA Fisheries related to any environmental decisions.

The Forest Service has developed a scope of work for these studies, issued an RFP to its list of pre-qualified consultants, and received and is completing its evaluations of the three proposals received. It plans to finalize a Cost Recovery Agreement for the City's consideration early in the week of March 17<sup>th</sup> at which time copies of the proposed Cost Recovery Agreement will be distributed to Council for review prior the meeting. The information received thus far indicates that two of the three proposals received were fairly close in cost and near the lower end of the estimates provided to City Council in November.

**BUDGET IMPLICATIONS:** Within Fund 53, the Water Reserve Fund, line 053-5300-000.75-10, there is a total of \$2,480,522 allocated in the current year for this project; the budget is on-track to have \$4,000,000 in cash available for the project at time of design and construction. There are adequate funds budgeted for the project in the current year to pay for the additional studies though a Cost Recovery Agreement with the Forest Service if desired.

**COUNCIL ALTERNATIVES:**

1. Staff Recommendation: *Move to authorize the City Manager to sign the Cost Recovery Agreement with the US Forest Service for completion of studies needed in support of the environmental permitting for the Dog River Diversion Pipeline Replacement Project.*
2. Deny authorization of the Cost Recovery Agreement and direct staff to develop and issue an independent RFP for environmental consulting services to conduct the needed analyses.

## AGENDA STAFF REPORT

### AGENDA LOCATION: Discussion Item

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

**ISSUE:** Update on status of environmental permitting for the Dog River Pipeline Replacement Project

**BACKGROUND:** One of our largest and most important projects in the City's Water Capital Improvement Plan (CIP) is the replacement of the Dog River Diversion Pipeline. A copy of the Budget Issue Paper #16-022 is attached to provide detailed background on the project. This report will provide an update on the project including a description of additional permitting work that is needed, an update on anticipated associated permitting expenditures, and a revised project schedule.

The Forest Service conducted public scoping for the project in April/May 2016. Due to the substance of some of the public comments received through that process, additional environmental analyses will need to be conducted as part of the permitting process. These analyses are necessary to address the comments received about flows in Dog River downstream of the City's intake and potential affects of the project on Threatened and Endangered Species that may be present. The analyses will also be necessary to support the consultation that the Forest Service must conduct with NOAA Fisheries related to any environmental decisions. The Forest Service does not have the staff resources to do the additional analyses in-house, nor does the City have the expertise on staff to do so. However, the Forest Service does have a contracting method available to them to hire pre-approved specialists to do the work and the City would need to reimburse the Forest Service for this work through a new Cost Recovery Agreement. This process can be initiated fairly quickly and would minimize delays to the project schedule when compared to the alternative of the City developing a scope of work, issuing an RFP and awarding a contract, and then working as the middle-man to coordinate communications

and study review between a consultant and the Forest Service. Working with pre-approved Forest Service consultants would help ensure an efficient project in that the consultants are experienced in working with the Forest Service and conducting the required analyses using the methodologies appropriate to federal agency standards. It seems likely that the City would have to pay about the same amount as the Forest Service to hire these specialists if we issued our own contract and we may spend more money trying to finalize the product to meet federal requirements and needs.

To utilize the Forest Service contracting method, they need to develop a scope of work specific to the Dog River Pipeline project. They would then solicit quotations from their list of approved specialists. The catch is that to formally solicit quotations, their rules require that the funding be committed in advance. It would be difficult for the City to commit funding without knowing how much money would be required. To get around this challenge, the Forest Service is proposing to conduct a “pre-solicitation” to get a good estimate of costs; these pre-solicitation “bids” would be good for 60 days. They would be willing to initiate this pre-solicitation process if the Council is supportive of the concept, understanding that actual approval of the ultimate Cost Recovery Agreement with identified costs would require future Council action.

