Kelso City Council Agenda

Regular Meeting, 7:00 pm
January 2, 2013
City Hall, Council Chambers
203 S. Pacific
Kelso, WA 98626

Special accommodations for the handicapped and hearing impaired are available by special arrangement through the City Clerk's Office at 360-423-0900

Invocation:

Call to Order:

Roll Call to Council Members:

Approve Minutes:

- December 18, 2012-Regular Meeting

Consent Items:

1. Appointment
   a. Kelso Housing Authority
      i. Marlene Johanson, Term to End 01/01/2017
2. Liquor License Renewals
   - Red Lion Hotel, 510 Kelso Dr.
   - Scooters Bar & Grill, 1107 N. Pacific Ave
   - 13th Ave Mini Mart, 1821 13th Ave
   - Boogerbean's, 816 Grade St.
   - Rite Aid #5287, 200 Kelso Dr.
   - Shari's of Kelso, 205 S. Kelso Dr.
   - Tim's Bar & Grill, 213 Allen St.

Citizen Business:

Council Business:

- Adopt 2013 State Legislative Agenda

Action/Motion Items:

1. Ordinance, 1st Reading
   a. Amending KMC 8.24
      i. Nuisance Abatement
2. Ordinance, 1st Reading
   a. LS Networks Franchise Agreement
3. Ordinance, 2nd Reading
   a. Sprint Franchise Agreement
4. Resolution
   a. Surplus-Visitor Information Center

Kelso City Council Agenda

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Other Items:

- City Manager & Staff Reports
- Council Reports
- Other Business
- Executive Session

KELSO CITY COUNCIL **December 18, 2012**
7:00 P.M. **REGULAR MEETING**

Pastor Wayne Schneider, Kelso First United Methodist Church, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were: Futcher, Lefebvre, Archer, Myers, McDaniel, Schimmel, and Roberson.

Minutes: Upon motion by Councilmember Schimmel, seconded by Councilmember Lefebvre, 'Approve the Minutes of the 12/04/12 Regular Meeting,' motion carried, all voting yes.

CONSENT AGENDA:

1. **Agreement – Debra Burchett, Indigent Defense Attorney**
2. **Rental Agreement – T & N, LLC, 206 W. Main Street**
3. **Amendment – Big Idea Agreement**
4. **Lease Agreement – Airport Hangar No. 16, Sam Clark**
5. **Lease Agreement – Airport Hangar No. 28, Billy Smith**
6. **Grant Acceptance – State Transportation Improvement Board, $20,500**
7. **Grant Acceptance – State Transportation Improvement Board, $520,212**
8. **Liquor License Assumption – Tim's Bar & Grill, Teresa R. Bonner, 213 Allen Street**
9. **Appointment – Planning Commission Position No. 1, Clark Hislop, Term to End 11/01/2016**
10. **Re-Appointments:**
    - **a) Kelso Housing Authority**
      - **Sherrie Tinoco, Term to End 1/01/2018**
    - **b) Lodging Tax Committee, Terms to End 12/31/2013**
      - **Bill Marcum**
      - **Cindy Keeney**
      - **Paul Thornton**
      - **Syed Pasha**
    - **c) Park Board**
      - **Bob Smith, Term to End 12/31/2014**
      - **Jerry Phillips, Term to End 12/31/2013**
    - **d) Highlander Festival**
      - **Ken Maney, Term to End 12/31/2016**
      - **Mike Fowler, Term to End 12/31/2016**
    - **e) Library Board**
      - **Jack Koelker, Term to End 12/31/2017**
    - **f) Civil Service Commission**
      - **Larry Anderson, Term to End 12/31/2018**
11. **Auditing of Accounts: $1,747,664.20**

Mayor Futcher asked if any items should be removed for separate consideration. Councilmember Archer requested to remove **Item No.'s 4 and 5 (Hangar Lease Agreements)**. Councilmember Myers requested to remove **Item No. 3 (Big Idea Agreement Amendment)** from the Consent Agenda to be discussed separately.

Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Approve the Consent Agenda and the Auditing of Accounts in the amount of $ 1,747,664.20,' motion carried, all voting yes.

COUNCIL BUSINESS:

Real Estate Services Request for Proposal: a) Pacific Northwest Realty Group, b) Windemere Realty: City Manager Steve Taylor gave a summary of the two proposals that were received for the real estate services of the City's properties. It was the recommendation of the City Manager to accept the proposal from the Pacific Northwest Realty Group. Upon motion by Councilmember Schimmel, seconded by Councilmember McDaniel, 'Authorize the proposal from the Pacific Northwest Realty Group.' Councilmembers Schimmel, McDaniel, Lefebvre, Roberson, Myers, and Futcher voted yes; Councilmember Archer voted no. Motion passed 6 to 1.

2013 State Legislative Agenda Discussion: City Manager Steve Taylor presented a draft of the City of Kelso 2013 Legislative Agenda. Mr. Taylor asked for the Council's support of the Association of Washington Cities' 2013 Legislative Priorities. Included in Mr. Taylor's presentation was the City of Longview's 2013-14 State Legislative Agenda for the Council's review. Mayor Futcher asked Council to consider any items that they would like to have added or removed from the Agenda. Mr. Taylor commented that the Agenda will be developed over time to fully address Kelso's legislative needs in the future. He commented that the Council's direction regarding the City of Kelso 2013 State Legislative Agenda will be requested at the next regular meeting on Wednesday, January 2, 2013.

Continuation of the Consent Agenda (Items that were previously removed):

Item No. 4 & 5 (Authorization of Lease Agreement for Airport Hangar No. 16 and Airport Hangar No. 28): Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Approve the Hangar Lease Agreements.' Councilmember Archer commented that the lease rent was too low. He asked if the new Airport Board will be taking charge of the lease agreements. Mayor Futcher commented that, as of January 1, 2013, the Airport Board will be handling the hangar lease agreements. Public Works Director David Sypher commented that these hangars are of low quality and are destined to be demolished within the next 3 years. Councilmembers Schimmel, McDaniel, Lefebvre, Roberson, Myers, and Futcher voted yes; Councilmember Archer voted no. Motion passed 6 to 1.

Item No. 3 (Amendment to the Big Idea Agreement): Upon motion by Councilmember Roberson, seconded by Councilmember Lefebvre, 'Approve the amendment to the Big Idea Agreement.' Councilmember Myers commented that the original agreement was that each entity would receive their portion of the pooled funds only once during the term of the agreement. This would be done on a rotation basis. He spoke against the amendment that gives the entities the flexibility to receive annual payments instead of waiting for their designated year. Mr. Taylor commented that the annual payment provision only pertains to the City of Woodland. This provision was made earlier. The provision for the 10% advance of an entity's allocation will only be available during the year prior to that entity's designated year. Motion carried, all voting yes.

MOTION ITEMS:

Ordinance No. (1st Reading) Sprint Franchise Agreement: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Lefebvre, seconded by Councilmember Schimmel, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO EXTENDING THE TERM AND AMENDING AND RESTATING THE GRANT OF FRANCHISE TO SPRINT COMMUNICATIONS COMPANY L.P., A DELAWARE LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS FOR CONSTRUCTING, OPERATING, AND MAINTAINING FIBER OPTIC TELECOMMUNICATIONS SERVICE,' motion carried, all voting yes.

Ordinance No. (1st Reading) LS Networks Franchise Agreement: Upon the request of City Attorney Janean Parker, this item was removed to be brought back to Council at a later date.

Ordinance No. 12-3784 – 2013/2014 Budget Approval: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Lefebvre, 'Adopt Ordinance No. 12-3784, 'AN ORDINANCE RELATING TO MUNICIPAL FINANCE AND ADOPTING A BUDGET FOR THE CITY OF KELSO FOR THE 2013/14 FISCAL YEARS,' motion carried, all voting yes.

Ordinance No. 12-3785 – 2012 Budget Revision #3: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Myers, 'Adopt Ordinance No. 12-3785, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING THE 2012 BUDGET TO REFLECT REVENUES AND APPROPRIATE FUNDS TO COVER EXPENDITURES OVER AND ABOVE THOSE ANTICIPATED AT THE TIME SAID BUDGET WAS ADOPTED,' motion carried, all voting yes.

Ordinance No. 12-3786 – Interfund Loan: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Myers, seconded by

Councilmember Schimmel, 'Adopt Ordinance No. 12-3786, 'AN ORDINANCE OF THE CITY OF KELSO AUTHORIZING THE TRANSFER OF FUNDS FROM THE WATER/SEWER FUND TO THE AIRPORT FUND AND PROVIDING FOR THE REPAYMENT OF SUCH LOAN,' motion carried, all voting yes.

Ordinance No. 12-3787 – Business & Occupations Tax Provisions: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Adopt Ordinance No. 12-3787, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING CHAPTER 5.02 AND 5.03 OF THE KELSO MUNICIPAL CODE TO BRING THE BUSINESS AND OCCUPATION TAX PROVISIONS INTO CONFORMANCE WITH STATEWIDE MODEL ORDINANCE REQUIRED BY CHAPTER 35.102 RCW,' motion carried, all voting yes.

Ordinance No. 12-3788 – Stormwater Rates: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Myers, seconded by Councilmember Roberson, 'Adopt Ordinance No. 12-3788, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING ORDINANCE NO. 08-3689 RELATING TO THE STORMWATER MANAGEMENT UTILITY BY ESTABLISHING A NEW BASE RATE FOR SINGLE-FAMILY PARCELS AND LISTING NEW MONTHLY SERVICE CHARGES FOR OTHER DEVELOPED PARCELS.' Councilmembers Archer, McDaniel, Futcher, Lefebvre, Roberson, and Myers voted yes. Councilmember Schimmel voted no. Motion carried 6 to 1.

Resolution No. 12-1075 – Emergency Work without Formal Bidding: The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Lefebvre, 'Pass Resolution No. 12-1075, 'A RESOLUTION OF THE CITY OF KELSO FINDING THE REMOVAL OF A DANGEROUS TREE IN TAM O'SHANTER PARK TO BE A SPECIFIC EMERGENCY AND APPROVES CONTRACT FOR EMERGENCY REPAIR WORK WITHOUT FORMAL BIDDING,' motion carried, all voting yes.

Memorandum of Understanding – Teamster Health Benefits: Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Approve the MOU.' Mr. Taylor briefed the Council on the MOU. Motion carried, all voting yes.

Walk On Item – Administration Services Agreement with Southwest Washington Regional Airport: Upon motion by Councilmember Lefebvre, seconded by Councilmember Myers, 'Authorize the City Manager to enter into the Administration Agreement,' The City Attorney Janean Parker commented that this is a contract for the City of Kelso to continue to provide the financial services and to maintain administrative records where as the City will be compensated for these services. Motion carried, all voting yes.

MANAGER'S REPORT:

Steve Taylor: Briefed the Council on the status of the Visitor Center. He commented that after discussions with the Kelso Longview Chamber of Commerce, he brought two potential options for Council to consider. The first option was to determine the existing building as surplus and make it available for sale and removal. The second option was to demolish the building and prepare the site for whatever future options are decided. He commented that due to the current condition of the existing building, Council will be asked for specific direction, at the next regular council meeting, regarding the shutdown of the Visitor Center. Discussion followed. **Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Authorize the surplus and disposal of the existing Visitor Center,' motion carried, all voting yes.** .

STAFF REPORTS:

Janean Parker: No report.

David Sypher: Thanked the Public Work's employees for their hard work over the past year and he thanked the Council for their support.

Cindy Donaldson: Reported that she has been telling stories with Frosty the Snowman at the Three Rivers Mall for the last two weeks and that the last library event of the year is Saturday, 12/22/12 at 1:00 p.m.

Chief Andrew Hamilton: 1) Reported that the 'Shop with a Cop' event was held on December 8th. 2) He commented that weather conditions add to keeping the patrols busy. 3) He thanked the men and women in the police department for their public service.

Brian Butterfield: 1) Presented the monthly financial statements for November. 2) He reported that the 2012 Audit is complete and there is an exit conference scheduled on January 8, 2013 at 2:00 p.m., at Kelso City Hall.

COUNCIL REPORTS:

Rick Roberson: 1) Reported that he attended a course presented by the Cowlitz Wahkiakum County Council of Governments. It was called 'A Short Course on Local Planning'.

Gary Schimmel: No report.

Kim Lefebvre: No report.

Todd McDaniel: No report.

Gary Archer: 1) Reported that he attended the 911 Board Meeting. The budget and funding were the main topics of their discussion. He commented that the City Manager Steve Taylor has volunteered to be on the Board. 2) He announced that he has been on the City of Kelso Council for a whole year.

Dan Myers: 1) Reported that today is his wife Nancy's birthday. 2) He gave a brief report on the 'Washington State Department of Transportation Developing Rail Plan Presentation' he attended on December 8, 2012. 3) He commented that the CWCOG Board will be working on becoming more active providing direction and policy for their staff. The search process for the new CWCOG Executive Director continues.

