

PUBLIC NOTICE
A MEETING OF THE HINES COMMON COUNCIL
August 10, 2021 AGENDA

- I. Meeting begins at 6:30pm
- II. Flag Salute
- III. Approval of August 10, 2021 Agenda VOTE
- IV. Approval of previous meeting minutes from July 27, 2021 VOTE
- V. Approval of Accounts Payable: VOTE
 - for a total amount of \$290,344.85
- VI. Department Head Reports
 - a) Fire Chief – Bob Spence
 - b) Police Chief – Ryan DeLange
 - c) Public Works – Jerry Lewellen
 - d) City Administrator Report, Kirby Letham
- VII. Public Comment – Non-Agenda Items ONLY (Speaking time limits may apply)
- VIII. Old Business VOTE
 - a) Resolution 2310: Deer Population Ballot Measure Proposal
 - b) 2nd Amendment Ordinance Discussion
 - c) Street Sweeper Purchase VOTE
- IX. New Business
 - a) Franchise Agreement: MiWave – Expanding Service Capabilities (First Reading)
- X. Public Comment Period (Speaking time limitations may apply)
- XI. Mayor and Council Comments
- XII. Adjournment VOTE

This meeting is open to the public. It is anticipated to last approximately one hour and a half.

In accordance with ORS 192.630, City of Hines will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time. The meeting room is physically accessible to persons with mobility devices; a sign language or foreign language interpreter may be available with advance notice.

DATED this 10th day of August 2021

Approved 8/10/21

Kirby Letham
Kirby Letham, City Administrator

City Council

8/10/21

present: Beus, Mayor, Quick

I. ✓

II. ✓

III Beus, York; Ayes

IV Quick, Beus; Ayes

V Beus, Quick;

VI Reports

• Spence: 911 calls - hotel fire, truck; trailer fire; Guns & Hoses watering plants; Beus: watering flowers

• Delange: sewer calls this time - 161. Drug calls are getting worse;

** Spence left the meeting for a 911 rollover call.

→ Guns & hoses went well, we cooked 147 hamburgers; Public Thank you to Harney County Stock Growers, and Thriftway; 2011 car is starting to break down; PD is buying new guns & tools.

• Jerry: pumping 1.5 mil water; lagoons evaporating quickly; new tank is full, we're flushing new tank. Next week new tank will be on line, tower will be offline. New sprinklers - SAVING MONEY 😊.

• Kirby

VII Public Comment - None.

✓
ack

VII Old Business

a) Res 2310 — Quick, Beers, Ages.

b) 2nd Amendment:

- Mayor explanation
- Beers - for it, concerned for Police
- * Delange - I'm in a rock and a hard place; ~~if~~ I could get fined, or possibly lose cert w/ State ?? Problem if someone moves here, I can't investigate.
- Quick: Can we word it so we don't put cops in jeopardy?
- Mayor: structure so it protects Police.
- Delange: Eventually - this will become a court case.
- * who will be the gunnery?
- Quick: we'd need place language that protect Police
- Beers: Protect Police.
- Delange:
- Mayor: vagueness is not good
- Quick: Talked to Wiseman what happens ~~if~~ - feels State is overstepping; feels like the ordinance is way ~~to~~ broad; Not willing to vote for anything that places Police in jeopardy.

~~Delange:~~

~~Delange:~~

Beers = let's get something going

VIII -b cont'd

- Beers cont'd.
- Mayor - policy of fines? DeLange = crime, dom vi., we don't destroy unless DA specifies.
- Quick - don't use County's as a base
- > Dean Brizendine - agree w/ approach, would like to see what attorney comes up w/. I know; trust Chief DeLange: concerned about if guns are stolen;
- DeLange: agrees w/ state on time place & manner restrictions.

c) Street Sweeper

- Mayor - shipping suggestions; how much are bushes.
- Quick - who can drive.
- Beers - Purchase street sweeper for \$29,500 Quick, Ages.

IX News

a) Franchise - M. Waver

X Public Comment

XI Mayor & Council

York: None

Miller: Deer, Guns & Chief DeLange, TLT lets promote fines, announced ~~that~~ formal resignation

Quick: for 2nd and Police, thanks to PW & Fire,

Beers: Thanks to Miller, good job PW, 2nd and PD, Homeless and panhandling ordinance. DeLange = simple and needed.

~~XI~~ - cont'd

- Beers - panhandling.
- Mayor - check Nyssa.