In an attempt to help understand the potential costs involved, Forest Service staff has reviewed the costs of some recent similar work they have undertaken. Some of that information indicates that the costs for the needed analyses may be around \$45,000 per study; two additional studies are needed, one for stream flows and one for T&E Species. That would mean that about \$90,000 may be needed for the contracted specialists to conduct the needed analyses. There is also information from other work the Forest Service has completed that indicates these costs may be 50% - 100% low; the costs could be closer to \$180,000 for the studies. The Cost Recovery Agreement would also include expenses to cover the time that Forest Service staff will need to spend reviewing the studies and providing feedback to the specialists, as well as time needed for consultations with NOAA Fisheries.

While these potential costs are higher than we were hoping to have to spend, City staff does not believe that issuing an independent contract is a better option. The project team (including both City and Forest Service staff) believes that the project will be best served using the Forest Service contracting option. This method will be better able to effectively manage the scope of work, deliver the analyses faster, and we believe that the findings will be better able to be defended by the federal agencies if they are challenged.

It may also be helpful to review the recent experiences from City of Bend as they sought to permit a new pipeline on Forest Service properties. They originally estimated \$250,000 for the environmental permitting but ended up spending over \$800,000 on permitting support and \$500,000 in legal fees defending the permit they received. To date, we have committed less than \$76,000 to the Forest Service for permitting efforts. By utilizing the Forest Service contracting option, we hope to conduct a series of analyses robust enough to support consultation with NOAA Fisheries and withstand potential challenges.

With the need to conduct these additional analyses and consult with NOAA Fisheries, the schedule for obtaining an environmental decision has slipped to about June 2017. If the

decision is not challenged, the City could issue an RFP for design of the pipeline in the summer of 2017, complete the design in the fall and early winter of 2017, and hopefully bid the project soon enough for construction to begin in the 2018 construction season.

**BUDGET IMPLICATIONS:** Within Fund 53, the Water Reserve Fund, line 053-5300-000.75-10, there is a total of \$2,480,522 allocated in the current year for this project; the budget is on-track to have \$4,000,000 in cash available for the project at time of design and construction. There are adequate funds budgeted for the project in the current year to pay for the additional studies though a Cost Recovery Agreement with the Forest Service if desired.

**COUNCIL ALTERNATIVES:**

1. Staff Recommendation: No formal action is required at this time. However, staff is seeking direction from Council to proceed with the Forest Service contracting option.
2. Direct staff to develop and issue an independent RFP for environmental consulting services to conduct the needed analyses.



## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #12-B

**MEETING DATE:** March 27, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Gene Parker, City Attorney

**ISSUE:** Adoption of Special Ordinance No. 17-575 Granting a Non-Exclusive Franchise and Right to Zayo Group, LLC to Construct, Operate and Maintain a Fiber-Based Service Facility, and Declaring an Emergency

**BACKGROUND:** Several months ago, Zayo Group, LLC (“Zayo”) contacted City staff requesting that the City consider granting a franchise for the installation of a fiber-based service facility in The Dalles. Zayo has provided a map showing the location of the fiber-based conduit which will start on the west side of the City and continue to the east side. Enclosed with this staff report is proposed Special Ordinance No. 17-575 to grant the request for a franchise. This franchise includes the same provisions which were included in a recent franchise granted to LSN Networks. The franchise ordinance proposed for Zayo includes an emergency clause, which was included at the request of Zayo, as they desire to get their fiber system installed in a portion of West 6<sup>th</sup> Street, which is scheduled to undergo reconstruction in the first part of May.

The proposed franchise for Zayo sets the franchise fee at 7% of their gross income. In reviewing other franchise agreements between Zayo and other cities, the City learned that one city drafted the franchise fee to be calculated at the rate of 6% of gross income, or a minimum of \$3,000 annually, whichever amount was greater. In conversations with representatives from Zayo, they project that, based upon revenue to be received from their expected initial customers; the amount of the franchise fee would exceed a minimum of \$3,000. The Zayo representatives requested that they be treated in the same manner as other telecommunications companies who have franchises with the City. Since the City has set the franchise fee at 7% of gross income for other telecommunication franchises, staff believes that the ordinance with Zayo should establish the franchise fee at 7% of gross income.