David Futcher: Commented that he appreciated everyone for attending the meetings and sharing the passion in making the City of Kelso a better place. He commented that it is an honor to be the Mayor. He thanked staff for their contributions in this successful year that they helped to achieve.

There being no further business, Mayor Futcher adjourned the meeting at 8:00 p.m.

_____

MAYOR

_____

CITY CLERK

KELSO HOUSING AUTHORITY

Executive Director
Marion P.Olmsted

December 19, 2012

Steve Taylor
City Manager
PO Box 819
Kelso WA 98626

RE: Appointment to Kelso Housing Authority Board of Commissioners

Dear Mr. Taylor:

The Housing Authority of the City of Kelso's Board of Commissioners would like the Council to appoint Marlene Johanson to the KHA Board. She would be fulfilling the term of Gary Nordin who resigned from the board position on November 25, 2012. His term expires on January 1, 2017. At the December 13, 2012 board meeting the Board of Commissioners unanimously selected Marlene Johanson's application to be presented to the City Council for appointment.

Marlene Johanson has expressed an interest in joining our Board of Commissioners. The Board feels she would be a great asset to the Board.

M Johanson currently is an employee at the Heritage Bank, Kelso Branch.

Thank you,

Sincerely,

Marion P. Olmsted
Executive Director

cc. Board of Commissioner's file

1415 South Tenth • Kelso, Washington 98626
Phone (360) 423-3490 • Fax (360) 577-6694 • TDD (360) 423-3490

AGENDA SUMMARY SHEET
Business of the City Council
City of Kelso, Washington

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SUBJECT TITLE: Liquor License Renewal(s)

Agenda Item No: _____

Dept. of Origin: **Finance**

Date of Meeting: **January 2, 2013**

Originator: **Brian Butterfield** BB

PRESENTED BY: Brian Butterfield

City Attorney: _____

City Manager: _____

Agenda Item Attachments:

See attached request for Liquor License Renewal(s):

Red Lion Hotel	510 Kelso Dr
Scooter's Bar & Grill	1107 N. Pacific Ave
13th Avenue Mini Mart	1821 13th Ave
Boogerbean's	816 Grade St
Rite Aid #5287	200 Kelso Dr
Shari's of Kelso	205 S. Kelso Dr
Tim's Bar & Grill	213 Allen St

SUMMARY STATEMENT:

Various departments have been requested to give their input. Comments will be available by the date of the City Council Meeting. The Finance Staff recommends this request be acted on by the City Council.

REC'D CLERK
DEC 14 2012
CITY OF KELSO

C091080-2 WASHINGTON STATE LIQUOR CONTROL BOARD DATE: 12/06/2012

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF KELSO
(BY ZIP CODE) FOR EXPIRATION DATE OF 20130331

	LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1.	RED LION HOTELS HOLDINGS, INC	RED LION HOTEL 510 KELSO DR KELSO WA 98626 0000	357617	HOTEL
2.	WRIGHT, SUSAN D	SCOOTER'S BAR AND GRILL 1107 N PACIFIC AVE KELSO WA 98626 0000	353422	SPIRITS/BR/WN REST LOUNGE -
3.	SANGNOK CORPORATION	13TH AVE MINI MART 1821 13TH AVE KELSO WA 98626 0000	081029	GROCERY STORE - BEER/WINE
4.	FAMILY FIRST MARKETS L.L.C.	BOOGERBEAN'S 816 GRADE ST KELSO WA 98626 2901	407118	GROCERY STORE - BEER/WINE
5.	THRIFTY PAYLESS, INC.	RITE AID #5287 230 KELSO DR KELSO WA 98626 3112	364471	GROCERY STORE - BEER/WINE WINE RETAILER RESELLER
6.	SHARI'S MANAGEMENT CORPORATION	SHARI'S OF KELSO 205 S KELSO DR KELSO WA 98626 3118	085795	BEER/WINE REST - BEER/WINE
7.	BONNER, TIMOTHY ALLEN	TIM'S BAR & GRILL 213 ALLEN ST KELSO WA 98626 3403	354193	SPIRITS/BR/WN REST LOUNGE -

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: 2013 State Legislative Agenda Adoption

Agenda Item:

Dept. of Origin: City Manager

For Agenda of: January 2, 2013

Originator: Steve Taylor

PRESENTED BY:

Steve Taylor

City Attorney:

City Manager: **Steve Taylor**

Agenda Item Attachments:

City of Kelso 2013 State Legislative Agenda

SUMMARY STATEMENT:

Staff has prepared the 2013 State Legislative Agenda document for Council adoption at the January 2nd meeting. The policy agenda includes the Association of Washington Cities' 2013 Legislative Priorities statement and several items of specific importance to Kelso contained within the City of Longview's agenda. The final approved document will primarily be used as a base to communicate with legislators leading up to and during the 2013 session as it pertains to the City's position on bills moving through the legislative process. This will allow the City Manager on behalf of the City to generate correspondence in favor of or opposition to proposals that are in line with the final approved Legislative Agenda.

The Agenda will be developed over time to more fully address Kelso's legislative needs in the future.

RECOMMENDED ACTION:

Staff reccomends adoption of the 2013 State Legislative Agenda.

City of Kelso
2013 Legislative Agenda

Support the Association of Washington Cities' 2013 Legislative Priorities

The City Council affirms its support of AWC's efforts to propose, oppose, or seek amendment to the adoption of legislation in line with the general priorities below:

Ensure fiscal sustainability and flexibility

- Restore diverted liquor revenue and retain existing state-shared city revenues.
- Preserve current local revenue authorities such as local business licensing taxes and seek to develop new options.

Foster and invest in infrastructure and economic development

- Collaborate with the state to increase multi-modal transportation funding and expand sustainable revenue options.
- Authorize tax increment financing and fine-tune other tools that foster job creation and retention in cities.
- Keep funding for critical infrastructure programs such as the Public Works Trust Fund and Model Toxics Control Act Fund, and refrain from diverting capital investment dollars to the state's general fund.

Enhance service provision

- Allow cities to be more flexible and responsive to fiscal challenges, such as managing personnel costs.
- Fund critical mandates such as municipal stormwater and refrain from adding any new unfunded or underfunded mandates.
- Strengthen public records efforts by curbing abusive requests.

Specified Priorities

Additionally, the City Council supports legislative action on the following items that directly impact or benefit Kelso residents, businesses, and stakeholders.

Key regional infrastructure

- Support funding for the SR 432/SR 433 projects, including critical rail and highway improvements.

Transportation funding

- Adopt new comprehensive state transportation revenue package with direct distribution to local governments and additional local option authorities.

Indigent defense standards

- Support legislative relief from the recent Supreme Court-imposed indigent defense standards and associated unfunded mandate.

Lodging tax flexibility

- Support extending the current sunset provision that allows lodging tax revenues to be used in direct support of operating costs associated with festivals and events.

Criminal justice programs

- Support increased funding for the Criminal Justice Training Commission and continued basic funding for WASPC programs including Crime Victim Notification, Jail Booking and Reporting, and Sex Offender address verification.

Mental health services

- Support increased funding and bolstering of state-provided services to provide adequate treatment and housing for populations with mental health needs.

Public pension security

- Support legislative action to ensure maximum pension rate stability by fully funding contribution rates as recommended by the State Actuary.

Sustainable personnel costs

- Support legislation to amend current binding arbitration laws to include a) qualification standards for arbitrators, b) further definition of what constitutes "comparables", and c) redefining "ability to pay" to criterion.

AGENDA SUMMARY SHEET

Business of the City of Kelso
City of Kelso, Washington

SUBJECT TITLE:

AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 8.24 TO AMEND PROCEDURES FOR CLEANUP OF ABANDONED PROPERTY AND TO REMOVE PROCEDURES FOR BOARD OF APPEALS HEARINGS

Agenda Item:_____

Dept. of Origin: Community Development

For Agenda of: January 2, 2013

Cost of Item:_____

City Manager: Stephen Taylor

PRESENTED BY: Janean Parker, City Attorney

AGENDA ITEM ATTACHMENTS:

Proposed Ordinance

SUMMARY STATEMENT:

Certain housekeeping amendments to the City's nuisance abatement provisions for civil abatement are necessary for the efficient operation of the nuisance code provisions.
The proposed amendments clarify the process for abandoned property in the City's right of way and also to amend appeal provisions to allow for appeals to the hearing examiner for final decision instead of a board of appeals.

FINANCIAL SUMMARY:

OPTIONS:
No Change
Adopt recommended revisions

RECOMMENDED ACTION:
Move to approve the proposed revisions on first reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 8.24 TO AMEND PROCEDURES FOR CLEANUP OF ABANDONED PROPERTY AND TO REMOVE PROCEDURES FOR BOARD OF APPEALS HEARINGS

WHEREAS, the City wishes to amend its nuisance abatement procedures to made the abatement process more effective and efficient; and

WHEREAS, the City wishes to clarify its processes related to the cleanup of abandoned property ; and

WHEREAS the City wishes to amend its procedures for appeal of abatement orders to reflect the use of the City's hearings examiner in lieu of a board of appeals, and

WHEREAS, these changes are necessary for the protection of the public health, safety, and welfare,

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That KMC 8.24.030 is hereby amended to provide as follows:

8.24.030 Definitions.

The words and phrases used in this chapter, unless the context otherwise indicates, shall have the following meanings:

...

H. "Abandoned property" means any structure or any property, real or personal, which is unattended and either open or unsecured so that admittance may be gained without damaging any portion of the property, or which evidence indicates that no person is presently in possession. Abandoned property includes all property left in the public right-of-way for more than 48 hours, including, but not limited to, any personal and household items, furniture, appliances, machinery, equipment, building materials, or other items, and all property left on the public right-of-way as a result of an eviction or a forcible entry and detainer or unlawful detainer action. Evidence of abandonment may include, but is not limited to, disconnected utilities, accumulated debris, uncleanness, and disrepair. In the case of chattels, location, length of time or any particular state

Deleted: structure

of mind of the owner or person entitled to possession are not conclusive in determining whether the property is abandoned.

SECTION 2. That KMC 8.24.050 is hereby amended to provide as follows:

8.24.050 Types of enumerated nuisances.

Each of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances, and unless otherwise permitted by law, are declared to constitute a public nuisance, and whenever the enforcement officer determines that any of these conditions exist, the officer may require or provide for the abatement thereof pursuant to this chapter, or as otherwise authorized by law:

The erecting, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, avenue, alley, park, parkway, or other public or private place in the city, of any one or more of the following places, conditions, things, or acts to the prejudice, danger, or annoyance of others:

...

AA. All property left in the public right-of-way, including, but not limited to, any personal and household items, furniture, appliances, machinery, equipment, building materials, or other items, including property left on the public right-of-way as a result of an eviction or a forcible entry and detainer or unlawful detainer action. Any such property left in the right of way for more than 48 hours shall be deemed abandoned and is hereby declared a public nuisance.

SECTION 3. That KMC 8.24.070 is hereby amended to provide as follows:

8.24.070 Enforcement.

The director of community development shall be primarily responsible for enforcement of this chapter under the supervision of the city manager. There also shall be a nuisance abatement officer who will serve under the direction of said director. The director of community development or an abatement officer may either refer information to the city attorney concerning violations of this chapter for charging under Section 8.24.080 or 8.24.430, or if after an inspection and having knowledge of any nuisance as defined under this chapter, or any other code adopted by the city council, may commence proceedings as set forth herein, to cause the repair, vacation or demolition of the building or otherwise vacate the nuisance.

Deleted: 8.24.090

SECTION 4. That KMC 8.24.080 is hereby amended to provide as follows:

8.24.080 Administrative enforcement—Notice and order.
In addition to that set forth herein, the community development director, his agent or the abatement officer may institute an administrative process to achieve a responsible person's abatement upon determination of a nuisance. The community development director, his agent or abatement officer may issue a notice and order directed to any responsible person, which shall contain:

A. The street address or legal description sufficient for identification of the premises upon which the nuisance is located.

B. A statement that the community development director, his agent or the abatement officer has found the site to be a nuisance; a brief and concise description or picture of the nuisance, together with a citation to the ordinance provision which the condition violates.

C. A demand that the nuisance be abated in accordance with the local, state, and federal laws.

D. Statements advising the party issued the citation that they may appeal the order to City's Hearings Examiner if requested in writing within thirty days from the date of service; that such an appeal shall be served upon the department of community development.

Deleted: the board of appeals,

SECTION 5. That KMC 8.24.100 is hereby amended to provide as follows:

8.24.100 Method of service.
Service of the notice and order shall be made upon all persons entitled thereto pursuant to Civil Court Rules and Chapter 4.28 RCW. Service may be made either personally, or by mailing a copy of the notice and order to such person at their last known address. If service is made by mail, service shall be deemed effective on the date of mailing.