°

~~XII~~ Adjourn

Beers, @ York. 7:39pm Ayles

Admin Report

- Water tank
- ~~WDA is going very well; Burns Paiute Tribe~~
- SCA grant
-

REGULAR MEETING OF HINES COMMON COUNCIL

August 10, 2021

AUDIENCE SIGN-IN SHEET

IF YOU WISH TO ADDRESS THE COUNCIL, PLEASE INDICATE YOUR SUBJECT TO THE RIGHT OF YOUR NAME

PLEASE **PRINT** YOUR NAME

SUBJECT, IF YOU WISH TO SPEAK

Dean Brizendin

Ralph Steelman

ELSON HART

SALLY HART

**MINUTES FROM
A MEETING OF THE HINES COMMON COUNCIL
AND BUDGET COMMITTEE
July 27, 2021**

Present:

Mayor:

Nikki Morgan

Council:

Councilors Amity York, Misty Shepherd, Marsallai Quick, Robert Beers, Ron Williams and Gary Miller were present.

City Staff:

Kirby Letham City Administrator

Public Audience:

Chris Wiseman, Eldon Hart, Duane Hutchins, Jordon Bennett, Dean Brizendin and Brad Erbe

***Mayor Nikki Morgan called the meeting to order at 5:30 pm and led the flag salute.**

Approval of July 27, 2021 Agenda

Councilor Beers made a motion to approve the July 27, 2021, agenda as presented. Councilor Williams seconded the motion. All ayes, motion carried.

Approval of Minutes from July 13, 2021

Councilor Beers made a motion to approve the meeting minutes from July 13, 2021, as presented. Councilor York seconded the motion. All ayes, motion carried.

Accounts Payable for July 27, 2021

Councilor Beers made a motion to approve the Accounts Payable for July 27, 2021, in the amount of \$502,782.42. Councilor Williams seconded the motion. All ayes, motion carried.

City Administrator Letham Report

Harney County Housing Project – First thing they want to do is get a surveyor to partition the lot and a lot line adjustment and make sure the City Right of Way is preserved to make sure the City has access to the ditch and the area behind the lot. Need to determine the sewer connection needs. Line could come up from Byrd or come down from Saginaw. The depth of the line on Byrd could be more conducive to connecting the

house to the sewer. Anderson Perry will look at that with Jerry Lewellen and Administrator Letham. The next step after that will be to bring in the sewer line to those lots. Later in the meeting Councilor Quick asked for clarification about what is to be surveyed. Administrator Letham said that both lots owned by the city will be surveyed.

Park Bathrooms – The engineer is working on the bid packet. Waiting for a response to an email advising that the city would like to put it out to bid ASAP.

Homeless Camping – He has a meeting scheduled with the League of Oregon Cities (LOC) on Thursday. Looking for information about what other cities have done so that he can draft an ordinance and be prepared for a first reading at the next Council meeting.

Small City Allotment Grant – The last grant the city received is earmarked for the N. Saginaw paving project with completion this year. Working on the pricing of the project. May approach ODOT regarding an extension as the grant was awarded in Jan 2020 and with Covid, will see if an extension is possible. Will then look at requesting the next Small City Allotment Grant and work on which street(s) have the most need.

Lagoon Lift Station Renovation – Becoming a higher priority as the pump has been working extra hard. He has received notice that the ARP funds are becoming available. He will confirm that infrastructure will be covered under these funds. Councilor Quick asked what happens is the lift station stops working. It could create an emergency situation within the city to get the sewer system to continue working. There are 3 pumps, and Public Works rotates through the pumps so that there is no undue strain on one particular pump.

Water Project Update – The new tank is complete. They have started filling it to test it for structural integrity. Once that testing is complete, they will sanitize the tank and will do water quality testing. They will give it a shot of chlorine, flush out a good portion of it, refill it and test the water quality again. If it passes the water quality test, they will bring it online. The goal to bring it online is between August 10 – 15. There will be information released through the radio, newspaper and website advising residents that it could be 60 – 90 days that you could smell and/or taste chlorine. This is normal, and the levels will not exceed acceptable levels. The chlorine will go away as the tank cycles through a couple of times. There are two additional water lines that need to be installed. Working with the Tribe on mitigation solutions as there was some archaeological material found in a couple areas. More information will be provided later in the meeting.

Small Cities Meeting – Administrator Letham was unable to attend, however Mayor Morgan and Councilor Shepherd were in attendance. The next meeting will be October 14th in John Day.

Planning Commission Update – LS Networks is continuing to install high-speed internet around the city. They come to the city when they need Right of Way permits. Spectrum Communications is also working around town improving their infrastructure.

Park Sprinklers – Almost done with the City Hall and Fire Hall parks. By the end of next week, they should be fully functional.