Notice of adoption of the proposed ordinance has been posted in accordance with the City

Charter, and the ordinance can be adopted by title only.

**BUDGET IMPLICATIONS:** At this time, staff does not know exactly how much the franchise fee to be collected from Zayo will be. As noted above, it is anticipated the amount should exceed the sum of \$3,000 during the initial part of the franchise term.

**COUNCIL ALTERNATIVES:**

1. Staff recommendation: *Move to adopt Special Ordinance No. 17-575 by title only.*
2. If the Council desires to amend any language in the proposed ordinance, it should identify that language. If the proposed amendments do not substantively change the ordinance and are agreeable to Zayo, the Council can have the amended language read in full, and then move to adopt the ordinance as amended by title only. If the proposed changes require further negotiation with Zayo, the staff can discuss the requested changes with Zayo and then bring the amended ordinance back to the Council at a future meeting.

**SPECIAL ORDINANCE NO. 17-575**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ZAYO GROUP, LLC, TO CONSTRUCT, OPERATE AND MAINTAIN A FIBER-BASED SERVICE FACILITY; TO OCCUPY CITY RIGHTS OF WAY AND PROVIDE FIBER-BASED SERVICES IN THE CITY OF THE DALLES; AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of The Dalles has determined that the financial, legal, and technical ability of Zayo Group, LLC is reasonably sufficient to provide fiber-based services, facilities, and equipment necessary to meet the telecommunications needs of the community;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:**

**Section 1. Definitions.**

A. **Rights-of-Way:** The present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including Rights-of-Way held in fee, or by virtue of an easement or dedication.

B. **“Facilities” or “Fiber-based Service Facilities”** means the conduits, cables, equipment, appliances, poles, wires, fibers, fixtures, underground lines, manholes and appurtenances thereto, including other technical facilities or buildings necessary for the purpose of providing fiber-based voice, video and data services.

**Section 2. Franchise Granted.**

A. There is hereby granted by the City of The Dalles, hereinafter referred to as “City,” to Zayo Group, LLC, a Delaware limited liability company, hereinafter referred to as “Grantee”, their successors and assigns, hereinafter each referred to as “Franchisee,” the nonexclusive right and privilege to place, erect, lay, maintain and operate in, upon, over and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City, conduit and fiber optic cable for the purpose of providing fiber-based voice, video and data services. Such conduit and fiber optic cable may be laid underground by the Franchisee, its successors and assigns.

B. The scope of this grant allows the installation, maintenance and repair of the conduit and fiber optic cable installed by Grantee in the City’s rights-of-way to provide fiber-based voice, video and data services. In the event the Grantee intends to provide services other than fiber-based voice, video and data services, Grantee shall be required to obtain an additional or revised franchise from the City to the extent required by law.

C. Notwithstanding the foregoing, the City Manager or his/her designee shall have the authority to designate which public ways will be used and the location of the conduit and fiber optic cable within the public way as may be reasonably necessary to minimize public inconvenience.

**Section 3. Excavations and Construction; Relocation of Facilities.**

A. It shall be lawful for Franchisee to make all needful excavations in any street, alley, avenue, thoroughfare, public utility easement and public highway, in the City where excavation has been authorized for the purpose of placing conduit and fiber optic cable, or repairing, renewing or replacing the same. A “Public utility easement” means the space in, upon, above, along, across, over, or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utility facilities. A “Public utility easement” does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City. The authority granted in this section shall apply only to the extent of the City’s right, title, interest or authority to grant a franchise to occupy and use such spaces for Franchisee’s telecommunications facilities. Said work shall be done in compliance with state and federal laws, as well as local rules, regulations, ordinances or orders, which may during the continuance of this Franchise be amended from time to time by the City.