Deleted: by mail

SECTION 6. That KMC 8.24.120 is hereby amended to provide as follows:

8.24.120 Standards for the abatement of nuisances.
The following standards shall be followed by the community development director, his agent, or the abatement officer (and by the hearings examiner if an appeal is taken) in ordering the abatement of nuisances.

Deleted: board of appeals or their designated

A. Any building declared a nuisance under this code shall be made to comply with one of the following:

1. The building shall be repaired in accordance with the current building code or other current code applicable to the type of substandard conditions requiring repair; or

2. The building shall be demolished at the option of the building owner; or

3. If the building does not constitute an immediate danger to the life, limb, property or safety of the public, it may be vacated, secured and maintained against entry.

B. All nuisance abatement shall be conducted in accordance with local, state and federal laws and codes.

C. Any items which remain on the public right-of-way for a period of 48 hours shall be deemed abandoned and constitute a public nuisance subject to removal by the City with or without notice. The costs of abatement may be assessed against the abutting real estate from which the nuisance was abated for collection in the manner provided in this chapter.

SECTION 7. That KMC 8.24.140 is hereby amended to provide as follows:

8.24.140 Appeal.

Any person entitled to service under Section 8.24.090 may appeal from any notice and order or any action of the community development director, his agent, or the abatement officer under this code by filing at the office of the building official a written appeal containing:

A. The heading in the words of "Before the Hearings Examiner of the City of Kelso."

Deleted: Board of Appeals

B. A caption reading "Appeal of the Nuisance at (address or legal description)."

C. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice.

D. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed.

E. The signatures of all appellants named, together with their addresses and telephone numbers. Signatures affixed to this appeal document shall constitute a verification that the appeal is made in good faith and not merely an effort to delay, harass, or annoy in any way that is frivolous or without merit.

The appeal shall be filed within thirty days from the date of the service of the order or action of the community development director, his agent, or the abatement officer; provided, that if the building or structure is in such condition as to make it immediately dangerous to life, limb, property or safety of the public or adjacent property is ordered vacated and is posted in accordance with this

chapter, such appeal shall be filed within ten days from the date of service of the notice and order of the building official. Appeals shall include all documents required by this chapter and a fee as established from time to time by resolution of the city council. Failure to do so shall result in a dismissal of the appeal.

SECTION 8. That KMC 8.24.150 is hereby amended to provide as follows:

8.24.150 Processing of appeal.

Upon receipt of any appeal filed pursuant to this section the building official or his or her designee shall present it to the Hearings Examiner.

Deleted: at the next regular or special meeting of the board of appeals

SECTION 9. That KMC 8.24.160 is hereby amended to provide as follows:

8.24.160 Scheduling the appeal hearing.

As soon as practicable after receiving the written appeal, the Hearings Examiner shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the community development director, his agent, or the abatement officer. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the Examiner's Office either by causing a copy of the such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

Deleted: board of appeals

Deleted: by the board

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SECTION 10. That KMC 8.24.170 is hereby amended to provide as follows:

8.24.170 Failure to appeal.

Failure of any person to file an appeal in accordance with the provisions herein shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof; said failure shall be deemed failure to exhaust administrative remedies.

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SECTION 11. That KMC 8.24.200 is hereby amended to provide as follows:

8.24.200 Procedures for conduct of hearing appeals.

A. Hearing Examiner. The examiner hearing the case shall exercise all powers relating to the conduct of hearings as set forth in KMC 2.14.

B. Record. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Examiner.

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Deleted: The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings.

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C. Reporting. The proceedings at the hearing shall also be recorded by a court reporter if requested by and paid for by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the prescribed fee.

D. Continuances. The Examiner may grant continuances for good cause shown. E. Oaths—Certification. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to officials acts.

F. Reasonable Dispatch. The Examiner shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

Deleted: The board may apportion, in equal amounts, the cost of transcription and reporting among the parties.

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Deleted: however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by the examiner for good cause shown so long as the matter remains before the examiner.¶

Deleted: the board, any board member, or

Deleted: board and its representatives

SECTION 12. That KMC 8.24.210 is hereby amended to provide as follows:

8.24.210 Form of notice of hearing.

The notice to appellant shall be substantially in the following form, but may include other information:

> You are hereby notified that a hearing will be held before Hearings Examiner at _____ on the _____ day of _____, 2___, at the hour _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with hearing examiner.

Deleted: (the board of appeals or name of hearing examiner)

Deleted: (board of appeals or name of

Deleted:)

SECTION 13. That KMC 8.24.220 is hereby amended to provide as follows:

8.24.220 Subpoenas.

A. Filing of Affidavit. The examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his/her possession or under his/her control. A subpoena need not be issued when the affidavit is defective in any particular.

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B. Penalties. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

SECTION 14. That KMC 8.24.240 is hereby amended to provide as follows:

8.24.240 Official notice.

A. What May Be Noticed. Official notice may be taken either before or after submission of the case for decision of any fact, which may be judicially noticed by the courts of this state, or of official records of the departments and ordinances of the city or rules and regulations of the Examiner.

B. Parties to Be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

C. Opportunity to Refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

D. Inspection of the Premises. The hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing; provided, that (1) notice of such inspection shall be given to the parties before the inspection is made, (2) the parties are given an opportunity to be present during the inspection, and (3) the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner.

SECTION 15. That KMC 8.24.250 is hereby amended to provide as follows:

8.24.250 Method and form of decision.

A. The examiner shall within a reasonable time (not to exceed ninety days from the date the hearing is closed) submit a written decision.

B. Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to for compliance therewith. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

C. Effective Date of Decision. The effective date of the decision shall be as stated therein.

Deleted: B. Cases Referred to Examiner. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.¶
C

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Deleted: Hearing Before Board Itself. When a contested case is heard before the board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision.¶
B. Hearing Before Examiner. If a contested case is heard by a hearing examiner alone, t

Deleted: report to the board

Deleted: Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

Deleted: C. Consideration of Report by Board—Notice. The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.¶
D. Exceptions to Report. Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.¶
E. Disposition by the Board. The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.¶
F. Proposed Decision not Adopted. If the proposed decision is not adopted as provided in subsection E of this section, the board may decide the case upon the entire record bef ... [1]

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SECTION 16. That KMC 8.24.260 is hereby amended to provide as follows:

8.24.260 Enforcement of the order of the building official or the Hearings Examiner.

Deleted: board of appeals

A. General. After any order of the building official or the Hearings Examiner made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

Deleted: board of appeals

B. Failure to Obey Order. If, after any order of the building official or Hearings Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may (1) cause such person to be prosecuted under subsection A of this section, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this Chapter.

Deleted: board of appeals

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C. Failure to Commence Work. Whenever the required nuisance abatement, repair, or demolition is not commenced within thirty days after any final notice and order issued under this code becomes effective:

1. The building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

DANGEROUS BUILDING
DO NOT OCCUPY

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official

_____ of _____

2. No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a certificate of occupancy issued pursuant to the provisions of the building code.

3. The director of community development or his agent may, in addition to any other remedy herein provided, cause the nuisance to be abated or the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as

set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris therefrom removed and the lot cleaned. Any such abatement, repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

SECTION 17. That KMC 8.24.450 is hereby amended to provide as follows:

8.24.450 Additional relief.

A. The director may seek any legal or equitable relief available at any time to mitigate any acts or practices that violate the provisions referenced in Sections 8.24.040 and 8.24.050 or abate any condition that constitutes a nuisance.

B. Chapter 35.80 RCW, Unfit Dwellings, Buildings and Structures, as it currently exists or is hereinafter amended, is hereby adopted.

C. The director of community development is designated as the city's "improvement officer," and shall have the full scope of authority granted to that official under Chapter 35.80 RCW. The city's Hearings Examiner is designated as the city's "appeals commission," and shall have the full scope of authority granted to that commission under Chapter 35.80 RCW.

SECTION 18. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 19. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____

_____, 2013.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:_____

C. Consideration of Report by Board—Notice. The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

D. Exceptions to Report. Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.

E. Disposition by the Board. The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.

F. Proposed Decision not Adopted. If the proposed decision is not adopted as provided in subsection E of this section, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in subsection B of this section hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 8.24 TO AMEND PROCEDURES FOR CLEANUP OF ABANDONED PROPERTY AND TO REMOVE PROCEDURES FOR BOARD OF APPEALS HEARINGS

WHEREAS, the City wishes to amend its nuisance abatement procedures to made the abatement process more effective and efficient; and

WHEREAS, the City wishes to clarify its processes related to the cleanup of abandoned property ; and

WHEREAS the City wishes to amend its procedures for appeal of abatement orders to reflect the use of the City's hearings examiner in lieu of a board of appeals, and

WHEREAS, these changes are necessary for the protection of the public health, safety, and welfare,

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That KMC 8.24.030 is hereby amended to provide as follows:

8.24.030 Definitions.

The words and phrases used in this chapter, unless the context otherwise indicates, shall have the following meanings:...

H. "Abandoned property" means any structure or any property, real or personal, which is unattended and either open or unsecured so that admittance may be gained without damaging any portion of the property, or which evidence indicates that no person is presently in possession. Abandoned property includes all property left in the public right-of-way for more than 48 hours, including, but not limited to, any personal and household items, furniture, appliances, machinery, equipment, building materials, or other items, and all property left on the public right-of-way as a result of an eviction or a forcible entry and detainer or unlawful detainer action. Evidence of abandonment may include, but is not limited to, disconnected utilities, accumulated debris, uncleanness, and disrepair. In the case of chattels, location, length of time or any particular state of mind of the owner or person entitled to possession are not conclusive in determining whether the property is abandoned.

SECTION 2. That KMC 8.24.050 is hereby amended to provide as follows:

8.24.050 Types of enumerated nuisances.

Each of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances, and unless otherwise permitted by law, are declared to constitute a public nuisance, and whenever the enforcement officer determines that any of these conditions exist, the officer may require or provide for the abatement thereof pursuant to this chapter, or as otherwise authorized by law:

The erecting, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, avenue, alley, park, parkway, or other public or private place in the city, of any one or more of the following places, conditions, things, or acts to the prejudice, danger, or annoyance of others:

...

AA. All property left in the public right-of-way, including, but not limited to, any personal and household items, furniture, appliances, machinery, equipment, building materials, or other items, including property left on the public right-of-way as a result of an eviction or a forcible entry and detainer or unlawful detainer action. Any such property left in the right of way for more than 48 hours shall be deemed abandoned and is hereby declared a public nuisance.

SECTION 3. That KMC 8.24.070 is hereby amended to provide as follows:

8.24.070 Enforcement.

The director of community development shall be primarily responsible for enforcement of this chapter under the supervision of the city manager. There also shall be a nuisance abatement officer who will serve under the direction of said director. The director of community development or an abatement officer may either refer information to the city attorney concerning violations of this chapter for charging under Section 8.24.080 or 8.24.430, or if after an inspection and having knowledge of any nuisance as defined under this chapter, or any other code adopted by the city council, may commence proceedings as set forth herein, to cause the repair, vacation or demolition of the building or otherwise vacate the nuisance.

SECTION 4. That KMC 8.24.080 is hereby amended to provide as follows:

8.24.080 Administrative enforcement—Notice and order.
In addition to that set forth herein, the community development director, his agent or the abatement officer may institute an administrative process to achieve a responsible person's abatement upon determination of a nuisance. The community development director, his agent or abatement officer may issue a notice and order directed to any responsible person, which shall contain:

A. The street address or legal description sufficient for identification of the premises upon which the nuisance is located.

B. A statement that the community development director, his agent or the abatement officer has found the site to be a nuisance; a brief and concise description or picture of the nuisance, together with a citation to the ordinance provision which the condition violates.

C. A demand that the nuisance be abated in accordance with the local, state, and federal laws.

D. Statements advising the party issued the citation that they may appeal the order to City's Hearings Examiner if requested in writing within thirty days from the date of service; that such an appeal shall be served upon the department of community development.

SECTION 5. That KMC 8.24.100 is hereby amended to provide as follows:

8.24.100 Method of service.
Service of the notice and order shall be made upon all persons entitled thereto pursuant to Civil Court Rules and Chapter 4.28 RCW. Service may be made either personally, or by mailing a copy of the notice and order to such person at their last known address. If service is made by mail, service shall be deemed effective on the date of mailing.

SECTION 6. That KMC 8.24.120 is hereby amended to provide as follows:

8.24.120 Standards for the abatement of nuisances.
The following standards shall be followed by the community development director, his agent, or the abatement officer (and by the hearings examiner if an appeal is taken) in ordering the abatement of nuisances.