Nuisances – The city has been notifying those residents that have been in violation. It is a continuing process. Councilor Beers asked about what appears to be a junk pile near the Sands RV Park. Administrator Letham explained that the State Fire Marshal was in

town and did an inspection of the Sundowner Motel. A brush pile belongs to the Sundowner, and the city is working with the owner to get it cleaned up. Councilor Beers clarified that he saw a junk pile at the Sands RV Park. Dean Brizendine addressed the Council and advised that Mr. Phelps is trying to sell the RV Park and that the items that are being seen do belong to Mr. Phelps and that he is supposed to remove the items.

OTEC – Had a meeting with OTEC. Due to high fire danger, they have instituted a new policy. They will shut off power under these conditions: projected winds of 50+ mph and if the National Weather Service declares a Red Flag Day. If those conditions are met, they will shut down the line between John Day and Burns along Hwy 395. Chris Wiseman asked how would this affect Crane? They Mayor suggested that someone from Crane contact OTEC directly.

Crack Seal – Councilor Williams commented that the city needs to get the crack seal project started immediately.

Public Comment Non-Agenda Items (Speaking time limits may apply)

Duane Hutchins – Brought up lighting for the Pavilion Park. He has done some research and found a model that he suggested the Council look at. He suggested the dusk – dawn solar lights. Maybe 6 of them to start to see how they would do. They would run about \$200 each.

Chris Wiseman – At the last meeting the Council discussed passing a resolution regarding the 2nd Amendment. Mr. Wiseman said the problem with a resolution, is that it is only a statement, it is not enforceable. He asked what the city attorney recommended. Administrator Letham said that they recommended that the city not pass a 2nd Amendment ordinance. The city attorney has asked for a copy of the County's ordinance for review. Mr. Wiseman said there is about 50 days before SB 554 goes into effect. Councilor Beers asked for a very brief synopsis. Dean Brisbane explained that weapons must be locked up unless they're on your person. Weapons at home are to be locked in a gun safe or gun room. If someone breaks into your home and gains access to your weapon you will be liable for how that weapon is used for the next 5 years and \$125K fine. This topic will be on the agenda for the next meeting.

Old Business

Harney County Fair Sponsorship – Jordon Bennett – He is asking for a donation to the rodeo purse. The larger the purse the better quality of participants. The rodeo does limit the number of participants. The current purse is \$10K. They would like a donation of \$2K to raise the total purse to \$12K. The highlight event is the bronc riding. In the past the city has sponsored a buckle for about \$200. *Councilor Quick made a motion to donate \$2,000 to the Harney County Fair to sponsor the bronc riding event. Councilor Beers seconded the motion. All ayes, motion carried.*

Update – MOA meetings with the Tribe: Most Favorable Stipulation Ideas

During installation of new water lines, from Byrd, the alleyway between S. Roanoke and S. Quincy and almost to Barnes there were a few areas determined by the archaeologists to be culturally significant. And at the other end of town, the alleyway between N. Roanoke and N. Quincy from Conley to Bennett there were a few areas also determined to be culturally significant. Have been working with the Tribe to protect the areas and respect them. Have been working towards an agreement that will also allow the city to move forward with the water project. The Tribe has stipulated they be allowed to have someone onsite as the city finishes the project. Administrator Letham read an email from the archaeologist that listed some standard mitigation measures the State Historical Preservation Office (SHPO) typically sees. Out of the ideas proposed by SHPO the Tribe would support interpretive panels, donation to cultural department, ethnography of the Hines area, planting of native plants, a National Register listing, etc.

New Business

League of Oregon Cities Legal Representation: Resolution 2309

A resolution authorizing the city's participation in the League of Oregon Cities' advise program providing limited free legal advice to Oregon cities located in Eastern Oregon. Administrator Letham read Resolution 2309 in its entirety. He did not read Exhibit A. It is similar to the previous program except now it is a permanent program and no longer a pilot program and raises the allotted hours from 10 to 15 of free legal advice. *Councilor Beers made a motion to approve Resolution 2309 as read. Councilor Shepherd seconded the motion. All ayes, motion carried.*

New Business License: KC's Coffee Box – Cynthia Spencer

The Spencer's were not able to attend the meeting. They will be operating a mobile trailer coffee kiosk. Councilors asked what are the hours of operation, and what will they offer? Questions about will they need a water account set up? Administrator Letham did advise them they would need the State Food Handler's license and that the city needs a copy. *Councilor Quick made a motion to approve the business license for KC's Coffee Box. Councilor York seconded the motion. All ayes, motion carried.*

Municode Legal Review Proposal

Municode will review our municipal code to make sure it complies with state law. They will add links from our code to state law to show the references. They present two options of services available. *Councilor Beers made a motion to adopt option 1 of the municode legal review proposal. Councilor Shepherd seconded the motion. All ayes, motion carried.*

Public Comment Period (Speaking time limits may apply):

Chris Wiseman – Please reconsider passing a 2nd Amendment ordinance.