B. Franchisee shall obtain from the City all applicable permits, which will require plan submittal, approval, and the payment of fees before work begins. The Franchisee shall file with the City maps showing the location of any construction, extension, or relocation or any of the facilities of the Franchisee and shall obtain the City’s approval of the location and plans prior to the commencement of the work. All Fiber-based Service Facilities installed by the Franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, bridges, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, bridges, or other public ways or places. Except as provided herein, if the removal or relocation of Fiber-based Service Facilities is caused directly by an identifiable development of property and the removal of such Facilities occurs within the area to be developed, is made for the convenience of a customer, Franchisee may charge the expense of removal or relocation to the developer or customer. Franchisee shall be solely responsible for enforcing collection from the developer or customer. If the removal or relocation of Facilities results from the City’s request, the Franchisee shall receive 120 days written notice from the City, and such notice will indicate the basis for such removal or relocation being either from the necessity of the (i) construction, repair, maintenance, installation of any City or other public improvement in or upon the City’s public Right-of-Way; (ii) operations of the City or other governmental entity in or upon the public Right-of-Way, or (iii) public interest. In such case, Franchisee will remove or relocate its Facilities at Franchisee’s expense.

C. Unless approved by the City, no newly overlaid street or newly constructed street shall be excavated by the Franchisee for a period of ten years from the time of completion of the street overlay or the street constructed. In the event that moling, boring, or shoulder work are not feasible to repair a system failure or construct system improvements, at Franchisee's request, the City will consider approval of a street cut prior to the ten (10) year moratorium described in this section.

D. When any excavation is made by the Franchisee, the Franchisee shall promptly restore the affected portion of the street, bridge, easement area, or public place to the reasonably same or better condition in which it was prior to the excavation. The restoration shall be done in compliance with City specifications, requirements, and regulations in effect at the time of such restoration. If the Franchisee fails to restore promptly the affected portion of the street, bridge, easement area, or public place to the same condition in which it was prior to the excavation, the City may make the restoration; and the reasonable costs of making the restoration, including the cost of inspection, supervision, and administration shall be paid by the Franchisee.

#### **Section 4. Construction and Performance Bond.**

Prior to the commencement of any construction work by the Franchisee, the Franchisee shall file both a construction and performance bond in an amount approved by the City in favor of the City and any other person who may suffer damages as a result of the breach of any duty by the Franchisee assured by such bond. Such bond as contemplated herein shall be in a form approved by the City and shall, among other matters, cover the cost of removal of any property of Franchisee. In no event shall the amount of said bond be construed to limit the liability of the Franchisee for damages. The City, at its sole option, may waive this requirement, or permit the consolidation of the construction bond with the performance bond. The Franchisee, pursuant to this chapter, shall also maintain in full force and effect public liability insurance in an amount specified by the City, see Section 14.

#### **Section 5. Improvements – Utility Obstruction Prohibited.**

The City reserves the right to construct, install, maintain, and operate any public improvement, work or facility, to do any work that the City may find desirable on, over, or under any street, bridge or public place, and to vacate, alter or close any street, bridge or public place. Nothing in this chapter shall be construed in any way to prevent the proper authorities of the City from installing sanitary sewer or storm sewer facilities, providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City in or upon which the Fiber-based Service Facilities of Franchisee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said Facilities, and the moving of the Franchisee's Facilities, where required due to such work by the City, will be done by Franchisee within 120 days of notice by the City without cost to the City. The Franchisee shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its conduits or fiber optic cable in the area involved in such proposed work.

**Section 6. Emergency Removal and Alternate Routing of Facilities.**

If, at any time, in case of fire, disaster, or other threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the Fiber-based Service Facilities installed by the Franchisee, such cutting or moving may be done. Any repairs rendered necessary thereby shall be made by the Franchisee, at its sole expense, provided that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City.