A. Any building declared a nuisance under this code shall be made to comply with one of the following:

1. The building shall be repaired in accordance with the current building code or other current code applicable to the type of substandard conditions requiring repair; or

2. The building shall be demolished at the option of the building owner; or

3. If the building does not constitute an immediate danger to the life, limb, property or safety of the public, it may be vacated, secured and maintained against entry.

B. All nuisance abatement shall be conducted in accordance with local, state and federal laws and codes.

C. Any items which remain on the public right-of-way for a period of 48 hours shall be deemed abandoned and constitute a public nuisance subject to removal by the City with or without notice. The costs of abatement may be assessed against the abutting real estate from which the nuisance was abated for collection in the manner provided in this chapter.

SECTION 7. That KMC 8.24.140 is hereby amended to provide as follows:

8.24.140 Appeal.

Any person entitled to service under Section 8.24.090 may appeal from any notice and order or any action of the community development director, his agent, or the abatement officer under this code by filing at the office of the building official a written appeal containing:

A. The heading in the words of "Before the Hearings Examiner of the City of Kelso."

B. A caption reading "Appeal of the Nuisance at (address or legal description)."

C. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice.

D. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed.

E. The signatures of all appellants named, together with their addresses and telephone numbers. Signatures affixed to this appeal document shall constitute a verification that the appeal is made in good faith and not merely an effort to delay, harass, or annoy in any way that is frivolous or without merit.

The appeal shall be filed within thirty days from the date of the service of the order or action of the community development director, his agent, or the abatement officer; provided, that if the building or structure is in such condition as to make it immediately dangerous to life, limb, property or safety of the public or adjacent property is ordered vacated and is posted in accordance with this chapter, such appeal shall be filed within ten days from the date of service of the notice and order of the building official. Appeals shall include all documents required by this chapter and a fee as established from time to time by resolution of the city council. Failure to do so shall result in a dismissal of the appeal.

SECTION 8. That KMC 8.24.150 is hereby amended to provide as follows:

8.24.150 Processing of appeal.

Upon receipt of any appeal filed pursuant to this section the building official or his or her designee shall present it to the Hearings Examiner.

SECTION 9. That KMC 8.24.160 is hereby amended to provide as follows:

8.24.160 Scheduling the appeal hearing.

As soon as practicable after receiving the written appeal, the Hearings Examiner shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the community development director, his agent, or the abatement officer. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the Examiner's Office either by causing a copy of the such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

SECTION 10. That KMC 8.24.170 is hereby amended to provide as follows:

8.24.170 Failure to appeal.

Failure of any person to file an appeal in accordance with the provisions herein shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof; said failure shall be deemed failure to exhaust administrative remedies.

SECTION 11. That KMC 8.24.200 is hereby amended to provide as follows:

8.24.200 Procedures for conduct of hearing appeals.

A. Hearing Examiner. The examiner hearing the case shall exercise all powers relating to the conduct of hearings as set forth in KMC 2.14.

B. Record. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Examiner.

C. Reporting. The proceedings at the hearing shall also be recorded by a court reporter if requested by and paid for by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the prescribed fee.

D. Continuances. The Examiner may grant continuances for good cause shown. E. Oaths—Certification. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to officials acts.

F. Reasonable Dispatch. The Examiner shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

SECTION 12. That KMC 8.24.210 is hereby amended to provide as follows:

8.24.210 Form of notice of hearing.

The notice to appellant shall be substantially in the following form, but may include other information:

> You are hereby notified that a hearing will be held before Hearings Examiner at _____ on the _____ day of _____, 2___, at the hour _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with hearing examiner.

SECTION 13. That KMC 8.24.220 is hereby amended to provide as follows:

8.24.220 Subpoenas.

A. Filing of Affidavit. The examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his/her possession or under his/her control. A subpoena need not be issued when the affidavit is defective in any particular.

B. Penalties. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

SECTION 14. That KMC 8.24.240 is hereby amended to provide as follows:

8.24.240 Official notice.

A. What May Be Noticed. Official notice may be taken either before or after submission of the case for decision of any fact, which may be judicially noticed by the courts of this state, or of official records of the departments and ordinances of the city or rules and regulations of the Examiner.

B. Parties to Be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

C. Opportunity to Refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

D. Inspection of the Premises. The hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing; provided, that (1) notice of such inspection shall be given to the parties before the inspection is made, (2) the parties are given an opportunity to be present during the inspection, and (3) the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner.

SECTION 15. That KMC 8.24.250 is hereby amended to provide as follows:

8.24.250 Method and form of decision.

A.The examiner shall within a reasonable time (not to exceed ninety days from the date the hearing is closed) submit a written decision.

B. Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to for compliance therewith. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

C. Effective Date of Decision. The effective date of the decision shall be as stated therein.

SECTION 16. That KMC 8.24.260 is hereby amended to provide as follows:

8.24.260 Enforcement of the order of the building official or the Hearings Examiner.

A. General. After any order of the building official or the Hearings Examiner made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

B. Failure to Obey Order. If, after any order of the building official or Hearings Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may (1) cause such person to be prosecuted under subsection A of this section, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this Chapter.

C. Failure to Commence Work. Whenever the required nuisance abatement, repair, or demolition is not commenced within thirty days after any final notice and order issued under this code becomes effective:

1. The building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

DANGEROUS BUILDING
DO NOT OCCUPY

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official

_____ of _____

2. No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a certificate of occupancy issued pursuant to the provisions of the building code.

3. The director of community development or his agent may, in addition to any other remedy herein provided, cause the nuisance to be abated or the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris therefrom removed and the lot cleaned. Any such abatement, repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

SECTION 17. That KMC 8.24.450 is hereby amended to provide as follows:

8.24.450 Additional relief.

A. The director may seek any legal or equitable relief available at any time to mitigate any acts or practices that violate the provisions referenced in Sections 8.24.040 and 8.24.050 or abate any condition that constitutes a nuisance.

B. Chapter 35.80 RCW, Unfit Dwellings, Buildings and Structures, as it currently exists or is hereinafter amended, is hereby adopted.

C. The director of community development is designated as the city's "improvement officer," and shall have the full scope of authority granted to that official under Chapter 35.80 RCW. The city's Hearings Examiner is designated as the city's "appeals commission," and shall have the full scope of authority granted to that commission under Chapter 35.80 RCW

SECTION 18. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 19. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____

_____, 2013.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:_____

AGENDA SUMMARY SHEET

Business of the City of Kelso
City of Kelso, Washington

SUBJECT TITLE:
AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA LS NETWORKS, DBA "LSN" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE RIGHTS OF WAY OF THE CITY OF KELSO WASHINGTON

Agenda Item:

Dept. of Origin: City Attorney

For Agenda of: January 2, 2013

Cost of Item:

PRESENTED BY: Janean Parker, City Attorney

City Manager: Stephen Taylor

AGENDA ITEM ATTACHMENTS:
Proposed ordinance, email from LS Networks

SUMMARY STATEMENT:
LS Networks, a telecommunications company based in Oregon, has requested a franchise ordinance with the City to use the rights of way for its telecommunications system. Under the state telecommunications law, telecommunications companies may not be denied use of the right of way unless substantial evidence supports the decision. The City has granted similar franchises to other similarly situated companies. As currently drafted, and consistent with other similar agreements, the City has proposed clarifying the definition of the services provided and a reopener clause in the event franchise fees are allowed by law, or services provided extend to cable or other services where franchise fees are allowed, and also a provision to allow the City to acquire fiber or services for public use at incremental cost.

FINANCIAL SUMMARY:
The franchisee will be subject to the City's 6% utility tax.

OPTIONS:
Approve the ordinance first reading.
Do not approve the ordinance on first reading and direct staff to continue to negotiate on any requested changes.
Deny the Franchise—or in effect deny their application. The City may deny an application for a master permit to a telecommunications company (here, the grant of a Franchise) only upon substantial evidence that it is not in the public interest.

RECOMMENDED ACTION:
Move to approve the ordinance on first reading to grant the Franchise.

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA LS NETWORKS, DBA "LSN" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS SYSTEM OR FACILITIES WITHIN THE RIGHTS OF WAY OF THE CITY OF KELSO WASHINGTON

WHEREAS, LightSpeed Networks, Inc. dba LS Networks dba LSN, an Oregon Corporation ("LSN") provides Telecommunications services within the City of Kelso, Washington; and

WHEREAS, Franchisee, LSN, has applied for a Telecommunications Franchise pursuant to local ordinances relating to Telecommunications located in the public rights of way, and the City of Kelso ("City") has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions stated herein:

NOW THEREFORE, THE CITY OF KELSO ORDAINS AS FOLLOWS:

Section 1: Definitions.

1.1 CITY: the Franchisor, City of Kelso, Washington, its successors and assigns.

1.2 Franchise: the grant of rights, privileges, and authority embodied in this Ordinance.

1.3 Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense in the City of KELSO and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

1.4 LSN or FRANCHISEE: the Grantee, LightSpeed Networks, Inc. dba LS Networks dba LSN, an Oregon Corporation, its successors and assigns.

1.5 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.

1.6 Telecommunications System or Facilities: Franchisee's infrastructure within the City's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, designed or constructed for the purpose of providing Telecommunications Service, whether the same be located overhead or underground. A general description of the Telecommunications Facilities currently planned by the Franchisee is set forth in Exhibit ___, attached hereto and incorporated by this reference.

1.7 Telecommunications Service: any telecommunication services provided by the Franchisee over its Telecommunication Facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Services, including but not limited to, transmission of voice, data, or other electronic information, facsimile reproduction, or other subsequently developed technology which carries an electronic signal over fiber optic cable, including but not limited to those definitions of telecommunications services as those terms are defined in RCW 35.99; provided that these terms shall not mean, refer to, or include "cable services" open video services, or video programming services as those terms are defined in the Cable Communications Act of 1984, as amended, or over-the-air broadcasts to the public at large from facilities licensed by the FCC or any successor thereto, or any services that Franchisee may not by law provide.

Section 2: Grant of Franchise. Pursuant to the laws of the State of Washington, the City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive Franchise to erect, construct, operate, repair and maintain in, under, upon, along, across and over the City's Rights-of-Way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining its Telecommunications Facilities for Telecommunications Services within the City, provided that such placement complies with all city requirements. This Franchise is granted upon the express condition that LSN, within thirty (30) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise.

Section 4: Term and Termination.

4.1 The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance and subsequent acceptance of such ordinance and Franchise by LSN.

4.2 This Franchise may be renewed for an additional ten (10) year term pursuant to the following process: If LSN desires to renew, LSN shall notify the City not less than 180 days prior to the expiration of the Franchise of its desire to renew and its desire, if any, to amend the ordinance or renegotiate any of the terms set forth within this Franchise. The City shall respond to the request not later than 120 days prior to the expiration date and may request amendment of the ordinance or renegotiation of any term. If LSN requests renewal and either party requests amendment of the ordinance or renegotiation of any term, this Franchise shall not renew unless the City and LSN reach agreement and said agreement is approved by ordinance of the City Council. The City will not unreasonably withhold renewal of the additional periods. Nothing in this section prevents the parties from reaching agreement or renewal earlier than the time periods indicated.

4.3 Upon termination or expiration of the Franchise, Franchisee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Franchisee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove the facilities and charge LSN for the costs of removal.

Section 5: No Limitation of City Authority.

5.1 Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

5.2 In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

5.3 Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

5.4 Except as otherwise provided by law, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Franchisee—Scope of Obligations The obligations imposed upon LSN by the express terms of this Ordinance, or implied by the terms of this section or any other ordinance affecting the same, shall be deemed to include every employee, nominee or independent contractor of LSN performing work in the City Rights-of Way under contract, direction, request, or authority of LSN under this Franchise, and LSN, its agents, employees, or independent contractors, severally, shall be responsible ot the City for any injury or damage to City property or the expense incurred or suffered by the City in correcting defects in work replacing City streets or other improvements damaged by the acts, or neglect of such agents, employees, or independent contractors of LSN.

Section 7: Construction, Maintenance and Repair of Infrastructure.

7.1 Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans (1) to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City, and (2) maintained by the City and protected from disclosure to third parties to the maximum extent allowed by Washington law. . Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

7.2 LSN's Telecommunication Facilities shall be constructed, installed, maintained and repaired within City Rights-of Way as per applicable City standards and code so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington and the ordinance, rules, and regulations of the City which are not inconsistent with the terms of this Franchise. LSN shall exercise its rights within the City Rights-of-Way in accordance with applicable City codes and ordinances governing use and occupancy of the City Rights-of-Way.

7.3 LSN shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, cables, equipment and connections in, over, under and upon the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. If a violation any applicable regulation is found to exist, the City may, upon discussion with LSN, establish a reasonable time for LSN to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable and applicable costs thereof from LSN. LSN shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City Rights-of-Way.

7.4 In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

7.5 Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities as per city Standards.