Dean Brizenden - Please reconsider passing a 2nd Amendment ordinance.

Chris Wiseman – This isn't the only bill they're trying to stop.

Councilor Quick – Personally, I agree with you. The Council does take this seriously. However, as a Council member, we really need to think this through as a Council.

Dean Brizenden – As a past law enforcement member I see both sides. People need to be able to protect themselves.

Mayor and Council Comments

Councilor York – None

Councilor Shepherd – Multiple people have expressed their thanks for the city cleaning up multiple areas in town.

Councilor Miller - I back the 2nd Amendment.

Councilor Quick – I back the 2nd Amendment.

Councilor Beers – I back the 2nd Amendment. The people that come into your home to attack you do not live by the rules. If you take guns away from citizens, they cannot protect themselves. Disagree with what the State is doing.

Councilor Williams – None.

Mayor Morgan – She and Councilor Shepherd attended the Small Cities meeting. She said if the other Councilors get the chance to attend these meetings it's a chance to hear how other small cities are handling issues that come up. The Mayor and Councilor Shepherd commented that John Day has an impeccable plan in place. Although a lot of smaller cities don't have the business growth, what they are finding is a lot of people are still moving in and then telecommuting. Administrator Letham said that although he couldn't attend the meeting, the energy coming from the small cities in Eastern Oregon, the next 5 – 10 years, things are going to be great.

Councilor Beers – A resident approached him about a splash pad in the park.

Next Council Meeting is scheduled for August 10, 2021, at 6:30pm.

Adjournment:

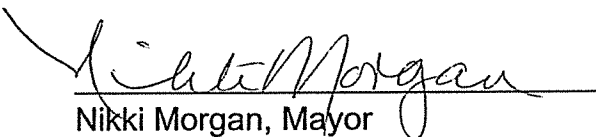
There being no further business, Councilor Williams made a motion to adjourn the meeting. Councilor Beers seconded the motion. All ayes, the motion carried. Meeting adjourned at 7:52pm.

Respectfully Submitted:

Kirby Letham

City Administrator

ACCEPTED AND APPROVED BY THE CITY COUNCIL ON August 10, 2021.


Nikki Morgan, Mayor

TO: Hines City Council
FROM: Kirby Letham, City Administrator
DATE: August 10, 2021
SUBJECT: Discussion – Deer Population Control Ballot Measure

Attachment(s)

- Resolution 2310
- Form SEL 802

DISCUSSION:

The City Council has directed staff to prepare a ballot measure that would allow the residents of Hines to vote on whether to proceed with the ODFW deer population control. This resolution and Form 802 formally initiates the process.

After the passage of this resolution, the City Administrator will publish form 802 in the paper, and in other public areas for a minimum of 8 business days. Then, the form will be presented to the County Recorder to be added to the November ballot.

POSSIBLE MOTION:

"I make a motion to adopt Resolution 2310 as read with attached Form 802."

RESOLUTION NO. 2310

A RESOLUTION OF THE CITY OF HINES, OREGON APPROVING A MEASURE BALLOT TITLE ON THE QUESTION OF DEER POPULATION CONTROL WITHIN THE CITY LIMITS TO THE RESIDENTS OF HINES

WHEREAS, the State of Oregon legislature created a Deer Population Control Program (Program) to be administered by Oregon Department of Fish and Wildlife and allowing cities the choice to participate; and

WHEREAS, the City of Hines considered participating in the Program and took the required steps to participate; and

WHEREAS, there were many residents who disagreed about the Program making it difficult for the Council to determine whether to proceed with the Program; and

WHEREAS, the Common Council of the City of Hines desires to accurately detect the will of the residents of Hines in order to know the course of action the City should take in regards to the Program;

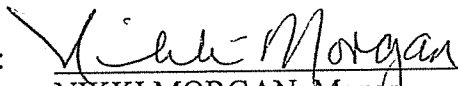
NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF HINES, OREGON:

The City of Hines Common Council approves the attached ballot title form SEL 802 and directs the City Administrator to file this ballot title in the City Records, publish notice, and refer to the November ballot for a vote by the residents of Hines, Oregon.

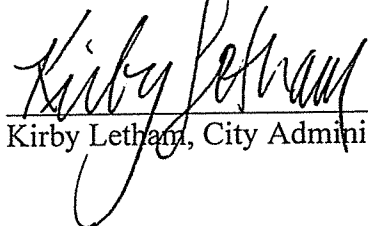
ADOPTED by the Common Council of the City of Hines this 10th day of August 2021 by a vote of 4 "ayes" to 0 "nays."