**Section 7. Compliance with Laws, Rules and Regulations.**

At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of The Dalles, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of The Dalles and to such reasonable regulations of general applicability as the City may from time to time hereafter, by resolution or ordinance, provide insofar as such regulations or ordinances do not materially alter or impair the express provisions of this Franchise. No provision of this Franchise shall be construed as a waiver of local, state or federal law, or as a limit of liability. Franchisee shall at all times keep and maintain all of its Fiber-based Service Facilities in a good state of repair and shall at all times conduct its operations under this Franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City. The location, construction, extension, installation, maintenance, removal and relocation of the Facilities of the Franchisee shall conform to the requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and such reasonable specifications in force at the time of such work, as the City may from time to time adopt. All installations, re-arrangements, removals, lowering or raising of the Fiber-based Service Facilities shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinances of the City. The City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

**Section 8. Sale of Subscriber Lists Prohibited.**

The Franchisee shall not sell, or otherwise make available, any list which identifies subscribers by name or address, to any person, agency or entity, except as needed to maintain current services or implement new services to subscribers in connection with Franchisee's services.

**Section 9. Payment, Franchise Term.**

Effective March 27, 2017 and until the Franchise's expiration, which is March 27, 2027, Franchisee shall pay to the City quarterly, as specified below, 7% percent of gross revenues as defined below. This Franchise shall be automatically extended for an additional term of five (5) years from the expiration date set forth in this Section, unless either party notifies the other in writing of its desire to not exercise this automatic extension at least three (3) years before the expiration of this Franchise.

A. Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 30 days after such dates. This Franchise Fee shall be deposited in the U.S. Mail, postage prepaid addressed to the Finance Director of the City and postmarked on the due date described herein.

B. If a payment is not mailed or sent electronically within 30 days of the due date set forth above, the payment shall be deemed delinquent and shall accrue a late fee of 9% interest per annum until collected.

C. "Gross Revenues" mean any revenue derived by the Franchisee from the provision of fiber-based voice, video and data services, consistent with federal and state law. However, such phrase shall not include: (1) any tax, fee or assessment of general applicability imposed on customers and collected by the Franchisee from customers for pass-through to a government agency; and (2) unrecovered bad debt; (Franchisee shall report Gross Revenues to the City using the accrual method of accounting, and maintain its books and records consistent with Generally Accepted Accounting Principles ("GAAP"). Nothing in this Section shall impair the City's ability to challenge Franchisee's interpretation of GAAP.

**Section 10. Abandonment.**

If the Franchisee goes out of business or withdraws service from the area and as a consequence refuses to renew the Franchise, or abandons all or any portion of its Fiber-based Service Facilities, unless the City gives written permission to the Franchisee to abandon in place, all Fiber-based Service Facilities installed or used by Franchisee under this Franchise shall be removed by Franchisee at Franchisee's expense and the public right-of-way upon which the Facilities were installed shall be restored by Franchisee at its expense to the condition it was in before installation. Until such time as Franchisee removes the Facilities or portion thereof, or the rights to and responsibility for the Facilities are accepted by another person having authority to construct and maintain such Facilities, Franchisee shall be responsible for all necessary repairs and relocations of the Facilities, in the same manner and degree as if the Facilities were in active use, and Franchisee shall retain all liability for the same. In the alternative, the City may elect to take ownership and control of the abandoned facilities and equipment, in which case the City shall have all rights to the use of the facilities and equipment and may sell, lease or otherwise use the facilities and equipment at its sole discretion.

**Section 11. Other Fees and Charges.**

Nothing in this chapter shall give the Franchisee any credit against any business tax or business license fee, or any ad valorem property tax now or hereafter levied against real property or personal property within the City, or against any local improvement assessments levied on the Franchisee's property.

**Section 12. Reporting of Funds.**

With each Franchise Fee payment, the Franchisee shall furnish a sworn statement or declaration under oath from the Chief Finance Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the calculation of the Franchise Fee paid, and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Franchisee in calculating the Franchise Fee. The City Manager of the City may require the Franchisee to provide any additional information reasonably necessary for administration of the Franchise Fee. The Franchisee shall keep available and open to inspection by the City Manager of the City, all accounts, books, and other records reasonably necessary for ascertaining the Franchise Fee. Franchisee shall provide any additional information requested by the City within 48 hours of any such request delivered to Franchisee, to be produced at The Dalles City Hall, office of the City Manager, during regular office hours. In the event that an audit of the Franchise Fee payments results in a determination that an additional payment is due to the City, such additional payment shall be subject to interest at the rate of 9% percent per annum from the date the original payment was due. If the additional payment amount exceeds five percent (5%) of the amount reported, Franchisee shall reimburse City for all audit costs.