7.6 Whenever the Public Utility District No. 1 of Cowlitz County, Washington, ("District") permanently discontinues any of the above ground or at grade District-owned Facilities within the City Right of Way, such as poles, braces,

guys, and anchors, due to modifications or upgrades to District's Facilities within the City Right of Way, the relocation or removal of LSN's Facilities connected to District Facilities shall be the responsibility of LSN. The relocation or removal of such facilities shall occur within ninety (90) calendar days after LSN's receipt of notice from the City demanding relocation or removal. The City will expeditiously review any LSN requests to move its Facilities. Further, when the District changes its method of transmission, such as changing from overhead transmission to underground transmission, LSN shall, within a reasonable period, remove or relocate its facilities as provided in this Section.

7.7 The City may, at the time of LSN's construction, relocation or placement of duct or conduits in the Right of Way, require that LSN provide the City with additional duct or conduit or related structures at incremental cost, necessary to access the conduit; provided that as a conditions to such a requirement, the City must enter into a separate contract with LSN pursuant to the terms and conditions set forth in RCW 35.99.070.

Section 8: Insurance.

8.1 General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

8.2 Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

8.3 Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

8.4 Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 for each person, and $1,000,000, for each occurrence of bodily injury and $1,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

Section 9: Transfers and Change in Control.

9.1 Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

9.2 Any transfer of ownership affected without the written consent of the City shall render this Franchise subject to revocation. Consent shall not be unreasonably withheld.

9.3 The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

9.4 The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

9.5 The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

9.6 Franchisee may offer or provide capacity or bandwidth in its Telecommunications System to another person without prior written notice to the City; provided that, Franchisee shall at all times retain exclusive control over its Telecommunication System and shall remain solely responsible for constructing, maintaining, and repairing its Telecommunication System pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such person that are greater than any rights Franchisee has pursuant to this Franchise; any rights granted shall terminate upon expiration or termination of this Franchise; such persons shall not be construed to be third-Party beneficiaries hereunder; such persons shall not be authorized herein to place, locate, construct, install, maintain, repair or operate equipment, systems or facilities in the Public Right-of-Way belonging to or controlled by such person, without prior authorization of the City; and, no such person may use the Telecommunication System to provide "cable services", open video services, or video programming services as those terms are defined in the Cable Communications Act of 1984, as amended, except as may be authorized by the City.

Section 10: Indemnification.

10.1 LSN shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions of LSN its agents, servants, officers, or employees in performing under this Franchise. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of LSN, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in the City Rights-of-Way or in any other public place in performance of work or services permitted under this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.

10.2 In the event any claim or demand for which indemnification is provided under Section 10.1 is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify LSN thereof, and LSN may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event that LSN refuses the tender of defense in any suit or any claim for which indemnification is provided under Section 10.1, said tender having been made pursuant to this indemnification clause, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of LSN, then LSN shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable recovery of attorneys' fees under this indemnification clause.

10.3 In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of LSN and the City, its officers, employees and agents, LSN's liability hereunder shall be only to the extent of LSN's negligence or the negligence of its agents. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, LSN waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude LSN from raising such immunity as a defense against any claim brought against LSN by any of its employees. This waiver has been mutually negotiated by the parties.

10.4 In the event it is determined that RCW 4.24.115 applies to this Franchise, LSN's indemnification obligations under Section 10.1 shall apply to the maximum extent permitted thereunder, to the full extent of LSN's negligence. Furthermore, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

10.5 The provisions in this Section 10 shall survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for which indemnification is provided under Section 10.1 and which is based on an act or omission that occurred during the term of this Franchise.

Section 11: Compensation.

11.1 Utility Tax. The Franchise shall pay to City during the term of this Franchise an amount equal to six percent (6%) of the Franchisee's Gross Revenues ("Utility Tax"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point and multi-point services is based on the pro-rata share of the revenue from those services.

11.2 Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Utility Tax below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

11.3 Payment of Utility Tax. 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 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

11.4 Franchisee may not offset against the Utility Tax the amount of any fee or charge paid to the City in connection with the Franchisee's use of the Rights-of-Way whether or not the fee or charge is imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

11.5 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge upon revenues derived by LSN from the telephone business, as defined in RCW 82.16.010 for use of the right of way. However, the City reserves the right to impose a franchise fee upon such revenues in the event that a change in state law or a final binding non-appealable decision of the appellate courts allows the imposition of franchise fees upon such revenues. The City further reserves its right to impose a franchise fee upon gross revenues derived by Franchisee from within the City from its Telecommunications System that are not otherwise prohibited pursuant to RCW 35.21.860 or other applicable state or federal law. In the event the City elects to

impose a franchise fee upon revenues derived by the Franchisee from its Telecommunications System within the City, the City will provide written notice of the same to Franchisee. The Franchisee agrees that, upon such notice, the City and Franchisee shall enter into good faith negotiations to amend this Franchse so as to enable the City to assess and collect such franchise fees in a manner reasonable acceptable to the City and Franchisee. In the event that Franchisee disputes the City's authority to impose such franchse fees and/or the Franchisee and City are unable to mutually agree on the terms and conditions of such amendment to the Franchise, either party may submit the dispute to the dispute resolution and binding arbitration provisions as set forth in Section 16.3; provided however, that nothing herein shall prevent the parties from first submitting the dispute to mediation.

11.6 As provided in RCW 35.21.860, the City may recover from LSN actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, or this Franchise. In consideration of such administrative expenses, the City shall charge LSN a permit fee which shall specify the amounts due. LSN shall make payment to the City of such expenses prior to permit issuance. Failure of LSN to acquire permit and pay such amount shall constitute a failure to comply with this Franchise. Additionally, failure to timely pay said amounts shall be grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Franchisee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Washington law.

Section 14: Right to Perform Utility Tax Audit or Review; Default. In addition to all rights granted under Section 13, and as further set forth in Kelso Municipal Code 5.02, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Utility Taxes to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 5 years after the date on which Franchise fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16 Dispute Resolution and Amendment of Franchise.

16.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify LSN in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) days of its receipt of such notice, LSN shall provide written response to the City that shall acknowledge receipt of such notice and state LSN's intentions with respect to how LSN shall respond to such notice. LSN shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 15.2, or:
B. Resolve the dispute or cure the default, or;
C. Notify the City that LSN cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default.

Notwithstanding such notice, LSN shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by LSN and the projected completion date. In such case, the City may set a meeting in accordance with Section 16.2.

16.2 If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with Section 15.1., then the City shall promptly schedule a meeting between the City and LSN to discuss the dispute or any alleged default. The City shall notify LSN of the meeting in writing and such meeting shall take place not less than ten (10) days after LSN's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting, shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means, except that any dispute or inability to agree on terms and conditions for amendment of the Franchise, including Franchise fees, that arise under Section 11(e) shall instead be subject to the binding arbitration provisions of 16.3. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

16.3 Notwithstanding the provisions of 16.4, for any dispute or inability to agree on terms and conditions for any amendment of the Franchise, including Franchise fees, that arise under Section 11(e), the Parties agree that in the event the dispute cannot be resolved pursuant to Section 16.1 or 16.2 of this Franchise, either party may submit the dispute to binding arbitration as provided pursuant to this section 16.3, by providing written notice to the other party of such intent; provided however, nothing herein shall prevent the parties from first submiting the dispute to mediation. Within fifteen (15) days after notice of submission of the dispute to binding arbitration, the Parties shall agree upon a single arbitrator selected from a panel of persons qualified by the American Arbitration Association [or other agreed upon local alternative dispute resolution organization] or, in case of a disagreement, the arbitrator shall be appointed from such panel by the presiding judge of [applicable local court]. During such time that the arbitrator is being selected or appointed, the Parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner. The arbitrator shall apply applicable provisions of Washington law in reaching his or her determination. In resolving disputes regarding the terms and conditions of imposition of the franchise fee, including by way of example and not limitation, the amount of the franchise fee to be assessed, the arbitrator shall determine whether the terms and conditions propsed by the City are just and reasonable and within the scope of the City's authority. The determination by the arbitrator shall be final and binding on the Parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Franchisee and City shall use their best efforts to conclude all arbitration proceedings involving franchise fee disputes within thirty (30) days following the commencement of such arbitration proceedings. The arbitrator shall have no authority to award attorneys' fees, or any other costs or expenses

incurred directly or indirectly in connection with the proceedings provided, however, the costs of the arbitrator shall be shared equally by the Parties.

16.4 If, at the conclusion of the steps provided for in Section 16.1 and 16.2 above, the City and LSN are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or LSN (as LSN may have authority to do so) may:

A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and/or;
B. By ordinance, declare an immediate forfeiture of this Franchise for a breach of any material obligations under this Franchise and/or;
C. Take such other action to which it is entitled under this Franchise or any applicable law.

16.5 Unless otherwise agreed by the City and LSN in writing, the City and LSN shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

16.6 Neither LSN's acceptance of this Franchise, LSN's appearance before the City Council at any public proceeding concerning the proposed termination of this Franchise, nor any action taken by the City Council as a result of any such public proceeding, including a declaration of termination or a finding of grounds to terminate, shall be construed to waive or otherwise affect LSN's right to seek dispute resolution of the rights and responsibilities of the parties under this Franchise.

16.7 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement, or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by LSN of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically references this Franchise and states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

16.8 In the event a dispute arises regarding the interpretation, implementation and/or breach of the terms of this Franchise, the prevailing party is entitled to be awarded costs and reasonable attorney fees incurred in resolution of such dispute pursuant to the terms of this section and in any judicial proceeding.

Section 17: Venue.

Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Superior Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court for the Western District of Washington in Seattle, Washington.

Section 18: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 19: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Washington anti-trust law, RCW 19.86.010 – 19.86.120. Nothing contained in this

section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 20: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

Department: Public Works
Name:Public Works Director
Address:P.O. Box 819
203 South Pacific, Suite 217_
KELSO, WA 98626
Phone: 360-423-6590
Facsimile: 360-423-6591

Contracts Administration
LS Networks
921 SW Washington St., STE 370
Portland, OR 97205
Phone: (503) 294-5300
Facsimile: (503) 227-8585

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 21: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 22: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.
(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. .

PASSED by the City Council and approved by the Mayor _____, 2012.

APPROVED:_____

Mayor

Attest: _____

City Recorder

Approved as to form

_____

City Attorney

Accepted _____(date)

LightSpeed Networks, Inc.

By _____

Michael Weidman

Title President and CEO

LS Networks
921 SW Washington St., Ste. 370
Portland, OR 97205
503-294-5300

October 26, 2012

City of Kelso
Franchise Application:

1. LightSpeed Networks, Inc. dba LSN
   921 SW Washington St. Suite 370, Portland, OR 97217
   Contact person: Robin Smith, Legal & Compliance Director 503-414-0479
2. Fiber Optic Cable, telecommunications, broadband and cell tower improvements, internet to schools, medical facilities and businesses
3. Route map to be provided, more detail will be submitted at permit phase
4. Construction schedule approximately: January 2013 to June 2013
5. Competitive Telecommunications Company, Certificate Granted 3/26/2006 in Docket UT-060317

Best regards,

Robin Smith
Legal and Compliance Director
Direct: 503-414-0479
rsmith@LSNetworks.net

From: Robin Smith [mailto:rsmith@lsnetworks.net]
Sent: Friday, October 26, 2012 10:58 AM
To: stimm@kelso.gov
Subject: Telecommunications Franchise Application

Shelly:

It was nice to meet you on the phone yesterday.

Franchise Application:

Our company is in the process of closing a significant opportunity with a major wireless carrier that will facilitate our network expansion further into Washington. The purpose of this email is two-fold: First to provide an introduction of the company, and secondly to identify the most appropriate person in the City staff with whom I should work regarding a probable franchise agreement.

Company Overview

LightSpeed Networks Inc., dba "LS Networks" is one of the fastest-growing telecommunications companies in the Pacific Northwest. We are a privately-held inter-exchange network services provider and competitive local exchange carrier, with our headquarters in Portland, Oregon. LS Networks is owned by upwards of 60,000 Oregonians (consisting of rural electric power cooperatives' members and a tribal nation), and as such is quite focused on providing benefit and value-added services to all of Oregon and now into areas of Washington.

LS Networks operates a fiber optic backbone throughout Oregon and has been focused to bring state-of-the-art connectivity to State and Local governmental agencies, schools, hospitals, wholesale opportunities and businesses. We have designed our network using the latest in resilient broadband technologies that effectively level the "playing field" of service-delivery capabilities between rural and metropolitan areas around the State. Additional information can be found on our website at www.LSNetworks.net .

Request

Based on our continued network expansion in Washington, specifically with some planned assets in your City, I would like to be able to identify the most appropriate point of contact on the City staff (if it is not you) that I should work with. Typically when there are LS Networks'-owned company assets utilizing the public rights-of-way a form of franchise agreement with the City is appropriate. If you have a formal process for that, would you please provide it to me? Alternatively, I have provided a template Ordinance that has been adopted by many cities in Washington.