CITY OF HINES

By:


NIKKI MORGAN, Mayor

ATTESTED TO BY:


Kirby Letham, City Administrator

Notice of Measure Election City

SEL 802rev 01/18 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465**Notice****Date of Notice****Name of City or Cities**
City of Hines**Date of Election**

November 2, 2021

Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

ADVISORY VOTE ON STATE DEER CULL PROGRAM

Question 20 words which plainly phrases the chief purpose of the measure.

In your opinion, should the City petition ODFW to participate in the Urban Deer Population Control Pilot Program?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

This non-binding advisory vote asks whether the City of Hines should petition the Oregon Department of Fish and Wildlife (ODFW) to participate in a program that allows the City to curb the local deer population using procedures under Oregon Administrative Rules 635-043-0250. The City has taken steps to meet the prerequisites for the program; the remaining step is to petition ODFW for the kill permits necessary to reduce deer population levels within the city limits. Under the program, ODFW is responsible for designating dates for the permits to be used and determining the number and sex of deer that can be taken. The City is responsible for designating areas within the city limits where deer can be taken as well as the manner of taking, which must comply with certain standards for humane euthanasia. To the extent feasible, any deer taken must be salvaged and delivered to a food bank or other charitable organization. This advisory vote is intended to gauge voter opinion; it does not preclude any future action by the City.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the city governing body; or
→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached?

☐ Yes☒ No

Authorized City Official Not required to be notarized.

Name

Kirby Letham

Title

City Administrator

Mailing Address

administrator@ci.hines.or.us

Contact Phone

(541) 573-2251

By signing this document:

→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; and

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature**Date Signed**

TO: Hines City Council

FROM: Kirby Letham, City Administrator

DATE: July 13, 2021

SUBJECT: Discussion – 2nd Amendment Sanctuary City
Attachment(s)
- Email from Councilor Shepherd

DISCUSSION:

The Oregon has passed legislature that many feel encroach upon US Constitutional 2nd Amendment rights.

Harney County has joined other local entities throughout the State by passing a “Second Amendment Sanctuary” ordinance.

This is the opportunity for the Council to discuss this topic.

Should the City pursue writing an ordinance??

Administrator

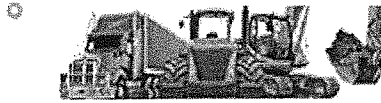
From: Misty Richardson <mystical_mysti2001@yahoo.com>
Sent: Wednesday, July 28, 2021 9:57 AM
To: Administrator
Subject: City Ordinance for 2nd amendment sanctuary City

Kirby, I wanted to email you and let you know my thoughts on this subject. Last night many council members openly expressed their thoughts finally about this matter. And I was glad Marsallai acknowledged Dean Brizendine and Chris Wiseman and let them know that they are being heard and we are working on it. With that being said. I am in full support of an ordinance that supports the 2nd amendment rights we currently have. I want something in place as a law for the citizens of Hines. I have been in support of this since before it showed up at our meetings. I think a resolution is almost a "slam" to our citizens and makes us look like we tried to care, but really don't. I see the next few meeting having more and more individuals come to show our councilmembers they too are concerned IF we do not put an ordinance in place, this would not be a bad thing, as we all are wanting more community members to come. But the pressure is going to be on, and so I would like to see this totally available for vote and be resolved by our next council meeting.

Thank you,
Misty

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WHAT
YOU
WANT WITH


Check Buying Power



2005 SCHWARZE A7000 For Sale In Tualatin, Oregon




For Sale Price: **\$29,500**

 Purchase today for USD
\$495.76/monthly*

Contact Information

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 Tualatin, Oregon

97062

Phone: (503) 558-
7157

WhatsApp: 

Message

Video Chat With

This Dealer

Contact: Neil
Burniston

 Photos (34)



Peter
P&L Mechanical *503-367-0878*

*Peter will be there next
week to get eyes on it.
leave a message

See All Sweepers / Broom Equipment By
Affordable Equipment Sales & Rentals

See All Construction Equipment By Affordable
Equipment Sales & Rentals

Apply for Financing



Get Shipping Quotes

Get Insurance

Description

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Hines, Oregon, hereinafter referred to as the "Grantor" and Grase Communications, LLC, an Oregon Limited Liability Company dba MiWave, hereinafter referred to as the "Grantee."

RECITALS

WHEREAS, pursuant to the Hines Municipal Code Title 12, Section 12.08.030, Grantor has jurisdiction and exercises regulatory control over each public right-of-way regardless of how said rights-of-way were obtained.