**Section 13. Indemnification and Insurance Requirements.**

A. Franchisee shall pay, save harmless, defend and indemnify the City from any loss or claim against the City on account of, or in connection with, any activity of Franchisee in the construction, operation, or maintenance of its Facilities. The Franchisee will not be required to indemnify the City for the negligent or willful misconduct of the City or its officials, boards, commissions, agents or employees.

B. The Franchisee shall, for the purposes of carrying out the provisions of this section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the Franchise Certificate of Insurance evidence thereto with the City Attorney, good and sufficient policies covering:

- 1) Worker's Compensation Insurance as required by the State of Oregon including Employers Liability with limits not less than \$1,000,000; Franchisee shall ensure that each of its sub-contractors complies with these same requirements and shall contain a Waiver of Subrogation against the City: and
- 2) Commercial General Liability Insurance with limits of at least \$5,000,000 per occurrence and \$5,000,000 general aggregate, with the aggregate on a Per Project basis; and
- 3) Business Automobile Liability Insurance, for any owned, hired or non-owned vehicles used in the performance of this agreement with combined single limits of \$1,000,000 each accident.

C. The City of The Dalles, its officers, agents, and employees, shall be named an Additional Insured in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.

D. Upon any material alteration or cancellation of any of the coverage, the Franchisee shall give the City notice as allowed per insured's insurance policy in advance of the effective date of the alteration or cancellation of the coverage.

E. Each policy, Commercial General Liability, Auto Liability and Workers' Compensation, shall contain a waiver of subrogation against the City.

**Section 14. Continuation.**

The rights, privileges and franchise herein granted shall continue and be in force until March 27, 2027, except that it is understood and agreed that either party may at any time terminate or renegotiate this agreement upon six months' notice in writing.

**Section 15. Forfeiture and Remedies.**

In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, subject to 45 day right to cure, and all of the Franchisee's rights arising thereunder in the event that Franchisee violates any material provision of the Franchise including, but not limited to, failing to pay or any suspension of Franchisee's payments of Franchise Fees to the City under this Franchise, failure by Franchisee to submit timely reports regarding the calculation of its Gross Revenues-based Franchise Fees to the City, failure to maintain the liability insurance and/or bonds required under this Franchise, or failure to comply with all other state, federal or local laws as set forth in this Franchise. All remedies and penalties under this chapter, including termination of the Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this chapter, including termination of the Franchise, are not exclusive, and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this Ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this chapter or acceptance of any payment due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation itself.

**Section 16. Bonds and Other Surety.**

Except as expressly provided herein in Section 4, Franchisee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence at the time this Franchise is granted. The City acknowledges that the legal, financial, and technical qualifications of Franchisee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. In the event that an additional bond or surety is required in the future, the City agrees to give the Franchisee at least ninety (90) days

prior written notice thereof stating the exact reason for the requirement and the amount. Such reason must demonstrate a change in the Franchisee's legal, financial, or technical qualifications that would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

**Section 17. Severability.**

In the event any of the provisions of this Franchise are deemed to be void, invalid or unenforceable, that provision shall be severed from the remainder of this Franchise so as not to cause the invalidity or unenforceability of the remainder of this Franchise. All remaining provisions of this Franchise shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope and breadth, such provisions shall be deemed valid to the extent of the scope and breadth permitted by law.

**Section 18. Successors and Assigns.**

This Franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors and assigns. Franchisee, however, shall not make any assignment without the written consent of the City, and any assignment made without the City's consent shall be null and void; provided, however, that nothing in this Franchise requires the City's consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that control, are controlled by, or under the common control of the Franchisee.

**Section 19. Franchise Nonexclusive.**

This Franchise is not exclusive and shall not be construed as a limitation on the City in granting rights, privileges and authority to other persons similar to, or different from, those granted by this chapter, or in constructing, installing, maintaining or operating any City-owned public utility. In the event the City enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Franchisee to enter into the City's streets and public ways for the purpose of providing Fiber-based Services including voice, video and data services, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

**Section 20. Acceptance and Effective Date.**

The Franchisee shall, within 30 days from the date the City Council passes an ordinance approving this Franchise, file with the City its written unconditional acceptance of this Franchise. This Franchise shall be effective as of March 27, 2017, provided that Franchisee provides the City with its written unconditional acceptance as required in this Section. In the event the Franchisee fails to do so, this ordinance shall be void. The initial term of this Franchise shall expire ten (10) years from the Effective Date defined herein, unless extended in accordance with Section 9 of this Franchise or by mutual agreement of the parties.

**Section 21. Emergency.**

Whereas, the City has notified Franchisee that it intends to engage in the reconstruction of a portion of West 6<sup>th</sup> Street beginning in May, 2017, which portion of public right-of-way is included in the proposed route for construction of fiber optic cable by the Franchisee; and

Whereas Franchisee desires to have installation of its fiber optic cable completed in the portion of West 6<sup>th</sup> Street which it be improved by the City, prior to the City's commencement of its work on West 6<sup>th</sup> Street;

**NOW, THEREFORE**, an emergency is declared to exist, and this ordinance shall go into full force and effect immediately upon its passage and approval.

**PASSED AND ADOPTED THIS 27<sup>TH</sup> DAY OF MARCH, 2017.**

Voting, Yes, Councilors: \_\_\_\_\_

Voting No, Councilors: \_\_\_\_\_

Absent, Councilors: \_\_\_\_\_

Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 27<sup>TH</sup> DAY OF MARCH, 2017.**

\_\_\_\_\_  
Stephen E. Lawrence, Mayor

ATTEST:

\_\_\_\_\_  
Izetta Grossman, City Clerk

ACCEPTANCE

City of The Dalles  
City Clerk  
313 Court Street  
The Dalles, OR 97058

This is to advise the City of The Dalles, Oregon (the "City") that Zayo Group, LLC (the "Grantee") hereby accepts the terms and provisions of Special Ordinance No. 17-575 passed by The Dalles City Council on March 27, 2017 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective upon acceptance of said agreement by Zayo Group, LLC (the "Grantee").

BY \_\_\_\_\_  
(Name)

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

This Acceptance was received by the City of The Dalles on \_\_\_\_\_, 2017.

\_\_\_\_\_  
City Clerk

## AGENDA STAFF REPORT

### AGENDA LOCATION: Discussion Item #13-A

**MEETING DATE:** March 27, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Dan Durow, Economic Development Specialist

**ISSUE:** CH2M's report on Riverfront Trail alternative routes

**BACKGROUND:** The Oregon Department of Transportation (ODOT) approved a Transportation Enhancement Grant for the Riverfront Trail project in late 2011. Following some extensive engineering studies on the preferred route, review of these studies by two of the Tribal Nations resulted in objections to this route. Attempts to resolve the issues with the Tribes by the ODOT and the Federal Highway Administration were unsuccessful.

ODOT agreed to keep the funding in place while alternate routes could be studied. To that end, the engineering firm hired to complete the Trail design, CH2M, was asked to do additional studies on alternative routes to determine if an alternate route could be feasible. This work began in the fall of 2016. A staff meeting was held on February 23 among the engineers, City staff, ODOT, and the Riverfront Trail Board to go over some initial engineering design concepts in preparation for completing the draft study document. Following this City Council presentation, the engineers will complete the final study document taking into account the input received. The Council then will consider accepting the final report on an upcoming meeting date.