Best regards,

Robin Smith
Legal and Compliance Director

AGENDA SUMMARY SHEET
Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:
AN ORDINANCE OF THE CITY OF KELSO EXTENDING THE TERM AND AMENDING AND RESTATING THE GRANT OF FRANCHISE TO SPRINT COMMUNICIATIONS COMPANY, ITS SUCCESSORS AND ASSIGNS FOR CONSTRUCTING, OPERATING AND MAINTAINING A FIBER OPTIC TELECOMMUNICATIONS SERVICE

Agenda Item:

Dept. of Origin: City Manager, Public Works

For Agenda of: January 2, 2013

Cost of Item:

City Manager: Steve Taylor

PRESENTED BY:
David M. Sypher, P.E.
Public Works Director

AGENDA ITEM ATTACHMENTS:

Proposed Ordinance

SUMMARY STATEMENT:

The City granted a franchise to Sprint in 1987. Franchise fee provisions were repealed in 2007 and the franchise has been extended to the present. It is set to expire in February 2013. The City staff reviewed the provisions of the ordinance and recommend a few minor changes to Sprint, who also made other minor amendments. To incorporate these changes and also clean up some repealed language of 2007, the attached ordinance amends and restates the franchise and also extends the franchise for a proposed ten year term. These changes have been reviewed by Sprint and is currently in process for their final approval; the second reading will be postponed until that final approval is complete

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

Move to pass the ordinance on second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO EXTENDING THE TERM AND AMENDING AND RESTATING THE GRANT OF FRANCHISE TO SPRINT COMMUNICATIONS COMPANY L.P., A DELAWARE LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS FOR CONSTRUCTING, OPERATING, AND MAINTAINING FIBER OPTIC TELECOMMUNICATIONS SERVICE

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WHEREAS, in 1987, the City granted a franchise to U.S. Sprint, now Sprint Communications Company, L.P., a Delaware limited partnership, ("Sprint") for constructing, operating, and maintaining fiber optic telecommunications services within the City by ordinance 87-3080; and

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WHEREAS, the franchise has been extended since that time with one amendment repealing section 6 of ordinance 87-3080 related to franchise fees; and

WHEREAS, the City wishes to extend the franchise agreement for ten (10) years and to amend and restate the franchise to make minor changes to the terms of the franchise and incorporate previous changes made by subsequent ordinance;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That the franchise granted by Ordinance 87-3080, as amended and extended previously, is hereby amended and restated as set forth herein.

Section A. Nature and Term of Grant:

1. The City of Kelso ("City") does hereby grant to Sprint Communications Company, L.P. ("Sprint" or "Grantee") a non-exclusive franchise to construct, operate, and maintain a fiber optic telecommunications system, with all necessary appurtenances, in and under the surface of the following streets and public places in the City, as shown in red on the map attached hereto as Exhibit "A" and incorporated by reference:

   Beginning at a point on the north city limits line, in North Kelso, being on the right-of-way for North Pacific Avenue, on the westerly shoulder of

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Deleted: BEGINNING at a point on the north city limits line, in North Kelso, being on the right-of-way for Pacific Avenue, on the westerly shoulder of said Pacific Avenue; thence Southerly 2,654 feet along Pacific Avenue to the easterly line of First Avenue in North Kelso; thence southerly 2,104 feet along the easterly side of First Avenue to Cowlitz Way; thence westerly 1,007 feet along the north side of Cowlitz Way, attached to the Cowlitz Way Bridge, to the east line of First Avenue in West Kelso; thence southerly 1,080 feet along the easterly side of First Avenue to the city limits line between the City of Kelso and the City of Longview, being the terminus of this line, having a total length of 7,565 feet.¶

said North Pacific Avenue; thence southerly 1,971 feet along North Pacific Avenue to a point near Redpath Street where Sprint's cable angles to the west to enter Wood Street , thence continuing southerly and easterly 1,888 feet along the westerly shoulder of said Wood Street; thence easterly 100 feet along the south side of Harris Street, thence southerly 503 feet along the westerly side of First Avenue North to Cowlitz Way; thence westerly 900 feet along the north side of Cowlitz Way, attached to the Cowlitz Way Bridge, to the east line of First Avenue in West Kelso; thence southerly 1,652 feet along the easterly side of First Avenue to the City limits line between the City of Kelso and the City of Longview, being the terminus of this line, having a total length of 7,014 feet.

2. This franchise is for the purpose of supplying fiber optic telecommunications services within the City, subject to the terms and conditions of this franchise, for a term of ten (10) years.

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3. An updated Exhibit "A" shall be provided to the City by Sprint at the end of each renewal period.

Section B.

1. All such facilities shall be constructed underground. No overhead facilities shall be constructed or attached to existing above ground structures within the City of Kelso, except over the Cowlitz Way Bridge.
2. Grantee shall file with the City of Kelso, before performing any work under authority of this Ordinance, plans for all such facilities which it proposes to construct or use under the authority of this Ordinance in the street rights of way of said City in such form and detail as the City may require, and such plans shall first receive the approval of said City. Any relocation and/or change shall be indicated in an "As Built" plan provided to the City by Sprint, and the City shall be provided an updated Exhibit "A" at that time; underground cables, other underground conduits and pipes shall be laid at such depths in the street rights of way or other public places, as may be directed by the City.
3. All facilities shall be constructed, operated and maintained in accordance with Federal, State, and local construction and safety codes and standards.

Section C.

All facilities constructed, operated, and maintained by said Grantee under and by virtue of this Ordinance, shall be so placed with reference to all said street rights of way of said City so as to not unduly or unnecessarily interfere with the public use thereof, and whenever the said Grantee, in the exercise of the rights granted by this Ordinance, shall disturb or obstruct the surface of any street or alley, the said Grantee shall, as soon as reasonably practical, restore said surface to as good or better condition as existed prior to the exercise of the rights hereby granted.

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Section D.

1. All construction maintenance of any and all facilities within the City streets incident to Grantee's provision of service shall, regardless of who performs construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction of any such facilities and for excavation and laying of any lines, conduits or other appurtenances within City streets. Grantee shall pay all fees applicable to specific construction segments upon issuance of the requisite construction permits by the City to Grantee. In the event that emergency repairs are necessary, Grantee shall immediately notify the city of the need for such repairs, and apply for appropriate permits within 48 hours after discovery of the emergency. Grantee must comply with all Ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

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2. Within forty-eight (48) hours after the City notifies Grantee of a proposed street excavation, the Grantee shall:
   a. Mark 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 owner does not have any underground facilities in the vicinity of the proposed excavation.

3. The City shall have the right to require Grantee to change the location of any conduit, structure or facility within the street area when the public convenience requires such change, and the expense thereof shall be paid by Grantee. However, payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third-party. Should Grantee fail to remove or relocate any such pipes, wires, conduits, or other facilities by the date established by the City and provided to Grantee in writing, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. City agrees to provide Grantee at least 180 days prior written notice before any required relocation. Notwithstanding anything to the contrary contained herein, except in the case of an emergency, Grantee will not be required to perform any relocation work contemplated during the period of November 15th of any year through January 2nd of the following year.

4. All Grantee's pipes, conduits and underground facilities shall be laid down and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, or other facilities that may have been laid in the street by or under the City's authority. The system of pipes, wires, conduits, and other facilities constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

Section E.

1. Whenever Grantee disturbs the surface of any street for any purpose mentioned

above. Grantee shall promptly refill the opening and restore the street surface to a condition satisfactory to the City Engineer.

2. Following excavation of the surface of any such street, Grantee shall be responsible for maintenance of the street and its surface within the area affected by the excavation for one year after such area is refilled and/or repaved. If Grantee fails to refill and/or repave the area affected by the excavation within a reasonable period of time following excavation, the City may, after providing notice to Grantee, refill and/or repave any street opening made by Grantee, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the reasonable determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in streets shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with all rules, regulations and Ordinances of the City. If the Grantee's use of the City's streets or rights of way imposes additional maintenance costs upon the City, Grantee shall pay a reasonable fee on an ongoing basis for its pro rata share of such costs.

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Section F.

1. The City reserves its right to impose a franchise fee in the event that a change in state law or a final binding and non-appealable decision of the appellate courts allows imposition of franchise fees. The City further reserves its right to impose a franchise fee upon gross revenues derived by Franchisee from within the City from its Communications System, that are not otherwise prohibited pursuant to RCW 35.21.860 or other applicable state or federal law. In the event that the City elects to impose franchise fees upon revenues derived by Franchisee from its Communication System within the City, the City will provide written notice of the same to Franchisee. Franchisee agrees that, upon such notice, the City and the Franchisee shall enter into good faith negotiations to amend this Franchise so as to enable the City to assess and collect such franchise fees in a manner reasonably acceptable to the City and Franchisee.

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2. Payment of any franchise shall not exempt Grantee from the payment of any other license fees, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the Ordinance or Ordinances imposing such other license, fee, tax or charge.

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3. The Grantee shall pay the cost of publication of this franchise Ordinance and any amendments thereto, as such publication is required by law. Grantee shall also pay the City or its agent for such reasonable pre-franchising costs as are City incurred in entering into this franchise agreement with the City.

4. The Grantee shall, within thirty (30) days after notification by City to Grantee of the passage of this Ordinance and Grantee's receipt of reasonable documentation

describing the fees and other reasonable pre-franchising costs incurred by City, file an acceptance hereof with the City and pay those costs and/or fees provided in this Section.

Section G

1. Except to the extent caused by the negligence or willful misconduct of City, its agents and employees, Grantee hereby agrees and covenants to indemnify and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this franchise , by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its pipes, wires, conduits, or other facilities in a safe condition.

2. Except to the extent caused by the negligence or willful misconduct of City, its agents and employees, Grantee also hereby agrees to indemnify the City for any damage, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting directly or indirectly from Grantee's failure to remove, adjust or relocate any of its facilities in a timely manner in accordance with a relocation schedule furnished Grantee by the City in writing pursuant to Section D.3. above.

Section H.

1. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City and its officers, agents, and employees from any and all insurable claims referred to in Section G. The insurance shall provide coverage at all times for not less than $1,000,000 for personal injury to each person, $1,000,000 for each occurrence, and $500,000 for each occurrence involving property damages plus costs of defense; or a single limit policy of not less than $1,000,000 covering all claims per occurrence, plus costs of defense.

2. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be cancelled without written notice first being given to the City Clerk according to policy provisions. If the insurance is cancelled or terminated prior to completion of the contract, Grantee shall provide a new policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage in the amounts required for the duration of the contract.

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Section G.¶
Unless Grantee shall within thirty (30) days after notification of the passage of this Ordinance, file an acceptance hereof with the City of Kelso and pay those fees provided in section 6, the consent herein granted, subject to the conditions and privileges herein set forth, shall become null and void. ¶

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3. The Contractor shall maintain on file with the City Clerk a certificate of insurance certifying the coverage required under this Section. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this franchise by the City.

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Section I.

The City of Kelso reserves the right to regrade, widen, change the grade or alignment of any or all of its streets, or alleys, and to make any other improvements, and to require Grantee, at its own expense, to readjust or relocate its facilities to conform therewith. In the event the City should vacate any right-of-way, Grantee may be required to readjust or relocate its facilities, at its sole cost and expense, provided, however, City shall provide such alternative right of way at no expense to Grantee.

Section J.

This Ordinance shall not be construed as any limitation upon the right of the City of Kelso to exercise its rights, privileges, or authority similar to or different from those herein set forth, or to grant rights, privileges, or authority to other persons or corporations similar to or different from those herein set forth in the same streets or alleys.

Section K

Except for a transfer to a parent company or a wholly owned subsidiary or affiliate of it or its parent company, this franchise shall not be assignable or transferrable by Grantee without the prior written permission of the City of Kelso, which will not be unreasonably withheld, conditioned or delayed.

Section L

1. Whenever Grantee intends to discontinue using any facility within the streets, Grantee shall submit to the City for its approval a completed application describing the facility and the date on which the Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the City may require the Grantee to remove the facility from the street area or modify the facility in order to protect the public health and safety or otherwise serve the public interest. The City may require the Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the affected facility as directed by the City, or until the rights to and responsibility for the affected facility are accepted by another utility having authority to construct and maintain such facilities, Grantee shall be responsible for all

necessary repairs, relocations of the facility, and maintenance of the street area in the same manner and degree as if the facility were in active use, and shall retain all liability for such facility.

2. In removing or modifying facilities as provided in this Section, Grantee shall also remove all residue of harmful or toxic substances associated with such facilities. Grantee hereby agrees to remain forever liable to and indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City to the extent arising out of harmful or toxic substances associated with facilities whose use has been discontinued by Grantee.

Section M.