WHEREAS, pursuant to Section 12.08.040, Title 12, the Hines Municipal Code, no person is allowed to occupy or encroach on any public right-of-way without the permission of the City which can be granted by franchise, license, and/or permit; and

WHEREAS, Grantee has requested a Franchise from Grantor, a Franchise to erect, construct, operate, repair and maintain certain fiber lines related to the operation of an aerial fiber network within the City of Hines; and

WHEREAS, Grantor has found that Grantee meets the lawful requirements for the issuance of a Franchise to occupy and use the rights-of-way within the City of Hines.

NOW, THEREFORE, the Grantor and Grantee agree as follows:

Section I. DEFINITION OF TERMS

1.1 Gross Revenues. Any and all revenue derived from the use of the aerial fiber network, of any kind, nature, or form, without deduction for expense in the City of Hines, Oregon, and is further defined in Section 6. All such revenue remains subject to applicable FCC rules and regulations which exclude certain revenues from internet access services where prohibited by law.

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

1.3 Telecommunications. The transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

1.4 Telecommunications Network. Infrastructure owned by Grantee utilizing one or more facilities located within the Grantor's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to the Internet and Telecommunications Service.

1.5 Telecommunications Service. The offering of Telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities' uses.

Section II. GRANT OF FRANCHISE

2.1 Grant. The Grantor hereby grants to Grantee, its successors and assigns, as authorized herein, a nonexclusive Franchise which authorizes Grantee to erect, construct, operate, repair and maintain in, under, upon, along, across and over Grantor'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 a competitive aerial fiber network within the City of Hines, Oregon. This Agreement does not confer on Grantee any right, title or interest in any public right-of-way beyond that expressly conferred herein or confer any right or privilege to use or occupy any other property of Grantor or any other entity.

2.2 Franchise Not Exclusive. The Franchise granted herein is not exclusive, and shall not be construed as any limitation upon the right the Grantor to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from rights, privileges or authorities herein set forth, in the same or other Rights-of-Way, by franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and nondiscriminatory manner with respect to the rights, privileges and authorities afforded to Grantee herein. The grant of authority conferred herein shall not be construed as a limitation on the Grantor on constructing, installing, or operating facilities for the purpose of telecommunication services.

2.3 Term and Termination. The Term of this Franchise shall be ten (10) years, commencing upon the full execution of this Franchise. Thereafter, this Franchise shall continue in full force and effect for an additional ten (10) years unless notice is given by either Party ninety (90) days prior to the expiration of the initial term of its intention to terminate or renegotiate this Franchise. Upon termination or expiration of this Franchise, Grantee shall, within one hundred eighty (180) days, remove all of its facilities and equipment from Grantor's Rights-of-Way. Should Grantee fail to remove its facilities and equipment within the one hundred eighty (180) day period, Grantor may remove the same at Grantee's sole cost and expense. Any charge for removal of Grantee's equipment and facilities from the Grantor's Right-of-Way shall be paid within thirty (30) days of invoice from Grantor. Any amount not so paid shall bear interest at the rate of twelve percent (12%) per annum until paid in full.

2.4 No Limitation on Grantor Authority.

2.4.1 Nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, Grantor from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of said 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 Grantor now has or in its Rights-of-Way whether now owned or hereinafter acquired.

2.4.2 In the event that any portion of Grantee's infrastructure interferes with any present or future use the Grantor desires to make of its Rights-of-Way, Grantee 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 Grantor.

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

2.4.4 Police powers and conflicts with Franchise. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance(s) do not have the effect of limiting the benefits or expanding the obligations of the Grantee by the Franchise granted herein. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

2.4.5 Removal and Emergency. Whenever, in the case of fire or other disaster it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

2.4.6 Change of Law/Amendment to Franchise Agreement. It is the intent of the parties that this Franchise Agreement may be amended from time to time to conform to any changes in the controlling federal or state law or other changes material to this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments.

2.5 Competitively Neutral Application. Grantor shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of Telecommunications Services operating within the City of Hines, Oregon.

2.6 Extension of City Limits. Upon the annexation of any territory into the City of Hines, Oregon, the rights granted herein shall extend to the annexed territory to the extent the Grantee has such authority. All facilities owned, maintained, or operated by Grantee located within any public Rights-of-Way to the annexed territory shall be subject to all of the terms of this Franchise.

Section III. CONSTRUCTION AND TECHNICAL STANDARDS

3.1 Compliance with Codes. All construction practices and new installation of equipment shall be done in accordance with the standards reasonable and customary in the telecommunications industry and safety codes applicable thereto. Furthermore, all work done shall be done in accordance with the plans or designs submitted to, and approved by, the Grantor, such plans (1) to be evaluated by the standards applied to the construction of similar telecommunications systems in the City of Hines, Oregon, and (2) maintained by Grantor as confidential and exempt from public disclosure to the maximum extent allowed by law. All work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, ordinances which may, during the term of this Franchise, be adopted from time to time by Grantor, or any other authority imposing construction standards on facilities of the type to be installed by Grantee.

3.2 Construction, Maintenance and Repair of Infrastructure.

3.2.1 Grantee may make all necessary excavations in Grantor's Rights-of-Way for the purpose of placing, erecting, laying, maintaining, or repairing Grantee's infrastructure, and shall repair, renew, and replace the same as reasonably possible to the condition that existed prior to such excavation. Grantee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees.

3.2.2 System Construction. All equipment and structures installed by Grantee under the terms and conditions set forth in this Franchise shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate, and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as to not interfere with the usual traffic on such public way.

3.2.3 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to the Rights-of-Way as a result of its operation, construction, or maintenance of the Telecommunications System to a condition reasonably comparable to the condition of the Rights-of-Way immediately prior to such damage or disturbance.

3.3 Emergency Repairs. In the event emergency repairs are necessary for Grantee's facilities, Grantee may immediately initiate such emergency repairs. Grantee shall give notice to the Department of Public Works of the City of Hines, Oregon, by telephone, electronic data transmittal or other appropriate means as soon as practicable after commencement of work performed under such emergency conditions. Grantee 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.

3.4 No Interference. Grantee shall construct and maintain its aerial fiber network in such a manner so as not to interfere with Grantor or Grantor's facilities. Grantee shall have no obligation to ensure other Franchisees do not interfere with Grantor's use of the rights-of-way.

3.5 Right to Inspect Construction. Grantor 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 Grantor's Rights-of-Way.

Section IV. INDEMNIFICATION

4.1 Indemnification. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties or injuries incurred by any third party, including reasonable attorney fees which arise from any alleged breach of such indemnifying party's obligations, representations and warranties made under this Franchise, provided that the indemnifying party is promptly notified of any such claim. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party, shall provide, at the indemnifying party's expense such assistance in investigating and defending such claims as the indemnifying party

may reasonably request. The indemnity obligations set forth in this section shall survive the termination of this Franchise.

Section V. INSURANCE

5.1 General. At all times during the term of this Franchise, Grantee, at its sole cost and expense shall provide the insurance specified in this section.

5.2 Evidence Required. Within thirty (30) days of the effective date of this Franchise, Grantee shall provide Grantor with its certificate of insurance executed by an authorized representative of the insured or insures evidencing that Grantee's insurance complies with the terms and conditions set forth in this section.

5.3 Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to Grantee not less than thirty (30) calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is cancelled, reduced, or materially changed, Grantee shall, prior to the effective date of such cancellation, reduction, or material change, obtain the coverage required under this section and shall provide the Grantor with documentation of such coverage. Grantee shall be responsible, to the extent not caused by the Grantor's gross 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.

5.4 Insurance Required. During the term of this Franchise, Grantee shall maintain and enforce, at its own expense, the following insurance in the minimum amounts set forth as follows:

<u>Type of Insurance</u>	<u>Minimum Requirement</u>
Workers' Compensation	Statutory limits
Commercial General Liability	\$1,000,000.00 per occurrence, combined single limit and \$2,000,000.00 general aggregate*

*The general liability insurance coverages shall include contractual liability coverage for the indemnity provided under this Franchise, and shall name the Grantee, its official, officers, employees and agents as additional insureds with respect to Grantee's activities pursuant to this Franchise.

Section VI. COMPENSATION

6.1 Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the Grantor for the construction, operation, and maintenance of a Telecommunications System as granted under this Franchise, Grantee shall pay to Grantor during the term of this Franchise an amount equal to five percent (5%) of the Grantee's Gross Revenues ("Franchise Fee"). Revenue from point to point or multipoint services is based on the prorated share of the revenue from those services.

6.2 Modification Resulting from Action by Law. Upon thirty (30) days' notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Grantee 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 Grantee shall pay the higher amount commencing from the date of such appeal or amendment, up to the maximum amount allowable by law.

6.3 Payment of Franchise Fee. Payments due under this section 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 forty-five (45) days after such dates. Not later than the date of each payment, the Grantee shall file with Grantor a written statement in a form satisfactory to Grantee and signed under penalty of perjury by an officer of the Grantee, identifying in detail the amount of gross revenue received by the Grantee, the computation basis and method, for the quarter for which payment is made.