1. In addition to any other rights set out elsewhere in this franchise, the City reserves the right to declare a forfeiture of the franchise and all Grantee's rights arising hereunder, in the event that:

    a. The Grantee violates any material provision of the franchise; or

    b. The Grantee's construction schedule is delayed for over 6 months; or
    c. The Grantee becomes insolvent or unable or unwilling to pay its debts or is adjudged bankrupt; or
    d. The Grantee is found to have practiced any fraud or deceit upon the City; or
    e. The Grantee fails to obtain and maintain any permit required by any federal or state regulatory body.

2. The City must give Grantee thirty (30) days written notice of its intent to declare a forfeiture, stating the reason for the forfeiture. If Grantee cures the stated reason for the forfeiture within the thirty (30) day notice period or if the Grantee initiates efforts reasonably satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the forfeiture shall not take place.
3. If the Grantee fails to cure the stated reason within the thirty (30) day notice period or if the Grantee does not undertake efforts reasonably satisfactory to the City to remedy the stated effect, then the City Council may revoke the franchise by Ordinance.

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4. In addition to any rights set out elsewhere in this franchise, the City reserves the right at its sole option to apply any of the following, alone or in combination, for violation of items (1) - (5) above that has/have not been cured by Grantee within the timeframes set forth above following receipt of written notice by Grantee of such violation(s):

    a. Impose a financial penalty of $100.00, whether per day, incident, or other measure of violation;

    b. Reduce the duration of the franchise, as the City deems reasonable; or

    c. Suspend the Grantee's franchise rights until the Grantee corrects or otherwise remedies the violation.

5. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the

remedy required in order to prevent further such violations and any other matters the City deems appropriate.

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The City Council may revoke this franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the franchise.

Section N

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Upon the expiration of this franchise, the City shall have the right, at its election, to:

1. Renew or extend the franchise, in accordance with applicable law, though nothing herein shall be construed to require such renewal or extension;
2. Invite additional proposals and award this franchise to another grantee;
3. Terminate the franchise without further action; or
4. Take such further action as the City deems appropriate.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

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SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____ _____, 2013.

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_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:_____

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EXHIBIT A

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Exhibit A¶ ... [1]

Sprint Right of Way GIS Map - Kelso, WA

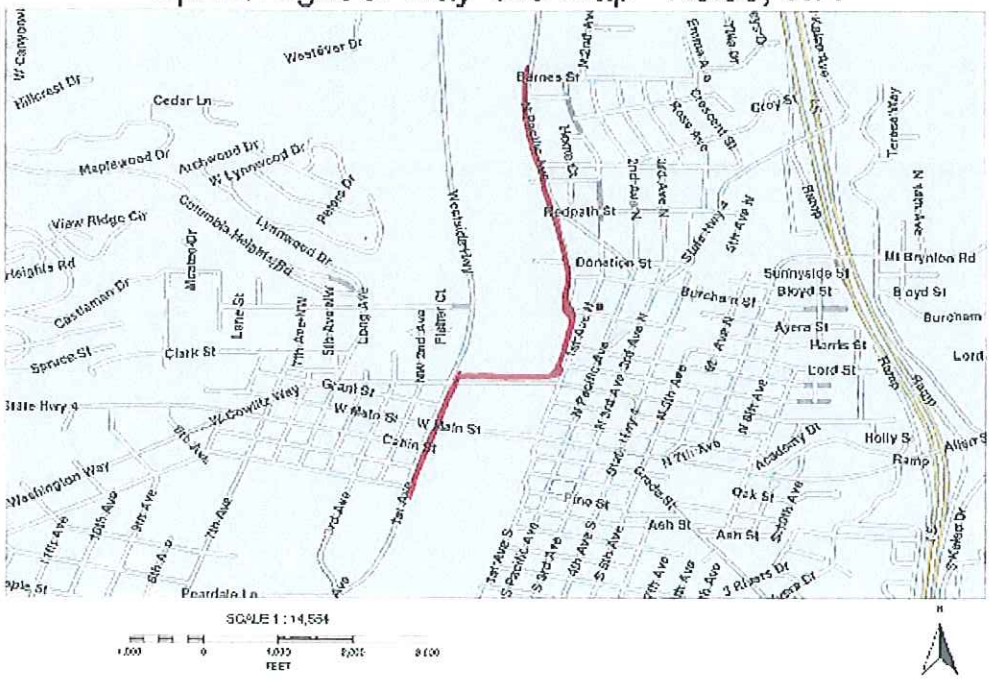

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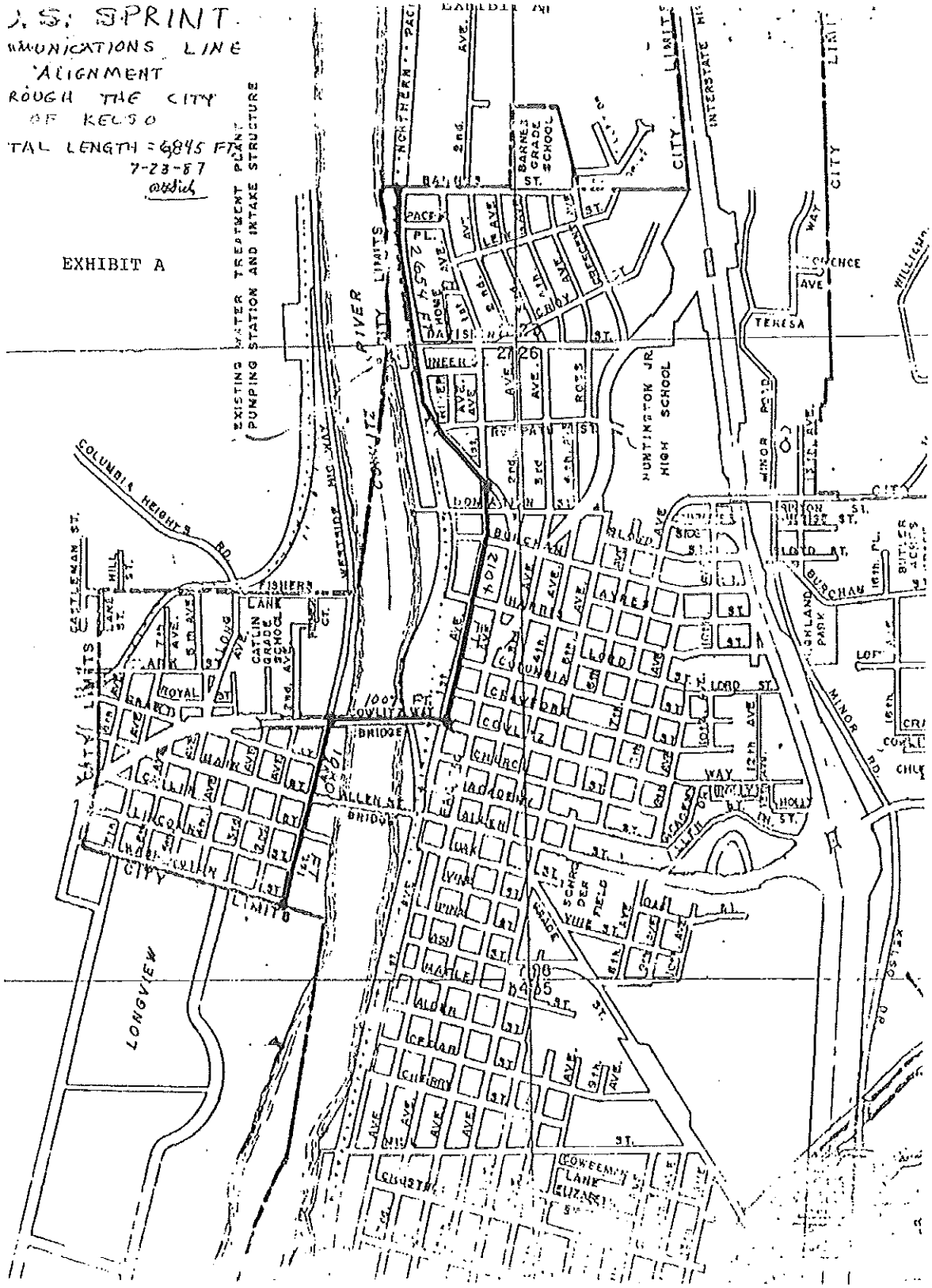
Exhibit A

J. S. SPRINT
MUNICATIONS LINE
ALIGNMENT
ROUGH THE CITY
OF KELSO
TAL LENGTH = 6845 FT
7-23-87

EXHIBIT A



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO EXTENDING THE TERM AND AMENDING AND RESTATING THE GRANT OF FRANCHISE TO SPRINT COMMUNICATIONS COMPANY L.P., A DELAWARE LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS FOR CONSTRUCTING, OPERATING, AND MAINTAINING FIBER OPTIC TELECOMMUNICATIONS SERVICE

WHEREAS, in 1987, the City granted a franchise to U.S. Sprint, now Sprint Communications Company L.P., a Delaware limited partnership, ("Sprint") for constructing, operating, and maintaining fiber optic telecommunications services within the City by ordinance 87-3080; and

WHEREAS, the franchise has been extended since that time with one amendment repealing section 6 of ordinance 87-3080 related to franchise fees; and

WHEREAS, the City wishes to extend the franchise agreement for ten (10) years and to amend and restate the franchise to make minor changes to the terms of the franchise and incorporate previous changes made by subsequent ordinance;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That the franchise granted by Ordinance 87-3080, as amended and extended previously, is hereby amended and restated as set forth herein.

Section A. Nature and Term of Grant:

1. The City of Kelso ("City") does hereby grant to Sprint Communications Company, L.P. ("Sprint" or "Grantee") a non-exclusive franchise to construct, operate, and maintain a fiber optic telecommunications system, with all necessary appurtenances, in and under the surface of the following streets and public places in the City, as shown in red on the map attached hereto as Exhibit "A" and incorporated by reference:

   Beginning at a point on the north city limits line, in North Kelso, being on the right-of-way for North Pacific Avenue, on the westerly shoulder of

said North Pacific Avenue; thence southerly 1,971 feet along North Pacific Avenue to a point near Redpath Street where Sprint's cable angles to the west to enter Wood Street , thence continuing southerly and easterly 1,888 feet along the westerly shoulder of said Wood Street; thence easterly 100 feet along the south side of Harris Street, thence southerly 503 feet along the westerly side of First Avenue North to Cowlitz Way; thence westerly 900 feet along the north side of Cowlitz Way, attached to the Cowlitz Way Bridge, to the east line of First Avenue in West Kelso; thence southerly 1,652 feet along the easterly side of First Avenue to the City limits line between the City of Kelso and the City of Longview, being the terminus of this line, having a total length of 7,014 feet.

2. This franchise is for the purpose of supplying fiber optic telecommunications services within the City, subject to the terms and conditions of this franchise, for a term of ten (10) years.
3. An updated Exhibit "A" shall be provided to the City by Sprint at the end of each renewal period.

Section B.

1. All such facilities shall be constructed underground. No overhead facilities shall be constructed or attached to existing above ground structures within the City of Kelso, except over the Cowlitz Way Bridge.
2. Grantee shall file with the City of Kelso, before performing any work under authority of this Ordinance, plans for all such facilities which it proposes to construct or use under the authority of this Ordinance in the street rights of way of said City in such form and detail as the City may require, and such plans shall first receive the approval of said City. Any relocation and/or change shall be indicated in an "As Built" plan provided to the City by Sprint, and the City shall be provided an updated Exhibit "A" at that time; underground cables, other underground conduits and pipes shall be laid at such depths in the street rights of way or other public places, as may be directed by the City.
3. All facilities shall be constructed, operated and maintained in accordance with Federal, State, and local construction and safety codes and standards.

Section C.

All facilities constructed, operated, and maintained by said Grantee under and by virtue of this Ordinance, shall be so placed with reference to all said street rights of way of said City so as to not unduly or unnecessarily interfere with the public use thereof, and whenever the said Grantee, in the exercise of the rights granted by this Ordinance, shall disturb or obstruct the surface of any street or alley, the said Grantee shall, as soon as reasonably practical, restore said surface to as good or better condition as existed prior to the exercise of the rights hereby granted.

Section D.