6.4 Right to Inspect Records. In order to manage the Grantee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to Grantor under this Franchise, the Grantee shall maintain, and provide upon request, the following information in such form as may be reasonably required by Grantor:

- (i) Maps of Grantee's Telecommunication Systems;
- (ii) Amounts collected by Grantee from users of Telecommunication Services provided by Grantee via its Telecommunications Network;
- (iii) The character and extent of the Telecommunications Service rendered therefore to them; and
- (iv) Any other related financial information required for the exercise of any other lawful rights of Grantee under this Franchise.

Grantor agrees that such information is confidential and that Grantor 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 Grantee's fee payments. Grantor further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon Law.

6.5 Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 6.4, Grantor shall have the right to have performed, a formal audit or a professional review of the Grantee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Grantee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the Grantor by the Grantee; provided, however, that any audit or review must be commenced not later than three (3) 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 Grantor. The Grantor 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 any other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

Section VII. TRANSFERS AND CHANGE

7.1 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 Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing, such consent not to be unreasonably withheld. If the Grantee wishes to transfer this Franchise, the Grantee shall give Grantor written notice of the proposed transfer and shall request consent of the transfer by the Grantor.

7.2 Any transfer of ownership affected without the written consent of Grantor shall render this Franchise subject to revocation. The Grantor shall have sixty (60) days to act upon any request for approval of a transfer. If the Grantor fails to render a final decision on the request within said sixty (60) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

7.3 The Grantee, upon any transfer, shall within sixty (60) days thereafter file with the Grantor a certified statement evidencing the transfer and an acknowledgement of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

7.4 The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Grantee or any affiliate of the Grantee. 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.

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

Section VIII. ENFORCEMENT OR REVOCATION

8.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of this Franchise, the Grantor shall first and formally discuss the matter with Grantee. If the discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

8.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to cure such default. If, by the nature of default, such default cannot be cured within the thirty (30) day period, Grantee shall initiate reasonable steps within the thirty (30) day period to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

8.3 Enforcement. Subject to applicable federal and State law, in the event the Grantor determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

8.3.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

8.3.2 Commence an action at law for monetary damages or seek other equitable relief; or

8.3.3 In the case of a substantial default of a material provision of this Franchise, seek to revoke this Franchise itself in accordance with section 8.4 below.

8.4 Revocation.

8.4.1 Prior to revocation or termination of this Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of this Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise, notice of which shall be published by Grantor in a newspaper of general circulation within the City of Hines, Oregon.

8.4.2 At the hearing, the City Council of the City of Hines shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City Council of the City of Hines shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court. The Grantee may continue to operate its Telecommunications System until all legal appeals procedures have been exhausted.

8.4.3 Notwithstanding the above provisions, the Grantee reserves all of its rights under federal law or regulation.

8.4.4 Upon revocation of this Franchise, Grantee may remove the Telecommunications System from the of the Rights-of-Way of the Grantor or abandon the Telecommunications System in place.

**Section IX.
LIMITATION OF LIABILITY**

9.1 The Grantee and Grantor 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 X.
MISCELLANEOUS PROVISIONS

10.1 Compliance with Laws. Grantee 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 Grantee, 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 Oregon anti-trust law or the Oregon Unlawful Trade Practices Act. Nothing contained in this section shall be construed as requiring Grantee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

10.2 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:

City of Hines
Kirby Letham, City Administrator
101 E Barnes Avenue
PO Box 336
Hines, OR 97738
Phone: (541) 573-2251
Facsimile: (541) 573-5827

Grase Communications, LLC dba MiWave
1804 W. Monroe Street
Burns OR 97720
Phone: _____

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the US 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.

10.3 Captions. The captions to section of this Franchise are intended solely 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.

10.4 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.

10.5 Waiver.

10.5.1 Grantor is vested with the power and authority to reasonable regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Grantee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of Grantor to enforce prompt compliance, nor does Grantor waive or limit any of its rights under this Franchise by reason of such failure or neglect.

10.5.2 No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Grantee gives written notice of a failure or inability to cure of comply with a provision of this Franchise, and the Grantor fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

10.5 Entire Agreement. This Franchise sets forth the final agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the negotiation of the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

10.6 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantor recorded on the signature page of this Franchise.

10.7 No Third-Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise. Notwithstanding the forgoing, Grantee agrees that Grantor does not waive any rights under the law it has to act for the benefit, enjoyment or protection of the public generally or a person other than Grantor.

Considered and Approved this ____ day of _____, 2021.

CITY OF HINES, OREGON

By: _____
Its: _____

Accepted this ____ day of _____, 2021, subject to applicable federal, State and local law.

Grase Communications, LLC dba MiWave

By: _____
Its: _____