1. All construction maintenance of any and all facilities within the City streets incident to Grantee's provision of service shall, regardless of who performs construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction of any such facilities and for excavation and laying of any lines, conduits or other appurtenances within City streets. Grantee shall pay all fees applicable to specific construction segments upon issuance of the requisite construction permits by the City to Grantee. In the event that emergency repairs are necessary, Grantee shall immediately notify the city of the need for such repairs, and apply for appropriate permits within 48 hours after discovery of the emergency. Grantee must comply with all Ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
2. Within forty-eight (48) hours after the City notifies Grantee of a proposed street excavation, the Grantee shall:
   a. Mark 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 owner does not have any underground facilities in the vicinity of the proposed excavation.
3. The City shall have the right to require Grantee to change the location of any conduit, structure or facility within the street area when the public convenience requires such change, and the expense thereof shall be paid by Grantee. However, payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third-party. Should Grantee fail to remove or relocate any such pipes, wires, conduits, or other facilities by the date established by the City and provided to Grantee in writing, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. City agrees to provide Grantee at least 180 days prior written notice before any required relocation. Notwithstanding anything to the contrary contained herein, except in the case of an emergency, Grantee will not be required to perform any relocation work contemplated during the period of November 15th of any year through January 2nd of the following year.
4. All Grantee's pipes, conduits and underground facilities shall be laid down and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, or other facilities that may have been laid in the street by or under the City's authority. The system of pipes, wires, conduits, and other facilities constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

Section E.

1. Whenever Grantee disturbs the surface of any street for any purpose mentioned

above. Grantee shall promptly refill the opening and restore the street surface to a condition satisfactory to the City Engineer.

2. Following excavation of the surface of any such street, Grantee shall be responsible for maintenance of the street and its surface within the area affected by the excavation for one year after such area is refilled and/or repaved. If Grantee fails to refill and/or repave the area affected by the excavation within a reasonable period of time following excavation, the City may, after providing notice to Grantee, refill and/or repave any street opening made by Grantee, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the reasonable determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in streets shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with all rules, regulations and Ordinances of the City. If the Grantee's use of the City's streets or rights of way imposes additional maintenance costs upon the City, Grantee shall pay a reasonable fee on an ongoing basis for its pro rata share of such costs.

Section F.

1. The City reserves its right to impose a franchise fee in the event that a change in state law or a final binding and non-appealable decision of the appellate courts allows imposition of franchise fees. The City further reserves its right to impose a franchise fee upon gross revenues derived by Franchisee from within the City from its Communications System, that are not otherwise prohibited pursuant to RCW 35.21.860 or other applicable state or federal law. In the event that the City elects to impose franchise fees upon revenues derived by Franchisee from its Communication System within the City, the City will provide written notice of the same to Franchisee. Franchisee agrees that, upon such notice, the City and the Franchisee shall enter into good faith negotiations to amend this Franchise so as to enable the City to assess and collect such franchise fees in a manner reasonably acceptable to the City and Franchisee.

2. Payment of any franchise shall not exempt Grantee from the payment of any other license fees, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the Ordinance or Ordinances imposing such other license, fee, tax or charge.

3. The Grantee shall pay the cost of publication of this franchise Ordinance and any amendments thereto, as such publication is required by law. Grantee shall also pay the City or its agent for such reasonable pre-franchising costs as are City incurred in entering into this franchise agreement with the City.

4. The Grantee shall, within thirty (30) days after notification by City to Grantee of the passage of this Ordinance and Grantee's receipt of reasonable documentation

describing the fees and other reasonable pre-franchising costs incurred by City, file an acceptance hereof with the City and pay those costs and/or fees provided in this Section.

Section G

1. Except to the extent caused by the negligence or willful misconduct of City, its agents and employees, Grantee hereby agrees and covenants to indemnify and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this franchise , by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its pipes, wires, conduits, or other facilities in a safe condition.

2. Except to the extent caused by the negligence or willful misconduct of City, its agents and employees, Grantee also hereby agrees to indemnify the City for any damage, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting directly or indirectly from Grantee's failure to remove, adjust or relocate any of its facilities in a timely manner in accordance with a relocation schedule furnished Grantee by the City in writing pursuant to Section D.3. above.

Section H.

1. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City and its officers, agents, and employees from any and all insurable claims referred to in Section G. The insurance shall provide coverage at all times for not less than $1,000,000 for personal injury to each person, $1,000,000 for each occurrence, and $500,000 for each occurrence involving property damages plus costs of defense; or a single limit policy of not less than $1,000,000 covering all claims per occurrence, plus costs of defense.

2. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be cancelled without written notice first being given to the City Clerk according to policy provisions. If the insurance is cancelled or terminated prior to completion of the contract, Grantee shall provide a new policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage in the amounts required for the duration of the contract.

3. The Contractor shall maintain on file with the City Clerk a certificate of insurance certifying the coverage required under this Section. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this franchise by the City.

Section I.

The City of Kelso reserves the right to regrade, widen, change the grade or alignment of any or all of its streets, or alleys, and to make any other improvements, and to require Grantee, at its own expense, to readjust or relocate its facilities to conform therewith. In the event the City should vacate any right-of-way, Grantee may be required to readjust or relocate its facilities, at its sole cost and expense, provided, however, City shall provide such alternative right of way at no expense to Grantee.

Section J.

This Ordinance shall not be construed as any limitation upon the right of the City of Kelso to exercise its rights, privileges, or authority similar to or different from those herein set forth, or to grant rights, privileges, or authority to other persons or corporations similar to or different from those herein set forth in the same streets or alleys.

Section K

Except for a transfer to a parent company or a wholly owned subsidiary or affiliate of it or its parent company, this franchise shall not be assignable or transferrable by Grantee without the prior written permission of the City of Kelso, which will not be unreasonably withheld, conditioned or delayed.

Section L

1. Whenever Grantee intends to discontinue using any facility within the streets, Grantee shall submit to the City for its approval a completed application describing the facility and the date on which the Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the City may require the Grantee to remove the facility from the street area or modify the facility in order to protect the public health and safety or otherwise serve the public interest. The City may require the Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the affected facility as directed by the City, or until the rights to and responsibility for the affected facility are accepted by another utility having authority to construct and maintain such facilities, Grantee shall be responsible for all

necessary repairs, relocations of the facility, and maintenance of the street area in the same manner and degree as if the facility were in active use, and shall retain all liability for such facility.

2. In removing or modifying facilities as provided in this Section, Grantee shall also remove all residue of harmful or toxic substances associated with such facilities. Grantee hereby agrees to remain forever liable to and indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City to the extent arising out of harmful or toxic substances associated with facilities whose use has been discontinued by Grantee.

Section M.

1. In addition to any other rights set out elsewhere in this franchise, the City reserves the right to declare a forfeiture of the franchise and all Grantee's rights arising hereunder, in the event that:

    a. The Grantee violates any material provision of the franchise; or

    b. The Grantee's construction schedule is delayed for over 6 months; or
    c. The Grantee becomes insolvent or unable or unwilling to pay its debts or is adjudged bankrupt; or
    d. The Grantee is found to have practiced any fraud or deceit upon the City; or
    e. The Grantee fails to obtain and maintain any permit required by any federal or state regulatory body.

2. The City must give Grantee thirty (30) days written notice of its intent to declare a forfeiture, stating the reason for the forfeiture. If Grantee cures the stated reason for the forfeiture within the thirty (30) day notice period or if the Grantee initiates efforts reasonably satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the forfeiture shall not take place.
3. If the Grantee fails to cure the stated reason within the thirty (30) day notice period or if the Grantee does not undertake efforts reasonably satisfactory to the City to remedy the stated effect, then the City Council may revoke the franchise by Ordinance.
4. In addition to any rights set out elsewhere in this franchise, the City reserves the right at its sole option to apply any of the following, alone or in combination, for violation of items (1) - (5) above that has/have not been cured by Grantee within the timeframes set forth above following receipt of written notice by Grantee of such violation(s):

    a. Impose a financial penalty of $100.00, whether per day, incident, or other measure of violation;

    b. Reduce the duration of the franchise, as the City deems reasonable; or

    c. Suspend the Grantee's franchise rights until the Grantee corrects or otherwise remedies the violation.

5. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the

remedy required in order to prevent further such violations and any other matters the City deems appropriate.

Section N

Upon the expiration of this franchise, the City shall have the right, at its election, to:

1. Renew or extend the franchise, in accordance with applicable law, though nothing herein shall be construed to require such renewal or extension;
2. Invite additional proposals and award this franchise to another grantee;
3. Terminate the franchise without further action; or
4. Take such further action as the City deems appropriate.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____ _____, 2013.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

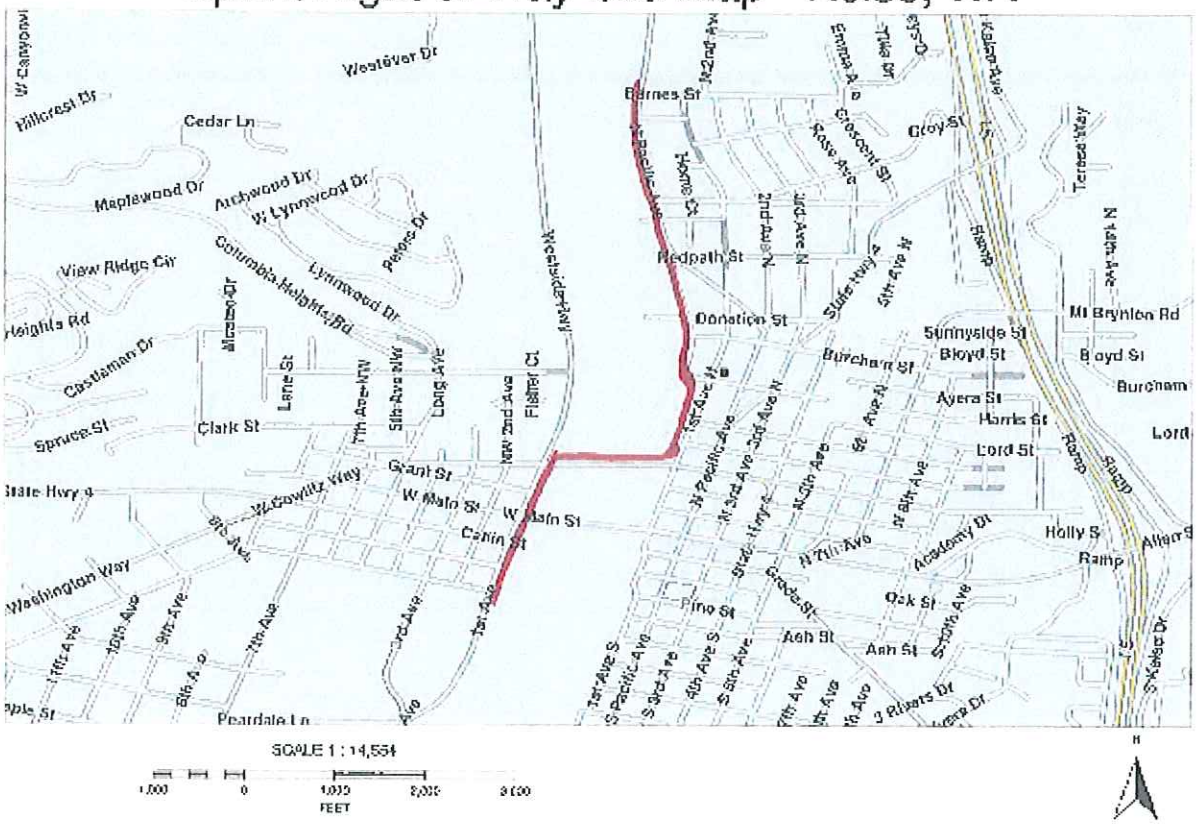
_____

CITY ATTORNEY

PUBLISHED:_____

EXHIBIT A

Sprint Right of Way GIS Map - Kelso, WA



AGENDA SUMMARY SHEET
Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:

Resolution - Surplus of a City Owned Building at 105 Minor Road.

Agenda Item:

Dept. of Origin: Public Works

For Agenda of: January 2, 2013

PRESENTED BY:
David M. Sypher, P.E.
Public Works Director

Cost of Item: N/A

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Resolution to Surplus a City Owned Building at 105 Minor Road

SUMMARY STATEMENT:

The City owned building used for the Visitors Center has reached the end of its useful life. Council has determined that it is in the best interest of the City to close the facility to prepare the structure for surplus and disposal.

RECOMMENDED ACTION:

Staff recommends Council make a motion to adopt the resolution designating the City owned structure at 105 Minor Road as surplus.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KELSO, WASHINGTON, DECLARING THE CITY OWNED BUILDING AT 105 MINOR ROAD AS SURPLUS AND TO AUTHORIZE THE DISPOSAL BY THE NEGOTIATION OF ITS SALE OR DEMOLITION.

WHEREAS, the City is the owner of an older manufactured home structure used for the Visitors Center; and

WHEREAS, the Visitors Center has reached the end of its useful life; and

WHEREAS, Council has determined that it is in the best interest of the City to close the facility to prepare the structure for surplus and disposal;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO HEREBY RESOLVE:

SECTION 1. The City owned manufactured home structure located at 105 Minor Road in Kelso, Washington is declared surplus to the needs of the City.

SECTION 2. The City Manager is directed to dispose of the structure by the negotiation of its sale or demolition and is authorized to take all steps necessary and incidental to accomplishing this.

SECTION 3. This Resolution shall take effect immediately.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2013.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY