

Moscow City Council



Regular Meeting ~Agenda~

www.ci.moscow.id.us

Laurie M. Hopkins
City Clerk

208.883.7015

Monday, February 1, 2021

7:00 PM

**Council Chambers
206 E. Third St.**

The Moscow Mayor, City Council and Staff welcome you to tonight's meeting. Due to the rise in COVID-19 cases in the area, the meeting is open to the public, but is subject to social distancing protocols and masks will be required of attendees. If you do not have a mask, a disposable mask will be provided. Per the modified Stage 2 of the Idaho Rebounds Plan, the number of attendees at any one time is limited to no more than 10. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item; therefore, the Mayor may exercise discretion in deciding when to allow public comment during the course of the proceedings and limitations may be placed on the time allowed for comments. During the modified Stage 2 of the Idaho Rebounds Plan, public comment and reports are suspended. Citizens wishing to comment on business on the agenda are encouraged to communicate with the Mayor and City Council by phone or email (council@ci.moscow.id.us) in order to respect social distancing protocol. Please note that Moscow City Council meetings are televised, videotaped and/or recorded. Meetings are streamed on the City website, YouTube, Facebook and Spectrum Cable 1301. Thank you for your interest in City government.

PLEDGE OF ALLEGIANCE

REGULAR AGENDA

1. Approval of Moscow City Council January 19, 2021 Minutes (ACTION ITEM) - Laurie M. Hopkins

Minutes presented for approval.

PROPOSED ACTIONS: Approve minutes as presented; approve minutes with amendments; or take such other action deemed appropriate.

2. Renewal of Agreement for E911 Services and Complete Dispatch Services with Whitcom (ACTION ITEM) - Gary J. Riedner

Since 2004, the City of Moscow has been contracting with Whitcom, the consolidated dispatch agency serving Whitman County, City of Pullman, Asotin County and the Nez Perce Tribe, for emergency dispatch, communications and E-911 services. The current agreement was renewed in 2016 and expired on December 31, 2020. For the past year, the Whitcom member entities have been discussing fee structures which would be equitable to all members. The new agreement contains a fee structure for the City of Moscow which is 21.25% of Whitcom's budget. The percentage takes into account in-kind services provided to Whitcom by Whitman County, City of Pullman and Washington State University. The new agreement is for two years (January

2021-December 31, 2022). Fees for the first year (2021) are \$607,213.25, and fees for the second year (2022) are \$712,911, which is the calculation of 21.25% of the Whitcom budget for each respective year. This was reviewed by the Public Works/Finance Committee on January 25, 2021 and recommended for approval.

PROPOSED ACTIONS: Approve the Agreement for E911 Services and Complete Dispatch Services with Whitcom from January 1, 2021 through December 31, 2022, or take such other action deemed appropriate.

3. Ordinance Amending Title 5 of Moscow City Code with the Addition of Chapter 19 (ACTION ITEM) - Kyle Steele / Tyler Palmer

The City of Moscow was issued a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Systems (MS4) Permit on August 5, 2019, which became effective on October 1, 2019. The MS4 Permit requires the City to develop and implement a comprehensive stormwater program. The City currently has few revenue sources and funding mechanisms to operate the existing stormwater program. Expenses for existing stormwater related activities are currently covered by general fund revenues. Due to increasing costs, increased maintenance and tracking requirements, and regulatory compliance responsibilities of the new MS4 Permit, securing the necessary additional funding and implementing the recommendations developed through the gap analysis process identified in the City of Moscow Stormwater User Fee Study is essential. The proposed amendment and adoption of Moscow City Code Title 5, by the addition of Chapter 19, would establish a system of stormwater user fees to fund and carry out a comprehensive stormwater management program. Stormwater user fees would be collected from customers within the entire incorporated area of the City proportionate to the cost of providing proprietary stormwater services. The money from stormwater user fees will be used to manage and operate the municipal stormwater control system in compliance with federal laws. The municipal stormwater control system exists to provide drainage services to properties within the City. This was reviewed by the Public Works/Finance Committee on January 25, 2021 and recommended for approval.

PROPOSED ACTIONS: Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

ADJOURN

NOTICE: Moscow City Council and committee meetings are televised, videotaped and/or recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

Moscow City Council



Regular Meeting ~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Tuesday, January 19, 2021

7:00 PM

**Council Chambers
206 E. Third St.**

The meeting was called to order at 7:00 p.m.

PRESENT: Mayor Bill Lambert, Art Bettge (Virtual), Sandra Kelly (Virtual), Maureen Laflin (Virtual), Brandy Sullivan (Virtual), Gina Taruscio (Virtual), Anne Zabala (Virtual)

STAFF: Gary J. Riedner, Mia Bautista, Bill Belknap (Virtual), Tyler Palmer (Virtual), Aimee Hennrich (Virtual), Jen Pfiffner (Virtual), Laurie M. Hopkins

PLEDGE OF ALLEGIANCE

Mayor Lambert led the Pledge of Allegiance.

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council January 4, 2021 Minutes - Laurie M. Hopkins

Minutes presented for approval.

ACTION: Approve minutes.

B. Disbursement Report December 2020 - Sarah Banks

Staff presented the December 2020 Accounts Payable Report to Public Works / Finance Committee on January 11, 2021. The Committee received the report and approved the disbursements as presented.

ACTION: Receive the Disbursements Report for the month of December, 2020.

C. First Quarter Financial Report October 1, 2020 to December 31, 2020 for FY2021 - Sarah Banks

The financial report for the first quarter of Fiscal Year 2021 (October 1, 2020 to December 31, 2020) was presented to the Public Works / Finance Committee on January 11, 2021 and recommended for approval.

ACTION: Approve the FY2021 First Quarter Report.

D. Lot Line Adjustment: 1212 and 1226 W Pullman Road - Aimee Hennrich

The applicant, the Connelly family, is requesting a lot line adjustment between two properties located at 1212 and 1226 Pullman Road. The proposed lot line adjustment would increase the lot addressed as 1212 Pullman Road from 25,564 sf to 28,079 sf in size and reduce the lot addressed as 1226 Pullman Road from 29,926 sf to 27,411 sf in size. The applicant is requesting the lot line adjustment after a recent survey revealed that the building on the north lot (1212

Pullman Road) is encroaching onto the southern lot (1226 Pullman Road). The southern lot currently contains Zips Restaurant and the northern lot contains a portion of the Hope Center Thrift Store. The subject properties are located within the Motor Business (MB) Zoning District where there is no minimum lot size or lot width requirements. As a result of the proposed lot line adjustment, the Hope Center will no longer be encroaching upon the common property line and will meet all setback requirements of the MB Zone. This was reviewed by the Public Works / Finance Committee on December 14, 2020 and recommended for approval.

ACTION: Approve the lot line adjustment request with no conditions.

E. Idaho Commission on the Arts Grant Applications Public Programs in the Arts - Megan Cherry

The Arts Department seeks approval to apply for an annual grant administered by the Idaho Commission on the Arts (ICA). The Public Programs in the Arts (PPA) grant program is intended to provide general operating support for arts organizations in Idaho. These funds will represent off-setting revenue in the production of Arts Department events including Entertainment in the Park and Artwalk. This was reviewed by the Public Works/Finance Committee on January 11, 2021 and recommended for approval.

ACTION: Approve the Public Programs in the Arts (PPA) grant application for the current cycle.

F. Professional Service Prequalification Process Master Agreements Approval - Scott Bontrager

The City frequently requires the services of design professionals necessary for the design and construction of a variety of public utility, facility and other public construction projects. Idaho requires that procurement of professional service contracts with design professionals (professional engineers, architects and landscape architects), construction managers and professional land surveyors shall be based upon the qualifications and demonstrated competence of the provider of the required services. City staff solicited a Request for Statements of Qualifications (SOQ) on September 26, 2020 for Engineering agencies looking to be included or updated as part of the Professional Services Roster. Submittals were accepted until October 23, 2020. The City received SOQs from a total of 18 engineering firms. Staff is requesting authorization for the City to enter into a Master Services Agreement with those firms, specifying the terms and conditions for the provision of professional services on an on-demand task order basis to the City. This was reviewed by the Public Works/Finance Committee on January 11, 2021 and recommended for approval.

ACTION: Approve the Professional Services Roster and allow City to enter into Master Services Agreements with respondents to the City's Statement of Qualifications.

G. Idaho Commission on the Arts (ICA) Arts Education Annual Project Grant Application - Megan Cherry

The Arts Department seeks approval to apply for an annual grant administered by the Idaho Commission on the Arts (ICA). The Arts Education Annual Project is a grant program that supports activities that unite education and the arts. These grant funds will sustain the Arts Department's growing MACTivities Toolbox program, which is part of the MAC's fulfillment of the arts education component of their mission. The Toolbox program was initiated during the

early days of the 2020 pandemic as a way to support arts education while maintaining social distance. The Toolboxes contain art supplies and National Core Arts Standards-aligned curriculum designed to serve ages 5 - 13+. The program is produced in partnership with the Prichard Art Gallery and is also supported by the Moscow Arts Commission's FY2021 budget. If received, this grant funding would represent off-setting revenue for FY2021. This was reviewed by the Public Works/Finance Committee on January 11, 2021 and recommended for approval.

ACTION: Approve the Arts Education Annual Project grant application for the current cycle.

H Moscow Farmers Market Design Toolkit RFQ - Amanda Argona

The City of Moscow continues to support a consistent and unified brand, as outlined in the Strategic Plan issue developed in 2015 and moved to operational status in 2018. Branding efforts have included enhancements made to social media use, City Department and Commission logos, and Arts Program Graphics. The Moscow Farmers Market would benefit from a comprehensive and consistent visual/graphic identity. A sub-committee of Moscow Farmers Market Commission members and City staff developed a Request for Qualifications for professional services to assist in a toolkit, which will include a style guide to illustrate and support Market programs and events. The Moscow Farmers Market Commission has reviewed and approved the draft RFQ for presentation to City Council. The branding project was budgeted for \$9,000 in the FY2021 City budget. This was reviewed by the Administrative Committee on January 11, 2021 and recommended for approval.

ACTION: Receive the Moscow Farmers Market Design Toolkit RFQ.

Bettge moved and Laflin seconded approval of the consent agenda. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

REGULAR AGENDA

2. Mayors Appointments (ACTION ITEM)

Mayor Lambert proposed the following appointments: Renee Magee to the Historic Preservation Commission; Julia Parker to the Human Rights Commission; Jamal Lyksett and Natalie Wiley Sustainable Environment Commission; Zena Hartung to the Tree Commission; Art Bettge to the Moscow Urban Renewal Agency. Sullivan moved, Zabala seconded to approve the proposed appointments. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

3. Amending Moscow City Code Title 1 Chapter 11 Emergency Powers (ACTION ITEM) - Gary J. Riedner

On March 20, 2020, in response to the COVID-19 pandemic, the City Council approved Ordinance 2020-03, which created a new Moscow City Code Title 1, Chapter 11 Emergency Powers, vesting the Mayor with temporary powers in times of emergency for a period of seven days (similar to the powers authorized by Idaho Code section 46-1011, and stating that the City Council may choose to extend the time of the Emergency Powers beyond seven days by Resolution. Subsequently, Mayor Lambert issued Public Health Emergency Order 20-01 and 20-02, which were extended to May 5, 2020 by City Council Resolutions 2020-06 and 2020-07 respectively. On April 30, 2020, at 11:59 pm, by Resolution 2020-09, City Council terminated the previous Public Health Emergency Orders, in favor of Idaho Governor Brad Little's implementation of his Idaho Rebounds plan and Stay

Healthy Order, which was implemented on May 1, 2020. Thereafter, on July 1, 2020, in response to continuing effects of the COVID-19 pandemic, Mayor Lambert issued Amended Public Health Emergency Order 20-03 (APHEO 20-03), requiring social/physical distancing when in public settings and face coverings in situations when social/physical distancing cannot be maintained. City Council extended APHEO 20-03 to June 9, 2021, by successive City Council Resolutions. The last Resolution (2020-27), included metrics to be considered by City Council in the determination of early termination of APHEO 20-03. The amendment to Moscow City Code Title 1, Chapter 11 Emergency Powers has been drafted by staff for Council consideration to address issues identified since MCC 1-11 has been enacted. Some of these issues include specific language regarding those emergency powers, which activities are regulated when a public health emergency is declared, and potential penalties for violation. This was reviewed by the Administrative Committee on January 11, 2021.

PROPOSED ACTIONS: Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

Riedner introduced the item and went through pertinent Idaho code sections regarding powers of the mayor and council. See attached presentation. Bautista discussed the first amendment, emergency powers versus civil liberties, and cited *Jacobson v. Massachusetts (1905)* and *Roman Catholic Diocese of Brooklyn, NT v. Andrew M. Cuomo, Governor of New York*. She also provided a history of the Governor's orders. Highlights from the Governor's orders include six-foot distancing from non-household members and size limitations to gatherings. Size limitations do not apply to political activities or religious assembly, but they are required to adhere to the social distancing and sanitation requirements. Amendments include removal of section 11-07 exclusions and address exclusions / exceptions that are appropriate at the time the order is put in place. The penalty section is expanded to allow a range of penalties. Bautista did include an optional edit to the appeal process to add more review and flexibility.

Julia Parker (Moscow) is a nurse and gave her story regarding how she caught COVID and missed five weeks of work. She has permanent lung damage because of it and is now on inhalers and medication. She appreciates the measures the Mayor and Council are putting in place and is in support of the emergency order edits.

Will Boyd (Moscow) agreed assisted living homes should be cautious but doesn't think the rest of the world needs to have those restrictions. He asked which epidemic the case Bautista cited was regarding. As a biology teacher, he doesn't want to compare pandemic that are not similar as not all viruses are created equally nor are vaccines. He asked how do you define social strife as it was used quite a few times. The pandemic may have indirectly led to social strife but there were many decisions in between, including overreach. Council should make decisions when most informed and not out of fear. The Council checks the Mayor, who checks the City Council?

Daniel Bradley (Moscow) asked for clarification of inclusive versus exclusive order. Riedner explained inclusion is if not excluded by language of the order, then it is included up to the authority of the State, Constitution and City ordinance. The ordinance indicated that unless the order specifically says it relates to these certain things, they are excluded by operation of law.

Elizabeth Landis (Moscow) said the virus is not a game but feels the responses to it are. Religious exclusion being proposed to be struck is the fabric of America based on the First Amendment of the Constitution. Allowing people to worship without the government interfering is the spirit of the First Amendment. It is a very serious covenant and not a place for a mask.

Bautista responded to Boyd that *Jacobson v. Massachusetts (1905)* was related to a vaccine for the small pox outbreak.

Riedner stated a state of public emergency is something that is imminent and needs to be taken care of quickly, such as cases of flood, communicable diseases, riots, etc. There is no laundry list of what can be an emergency. There is redress in the court of law which allows petitioning the district court if a city council is exceeding authority. The proposed amendments are a larger perspective of all types of emergencies and not just for the current emergency. The current public health emergency process began when the Mayor, Councilmember Bettge and Riedner were attending the National League of Cities in Washington DC in March and COVID was spreading along the east coast. After returning to Moscow, Mayor and staff assessed the situation by speaking with the public health district, the State of Idaho, local healthcare providers, many authorities and input from restaurants asking for something to be done. The Mayor made the decision per Idaho Code that something needed to be done, which resulted in the proclamation. The City Council then weighed the evidence, and determined that the Mayor acted in accordance with law, the order was reasonable, and continued the order with the passing of a resolution. Bautista added that previous to March, on January 30, 2020, the Emergency Committee of the World Health Organization declared the outbreak a public health emergency of international concern. Also, on January 31, 2020 Health and Human Services Secretary declared a health emergency for the United States. There were also other states declaring emergencies. Idaho Code 46-1002 defines emergency as “occurrence or imminent threat of a disaster or condition threatening life or property that requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster.”

Sullivan asked for clarification whether the proposed amendments change the powers the mayor and council have and do they result in the ability for the city to enforce laws and are they constitutional. Bautista said the proposed amendments are more restrictive and does not allow the city to create unconstitutional laws.

Bettge pointed out Title 1 Chapter 11 is for all emergencies. The emergency order is regarding the current emergency. He feels the amendments are not unconstitutional and the Code does not prohibit assembly or practice of religion. He also likes the optional changes to the appeal process. Sullivan reiterated in Julia's story the spread was brought into the care facility by someone who is not an at-risk elderly person. This is not just about protecting the vulnerable as they interact with others. She does not believe following the science to reduce the spread is a game. Kelly stated she is grateful to be able to discuss this again. She agrees this is not a game and Council is reacting to what has happened, still currently happening, and reviewing metrics. By masking up and social distancing Moscow will save lives. Taruscio thanked the citizens for their public comments and does not take these decisions lightly. The amendments do not create ultimate power for the Mayor. The community needs to pull together. Zabala prefers the penalty be an infraction, not a range to choose from, and start enforcing where applicable. Laflin thanked everyone for their work. She explained it may seem Council doesn't listen because they didn't adopt someone's particular opinion. However, the Council has acted deliberately through this process. There are many religious groups that do not think their rights are being infringed

upon. Sullivan was uncomfortable with the words “out of” with restrictions on travel in section 11-05.E. in regards to the ability of keeping people here.

Riedner explained “travel into, out of, and through” is quarantine language in which you cannot leave your home. Quarantine in the Idaho Code is specifically stated as an emergency. The amended ordinance encompasses all types of emergencies and is not specific to this pandemic and emergency order, and is providing flexibility for future emergencies. An emergency order can include or not include the “out of” language dependent on the type of emergency. The language providing for a range of penalties provides flexibility and can be determined by the severity of the emergency.

Bettge moved to approve the ordinance with inclusion of the suggested edits to the appeals section under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Laflin seconded the motion. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

Mayor Lambert read Ordinance 2021-02:

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO FOR REVISING, CODIFYING AND COMPILING THE GENERAL ORDINANCES OF THE CITY OF MOSCOW; PROVIDING FOR THE AMENDMENT OF CHAPTER 11 TO TITLE 1, OF MOSCOW CITY CODE ENTITLED EMERGENCY POWERS; SETTING FORTH THE AUTHORITY, PURPOSE AND INTENT, SCOPE, DEFINITIONS, PUBLIC HEALTH EMERGENCY ORDERS, PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS, SUSPENSION OF SERVICES, FORCE MAJEURE, PENALTY, APPEAL, ADOPTING A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF ANY OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERANCE AND SAVINGS CLAUSE; AND FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

4. COVID-19 Update - Gary J. Riedner

Riedner read the metrics adopted by Resolution 2020-27. The trend line for confirmed COVID cases is currently down: Thursday, January 14, 2021 – 23 cases with a 7-day moving average of 20.1; Friday, January 15, 2021 – 8 cases with a 7-day moving average of 17.4; Monday, January 18, 2021 – 4 cases with a 7-day moving average of 14. There were 8.71 hospitalizations last week and testing results are being reported in 1-4 days. Governor's determination is that Idaho is still in a Modified Stage 2. Whitman County is still in the red category. Riedner said Moscow is moving in the right direction but not meeting the metrics yet.

ADJOURN

The meeting adjourned at 8:43 p.m.

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

CITY COUNCIL STAFF REPORT

DATE: Monday, February 1, 2021



RESPONSIBLE STAFF

Gary Riedner, City Supervisor

REVIEWED BY

This was reviewed by the Public Works/Finance Committee on January 25, 2021 and recommended for approval.

ADDITIONAL PRESENTER(S)

OTHER RESOURCES

AGENDA ITEM TITLE

Renewal of Agreement for E911 Services and Complete Dispatch Services with Whitcom (ACTION ITEM) - Gary J. Riedner

DESCRIPTION

Since 2004, the City of Moscow has been contracting with Whitcom, the consolidated dispatch agency serving Whitman County, City of Pullman, Asotin County and the Nez Perce Tribe, for emergency dispatch, communications and E-911 services. The current agreement was renewed in 2016 and expired on December 31, 2020. For the past year, the Whitcom member entities have been discussing fee structures which would be equitable to all members. The new agreement contains a fee structure for the City of Moscow which is 21.25% of Whitcom's budget. The percentage takes into account in-kind services provided to Whitcom by Whitman County, City of Pullman and Washington State University. The new agreement is for two years (January 2021-December 31, 2022). Fees for the first year (2021) are \$607,213.25, and fees for the second year (2022) are \$712,911, which is the calculation of 21.25% of the Whitcom budget for each respective year.

STAFF RECOMMENDATION

Approve the Agreement for E911 Services and Complete Dispatch Services with Whitcom from January 1, 2021 through December 31, 2022.

PROPOSED ACTIONS

PROPOSED ACTIONS: Approve the Agreement for E911 Services and Complete Dispatch Services with Whitcom from January 1, 2021 through December 31, 2022, or take such other action deemed appropriate.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Moscow Whitcom Agreement 2021

AGREEMENT FOR E911 SERVICES AND
COMPLETE DISPATCH SERVICES

This Agreement for Enhanced 911 (E911) Services and Complete Dispatch Services (hereinafter referred to as “Agreement”), is made and entered into by and between the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter referred to as “CITY”), and WHITCOM, an agency established through the cooperation of Washington State political entities consisting of County of Whitman, City of Pullman, Washington, and Washington State University, acting through Enhanced 911 Inter-Local Agreement pursuant to the Inter-Local Cooperation Act, Chapter 39.34 Revised Code of Washington, 2325 Hopkins Court, Pullman, Washington, 99163 (hereinafter referred to as “WHITCOM”).

W I T N E S S E T H:

WHEREAS, in 2004, CITY and WHITCOM entered into an agreement for E911 services and complete dispatch services; and

WHEREAS, in 2006, CITY and WHITCOM entered into an agreement replacing the 2004 Agreement to continue to provide services through December 31, 2009; and

WHEREAS, in 2009, CITY and WHITCOM entered into an agreement replacing the 2006 Agreement to continue to provide services through December 31, 2015; and

WHEREAS, in 2015, CITY and WHITCOM entered into an agreement replacing the 2009 Agreement to continue to provide services through December 31, 2020; and

WHEREAS, CITY has determined that the best and most efficient use of its current resources is to continue to contract with WHITCOM for WHITCOM’s provision of E911 services and complete dispatch services; and

WHEREAS, WHITCOM has agreed to continue to provide such services to CITY as are stated herein; and

WHEREAS, WHITCOM has agreed to provide a certain minimum level of service for an amount certain throughout the term of this Agreement; and

WHEREAS, CITY and WHITCOM believe that it is in their mutual best interest to establish a working relationship for the term of this Agreement; and

WHEREAS, it is desired of City Council to enter into this Agreement with WHITCOM; and

WHEREAS, it is the desire of WHITCOM entities to enter into this Agreement;

NOW THEREFORE, Parties agree as follows:

SECTION 1. Intent and Term

This Agreement memorializes the Parties' intent (a) that CITY will continue to utilize WHITCOM's E911 services and complete dispatching services through December 31, 2022 in conformance with the terms of this Agreement. If the Parties are engaged in active negotiations with the intent of renewal or extension of this Agreement after December 31, 2022, this Agreement shall be extended until this Agreement is renewed, or extended, or such negotiations are terminated by either Party.

It is specifically the intention of both Parties not to create an interlocal cooperation agreement or a joint powers agreement with this current Agreement at this time.

SECTION 2. Description of Services to be Provided.

WHITCOM agrees to provide E911 services and complete public safety dispatching services through the term of this Agreement as such term is further detailed in Section 23 hereinbelow. Dispatching services provided by WHITCOM shall include the following:

The answering of business telephone lines for fire, police and emergency medical services requests;

Emergency and routine radio communications with police, fire and EMS emergency providers;

Communications between providers and other resources relating to their function;

After-hour emergency public works requests.

Limited technical training, trouble shooting, and support to CITY Information System (IS) personnel as it applies to devices accessing WHITCOM applications and services;

For the purpose of performing the above-mentioned functions, WHITCOM shall furnish and supply all necessary personnel, supervision, administration, equipment and supplies to maintain the level of E911 services and complete dispatch services equal to services provided to other WHITCOM parties.

If WHITCOM Information Technology (IT) personnel provide assistance to CITY Information Services (IS), CITY IS must be prepared and ready for upgrades. Any unforeseen or out of the ordinary costs will be negotiated, in good faith.

SECTION 3. Responsibility.

WHITCOM shall have full responsibility for the provision of E911 services and complete dispatch services as described hereinabove. In addition, the WHITCOM Executive Board shall be responsible for administration and oversight of dispatch services, hiring an Executive Director, setting standards of performance and training and disciplining employees, as well as any other matters incident to the control of personnel and performance of services under this Agreement. CITY shall have one (1) voting member position on the WHITCOM Executive Board.

SECTION 4. Consideration.

It is agreed that CITY's compensation to Whitcom for services (user fees) shall be based upon twenty-one and a quarter percent (21.25%) of the annual WHITCOM E911 budget as adopted by the Whitcom Executive Board. This agreed upon percentage includes credit for all in-kind services provided by each agency in support of Whitcom E911 operations.

During the term of this Agreement, utilizing the above percentage calculation, CITY shall compensate Whitcom for services provided as follows:

For the period of January 1, 2021 through December 31, 2021, CITY shall pay to WHITCOM the total amount of Six Hundred Seven Thousand, Two Hundred Thirteen dollars and Twenty-five cents (\$607,213.25).

For the period of January 1, 2022 through December 31, 2022, CITY shall pay WHITCOM the total amount of Seven Hundred Twelve Thousand, Nine Hundred Eleven dollars (\$712,911.00).

CITY shall make such payments in four quarterly installments and shall remit payment to WHITCOM no later than thirty days from invoice.

User fees, including Nez Perce Tribe contract user fees, will be established by dividing the total WHITCOM E911 budget by the agreed upon percentage minus all pass-through money credited to each agency. Unanticipated revenue will be credited to WHITCOM entities at the same percentage as their user fees unless the revenue is specifically tied to one of the entities such as a grant. In the event an entity receives a grant, the entire grant amount will be credited to the entity that obtained the grant.

If this Agreement is terminated prior to the expiration of the term of this Agreement pursuant to Section 23, payment shall be pro-rated by written agreement between the Parties.

There shall be no additional compensation for activities, events or occurrences except by written amendment to this Agreement.

SECTION 5. Expenditures of Funds Under this Agreement.

WHITCOM agrees to utilize any and all payments made to WHITCOM pursuant to this Agreement only.

SECTION 6. Equipment.

CITY and WHITCOM agree that WHITCOM shall operate on CITY's radio frequencies in order to enhance level of services to CITY and in order to provide an increased level of safety for employees of both Parties. WHITCOM agrees to pay for recurring telephone line and database charges. WHITCOM agrees to furnish such items without costs additional to that set out in Attachment A.

CITY agrees to furnish and to pay for installation of equipment necessary to communicate with its police facilities, fire stations, Public Works departments, and citizens requesting assistance; and

any costs incurred as a result of expanding WHITCOM's telephone system to accommodate increased Latah and Whitman Counties call volume. This includes the Spillman State Link and Spillman connectivity consistent with the purposes of this Agreement.

SECTION 7. Insurance.

Each Party warrants that it shall obtain, and will maintain at its expense for the duration of this Agreement, statutory worker's compensation coverage, employer's liability and comprehensive general liability insurance coverage for its principals and employees for the services to be performed hereunder. The amounts of such insurance shall not be deemed a limitation of the indemnity and hold free and harmless covenant contained in Section 8 herein.

WHITCOM shall furnish CITY with policies or certificates of insurance to demonstrate WHITCOM has procured such insurance and that CITY has been named as an additional insured therein. Such policies or certificates shall contain the following provision:

"It is agreed that City is added as an additional insured under this Policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to City under any other third-party liability policy. It is further agreed that the 'other insurance' condition of this policy is amended to conform therewith."

Such policies or certificates of insurance shall contain the covenant of the insurance carrier that thirty (30) days' written notice shall be given to CITY prior to modifications, cancellations, or reduction in coverage of such insurance.

SECTION 8. Limitation of Liability.

CITY hereby covenants and agrees to hold and save WHITCOM (including its political entities) and all of its officers, agents, and employees harmless from all claims whatsoever that may arise against WHITCOM (including its political entities), its officers, agents, or employees and, in the case of WSU, its Regents, as a result of the performance of duties performed by CITY under the terms of this Agreement. By so doing, CITY, its officers, agents, and employees shall not be deemed to have assumed any liability for the independent acts of WHITCOM or of any officer, agent, or employee thereof, and WHITCOM hereby covenants and agrees to hold and save CITY, all of its officers, agents, and employees harmless from all claims whatsoever that may arise against CITY, its officers, agents, or employees, by reason of any independent act of WHITCOM, its officers, agents, and employees.

SECTION 9. Information.

CITY shall provide WHITCOM with:

- an updated map of City with addresses,
- a twenty-four (24) hour emergency telephone number list for on-call CITY personnel,
- a list of fire hydrant locations,
- emergency contact information on essential CITY employees including volunteer fire personnel, and any other pertinent information deemed necessary to effectively perform dispatching duties. Whenever CITY is made aware of additional information or a change

in current information, CITY shall reduce this information to writing and deliver it by hand delivery, inter-agency mail, regular mail, or any other reasonable means of delivery to WHITCOM within a reasonable amount of time after City has been made aware of such change.

Although CITY does not maintain a list of apartment and business emergency contact numbers, or building or development site information, CITY, upon request from WHITCOM, will assist WHITCOM in obtaining such information.

SECTION 10. Use of Idaho Law Enforcement Telecommunications System (ILETS).

CITY shall be responsible for maintaining the ILETS System for use by WHITCOM in providing services contemplated by this Agreement including, but not limited to, any payments, licenses, permissions, protocol and the like.

SECTION 11. Records.

Records generated and/or related to services provided by WHITCOM to CITY under this Agreement shall comply with relevant requirements of the Revised Washington Code and the Idaho Code, respectively. WHITCOM and CITY shall retain such records in accordance with applicable law and shall produce such records pursuant to requests for records in accordance with applicable law. WHITCOM and CITY shall make records (except for those protected by privilege or otherwise under applicable law) available to the other upon reasonable notice during business hours.

CITY shall have unlimited, around-the-clock (twenty-four (24) hours) access to its ILETS System records at all times during the term of this Agreement.

SECTION 12. No Waiver of E911 Service Area Jurisdiction.

It is specifically the intention of CITY and WHITCOM that CITY retains all rights, privileges, authority, jurisdiction and entitlement to CITY's established E911 service area, as defined in Idaho Code. In addition, nothing in this Agreement shall be construed by either party or by others to in any way alter CITY's 1990 decision in Ordinance No. 90-16 to provide E911 services and dispatch services to citizens of Moscow, Idaho pursuant to Idaho Code Title 31, Chapter 48.

SECTION 13. Non-Appropriation Clause.

In recognizing that each Party to this Agreement can only receive budget approval for one (1) fiscal year at a time, non-appropriation will be a legitimate reason for release from this Agreement provided:

- A. Thirty (30) days' written notice is given to the other Party; and
- B. No other funds are appropriated for the same fiscal period that would provide essentially the same or similar service as outlined in this Agreement.

SECTION 14. Compliance with Laws.

WHITCOM agrees that it shall conduct its operations pursuant to this Agreement in conformance with all applicable laws, ordinances and regulations of all governmental and regulatory agencies having jurisdiction. WHITCOM shall undertake a continuing program of monitoring to ensure compliance with all applicable Federal, State, County and municipal laws and regulations as well as directions of the WHITCOM board to ensure safe and efficient operations and to administer funds paid to WHITCOM by CITY in accordance with this Agreement. WHITCOM further agrees to utilize any and all payments made to WHITCOM pursuant to this Agreement only in a manner consistent with Idaho Code Title 31, Chapter 48.

SECTION 15. Non-Discrimination

It is illegal under the U.S. Federal law to discriminate against an employee, either intentionally or through disparate impact, on account of race, color, gender, religion, sex (including pregnancy), national origin, physical or mental disability, age, marital or familial status, sexual orientation, and gender expression or identity. WHITCOM shall not discriminate against any employee or applicant for employment. WHITCOM's action under this Section shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. WHITCOM agrees to post in conspicuous places, available to employees and other applicants for employment, notices setting forth the provisions of this non-discrimination Section.

SECTION 16. Independent Contractor

The Parties warrant by their signature that no employer-employee relationship is established between WHITCOM and CITY by the terms of this Agreement. It is understood by the Parties hereto that WHITCOM is an independent contractor and as such neither it nor its employees, if any, are employees of CITY for purposes of tax, retirement system, or social security (FICA) withholding.

SECTION 17. Venue and Legal Fees.

This Agreement shall be construed as having been made and delivered within the State of Washington, and it shall be mutually understood and agreed by each Party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Whitman County, Washington.

As a further condition of this Agreement, the Parties acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each Party. The Parties expressly agree that any uncertainty or ambiguity existing therein shall not be construed against either Party.

SECTION 18. Rights Not Assignable.

Parties shall not assign any rights or duties under this Agreement to any other person or entity, governmental or otherwise, without the prior written approval of the other Party.

SECTION 19. Severability.

In the event any provision of this Agreement or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions, or parts thereof, shall remain in full force and effect, being in no way affected, impaired or invalidated. The remaining provisions shall be construed in a manner most closely approximating the intention of the Parties with respect to the invalid, void, or unenforceable provision or part thereof.

SECTION 20. Complete Agreement.

This Agreement constitutes the entire expression of intent and/or agreement of the Parties and supersedes all prior agreements or understandings, written or oral, with respect thereto.

SECTION 21. Amendments.

The terms of this Agreement may be amended by mutual agreement of the Parties. The Party seeking an amendment shall submit a written request for amendment to the other Party. The request shall clearly describe the proposed change and why the change is necessary. The responding Party shall schedule a review of the request within thirty (30) days from receipt of the request and shall respond within forty-five (45) days from receipt of the request. The responding Party may approve, deny, or suggest modifications to the amendment. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by both Parties.

SECTION 22. Termination of Agreement.

This Agreement may be terminated without cause by either Party upon one (1) year's prior written notice.

SECTION 23. Notice.

Any notice under this Agreement shall be in writing and shall be effective when actually delivered or when deposited in the mail addressed to the Parties as follows:

WHITCOM

CITY

WHITCOM Director
WHITCOM 911
2325 Hopkins Court
Pullman, WA 99163

City Clerk
City of Moscow
P O Box 9203
Moscow, ID 83843

IN WITNESS WHEREOF, the Parties have set their hands and affixed their seals as of the date and year hereinbelow written.

WHITCOM

This _____ day of _____, _____

Whitcom Board Chair

Whitcom Board Vice Chair

CITY OF MOSCOW, IDAHO

This _____ day of _____, _____

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

CITY COUNCIL STAFF REPORT

DATE: Monday, February 1, 2021



RESPONSIBLE STAFF

Kyle Steele, Environmental Services Supervisor

REVIEWED BY

This was reviewed by the Public Works/Finance Committee on January 25, 2021 and recommended for approval.

ADDITIONAL PRESENTER(S)

OTHER RESOURCES

AGENDA ITEM TITLE

Ordinance Amending Title 5 of Moscow City Code with the Addition of Chapter 19 (ACTION ITEM) - Kyle Steele / Tyler Palmer

DESCRIPTION

The City of Moscow was issued a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Systems (MS4) Permit on August 5, 2019, which became effective on October 1, 2019. The MS4 Permit requires the City to develop and implement a comprehensive stormwater program. In order to comply with the MS4 Permit, the City must implement stormwater management activities, including: (1) public education, outreach, and involvement; (2) finding and eliminating illegal polluted discharges; (3) construction site erosion and sediment control; (4) post-construction stormwater management on new development and redevelopment; (5) pollution prevention and good housekeeping for City operations; (6) performing outfall monitoring and assessment activities for discharges to water quality impaired stream and creeks ; and (7) keeping records and preparing compliance reports.

The City currently uses few revenue sources and funding mechanisms to operate its existing stormwater program. Expenses for existing stormwater related activities are currently covered by general fund revenues (derived from property tax levy; state sales tax; plan review fees; utility franchise, licensing, and permit fees; and other minor revenue sources); and special revenue funds, specifically the Street Fund (revenue derived from highway user tax and road and bridge tax).

Due to increasing costs, increased maintenance and tracking requirements, and regulatory compliance responsibilities of the new MS4 Permit, securing the necessary additional funding and implementing the recommendations developed through the gap analysis process identified in the City of Moscow Stormwater User Fee Study is essential.

The proposed amendment and adoption of Moscow City Code Title 5, by the addition of Chapter 19, would establish a system of stormwater user fees to fund and carry out a comprehensive stormwater management program. Stormwater user fees would be collected from customers within the entire incorporated area of the City proportionate to the cost of providing proprietary stormwater services. The money from stormwater user fees will be used to cover the cost the City incurs in managing and operating the municipal stormwater control system in compliance with federal laws. The municipal stormwater control system exists to provide drainage services to property owners within the City. Some of the things that stormwater fees will be used for include: City stormwater control system construction, operation, and maintenance costs; water quality protection and clean-up activities; educational activities; and management and administrative activities.

Operating the City's stormwater control system drains runoff and related pollutants from developed

properties within the City, prevents flooding of homes and businesses, ensures that drainage from future growth does not impact existing property owners, provides for the safe passage on City roads, and protects environmental resources and public health by controlling pollutants discharged by customers to the system.

STAFF RECOMMENDATION

Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary.

PROPOSED ACTIONS

PROPOSED ACTIONS: Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Draft IIII Moscow Stormwater User Fee Ordinance 21-_clean

ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 05, BY THE ADDITION OF CHAPTER 19, ESTABLISHING A SYSTEM OF STORMWATER USER FEES TO FUND THE PROVISION OF PROPRIETARY STORMWATER SERVICES BY THE CITY TO PROPERTY OWNERS WITHIN CITY'S JURISDICTION; APPROVING ADMINISTRATION OF THE USER FEE SYSTEM; AUTHORIZING STORMWATER USER FEES AND ESTABLISHING A PROCESS FOR PROPERTY OWNERS TO APPEAL THE AMOUNT OF THE FEE; REQUIRING THAT STORMWATER USER FEE REVENUE BE KEPT SEPARATE FROM THE GENERAL FUND AND SPENT ONLY ON STORMWATER CONTROL SYSTEM COSTS; ESTABLISHING ENFORCEMENT PROVISIONS AND PENALTIES FOR NON-PAYMENT OF FEES; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; APPROVING THE PUBLICATION OF A SUMMARY OF THE ORDINANCE WITH THE FULL TEXT AVAILABLE AT CITY HALL; PROVIDING FOR A WAIVER OF THE READING RULES; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, after a public hearing on the hereinafter provided amendments, the Mayor and City Council make the following findings:

A. Authority

The City of Moscow (the "City") has authority to:

1. Operate the City Stormwater Control System (hereinafter "System") for the use and benefit of those served by such works, for the promotion of the welfare, and for the improvement of the health, safety, comfort and convenience of the inhabitants of the City. To acquire by gift or purchase, and to construct, reconstruct, improve, better, or extend the System within any part, or partially within City limits, or partially outside of City limits. Issue revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of the System. Prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the State of Idaho and its subdivisions, for the services, facilities and commodities furnished by the System. Prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by the System, and revise such rates, fees, tolls or charges from time to time. The intent is to provide a self supporting System

in perpetuity. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay all bonds and interest thereon; and (b) to provide for all expenses of operation and maintenance of such works, including reserves therefor. The construction, acquisition, improvement, equipment, custody, operation and maintenance of the System, and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of the governing body of the City, pursuant to I.C. § Title 50 - Municipal Corporations, Chapter 10 Finances, 1027-1042 [Revenue Bond Act].

2. Prevent the flooding of the City or secure its drainage, to assess the cost thereof to the property benefited, and for such purpose may make any improvement or perform any labor on any stream or waterway, either within or without the City limits, when necessary to protect the safety of life and property of the City. The City shall have power to cause any parcel of land within its limits on which water may at any time become stagnant, to be filled or drained in such manner as may be directed by a Resolution of the Council, and such owner or his agent shall, after service of a copy of such Resolution, comply with the directions of such Resolution within the time therein specified; and in case of failure or refusal to do so, it may be done by the City, and the amount of money so expended shall be assessed against such property, pursuant to I.C. § 50-333. Flood Prevention – Drainage.
3. Impose and cause to be collected, fees for those services provided by the City which would otherwise be funded by property tax revenues. The fees collected shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered, pursuant to I.C. § 63-1311. Fees for Services.
4. Clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain, or sewer or any watercourse in the City when not declared, by law, to be navigable, and assess the expense thereof in whole or in part to the property specially benefited thereby, pursuant to I.C. § 50-332. Control of Sewers and Drains.

B. MS4 Permit Compliance

1. To manage stormwater and protect people and property within the City, the City has constructed stormwater drainage components that, along with intertwined natural drainage courses, are part of the overall City Stormwater Control System. The System provides proprietary drainage services to public and private property whose runoff has been allowed to enter the System through direct manmade connections as well as through overland flows. Portions of the System discharge to the South Fork Palouse River, Paradise Creek, and other associated Waters of the United States within Moscow. The majority of the System has been designated as a regulated Municipal Separate Storm Sewer System (MS4) by the US Environmental Protection Agency (EPA).
2. The City has been issued an MS4 Permit by the EPA which authorizes the City to discharge stormwater from the MS4 into Waters of the United States, as long as such discharges are in compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, and as described by the MS4 Permit

conditions and requirements. These conditions and requirements impose a regulatory cost associated with the City's provision of drainage services to its customers. Idaho is in the process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.

3. The MS4 Permit imposes mandatory requirements on the City in order to legally discharge stormwater from the MS4 into Waters of the United States, including:
 - a. Public Education and Outreach on Stormwater Impacts;
 - b. MS4 Illicit Discharge Detection and Elimination;
 - c. Construction Site Stormwater Runoff Control;
 - d. Post-Construction Stormwater Management for New Development and Redevelopment Projects;
 - e. Pollution Prevention/Good Housekeeping for City Operations;
 - f. Stormwater Pollution Related Monitoring/Assessment Activities;
 - g. Stormwater Pollutant Reduction Activities;
 - h. Stormwater System Mapping and Planning;
 - i. Keeping Stormwater Compliance Records; and
 - j. Completing Stormwater Compliance Reports.
4. Failure by the City to comply with MS4 Permit requirements would subject the City to civil and criminal penalties under Federal Law which would place the City's resources and staff at financial, civil, and criminal risk and subject the City stormwater customers to additional financial and regulatory burdens.

C. Compliance with Idaho Statutes and Administrative Requirements for Discharging Stormwater to Groundwater

1. Portions of the City's Stormwater Control System receives stormwater leaving individual properties in the City, which is then deposited into a system of curbs, gutters, ditches, swales, detention basins, open spaces, and other appurtenances that dispose of the drainage. Most drainage is discharged to surface waters; however, some drainage may be disposed of by infiltration into the ground over deep and shallow aquifers. In addition, the City's MS4 permit requires the City to promote, where feasible, the use of on-site retention and infiltration of stormwater runoff for new development and redevelopment projects.
2. The Idaho Department of Environmental Quality (IDEQ) and Idaho Department of Water Resources (IDWR) regulate stormwater drainage over aquifers. Uncontrolled discharges

from stormwater systems to groundwater can impact groundwater quality and protected beneficial uses.

3. Under IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, “Ground Water Quality Rule.”, activities with the potential to degrade aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best practical methods to the maximum extent practical, and no person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that (a) causes a groundwater quality standard to be exceeded; (b) injures a beneficial use of groundwater; or (c) is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method.
4. IDWR has also adopted Rules and Minimum Standards for the Construction and Use of Injection Wells (IDAPA 37.03.03), which regulates the use of drywells and other shallow injection systems used to dispose of stormwater below the ground surface. Use of a shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of surface or groundwater quality standards that would affect a beneficial use.
5. Failure by the City to comply with IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, Ground Water Quality Rule and IDAPA 37.03.03, Rules and Minimum Standards for the Construction and Use of Injection Wells would subject the City to enforcement actions which would subject City stormwater customers to additional financial and regulatory burdens.

D. Compliance with Lewiston Independent School Dist. No. 1 v. City of Lewiston

1. The City of Lewiston’s original stormwater fee was judged to be an unlawful tax rather than a lawful regulatory fee or user fee by the 2nd District Court, whose decision was upheld by the Idaho Supreme Court upon appeal. Lewiston Independent School Dist. No. 1 v. City of Lewiston, 151 Idaho 800, 264 P.3d 907 (2011).
2. Key factors cited by the Court that led to the decision overturning Lewiston’s stormwater user fee included:
 - a. The Court did not perceive that Lewiston’s storm drains provided identifiable benefits and services to properties.
 - b. The Court concluded that Lewiston’s stormwater fee was not a fee for service but instead was “a revenue generating tax created to benefit the general public by charging all property owners for the privilege of using the City’s preexisting stormwater system, regardless of whether they are using the stormwater system or not.”

- c. Lewiston’s indication that a portion of stormwater fee revenue would be used to pay for some activities that were not entirely stormwater related, such as street maintenance and rebuilding.
 - d. The Court concluded that “the Stormwater Utility has an ad hoc structure” under which Lewiston made “ad hoc determination[s] as to what constituted...stormwater activities.”
 - e. Lewiston charged fees to all owners of property with impervious surfaces with no exceptions for those “whose runoff does not enter the stormwater drain because they have their own stormwater systems or because their neighborhoods are not connected to the stormwater system”.
 - f. The Court concluded that “it is unclear whether the Council has adopted a distinct Stormwater Utility structure separate from the Street Maintenance Department.”
 - g. The Court concluded that fees charged for the stormwater utility did not qualify as regulatory fees under the police power, because the amount charged was not related to the cost of a regulatory or enforcement program.
 - h. The Court found that although the prior ordinance required that “all fees would be collected and separated from the general revenue,” the actual practice was different. “In practice, stormwater fees are comingled with the City’s general funds in the City’s primary checking account.”
 - i. According to the Court, “the City did not proceed under the Revenue Bond Act”.
3. To address the factors cited by the Court in *Lewiston Independent School Dist. No. 1 v. City of Lewiston*, the City of Moscow’s ordinance and authorized stormwater user fee does the following:
- a. Recognizes that, like potable water and sanitary sewer facilities, the City’s Stormwater Control System serves a proprietary, rather than regulatory or governmental, function. Fees associated with the provision of stormwater service to property owners are user fees, not incidental regulatory fees.
 - b. Recognizes that the City’s Stormwater Control System provides tangible benefits and services to property owners who use the System and consume System capacity and services. The array of stormwater benefits and services to customers are described in the City’s Stormwater User Fee Basis, Rate Structure, and Policy Memorandum prepared by Aspect Consulting, 2019.
 - c. The user fee authorized by this ordinance is used to recover, on a pro-rata basis, the costs incurred by the City in providing stormwater drainage services including the cost of maintaining the System and complying with all applicable regulations. The system of stormwater user fee is not intended to generate revenues in excess of these costs.

- d. Establishes a City Stormwater Division that, like the Water and Sewer Divisions, is charged with (1) updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; (2) properly planning, operating, maintaining, and constructing the Stormwater Control System; and (3) complying with all applicable stormwater regulations.
- e. Only charges fees to properties actually receiving stormwater service, i.e., those discharging stormwater, whether directly or indirectly, to the City's Stormwater Control System.
- f. Allows property owners to seek stormwater fee adjustments, or elimination of fees, though an application and appeal process to reflect their burden on, and services received from, the Stormwater Control System; including exemptions and refusal of service.
- g. Prohibits using stormwater user fee revenue to pay for non-stormwater related City costs.
- h. Places stormwater user fee revenue in a dedicated stormwater enterprise fund and prohibits co-mingling such revenues with the City's general fund.
- i. Requires the City to adopt a detailed and transparent stormwater budget when setting stormwater fees and accounting for how stormwater fee revenue is spent.
- j. Relies on authority contained within the Idaho Revenue Bond Act, and other sources of authority cited herein.

WHEREAS, based on the findings hereinabove, it is deemed by the Mayor and City Council to be in the best interest of the City of Moscow that the following amendments be adopted;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1. *That a new Chapter 19, entitled Stormwater User Fees is hereby added to Title 05 of the Moscow Municipal Code as follows:*

SEC.19-1. AUTHORIZATION.

This Chapter is enacted pursuant to the authority vested in the City by Article XII, Section 2 of the Idaho Constitution, the Idaho Revenue Bond Act (I.C. § 50-1027 - 50-1042) and Idaho Code Sections 50-301, 50-332, 50-333 and 63-1311.

Sec. 19-2. PURPOSE.

The purposes of this Chapter are:

To equitably allocate the operation, maintenance, improvement, and regulatory compliance expenses of the City's Stormwater Control System to users of the System in proportion to the level and type of services received from the System.

To provide for the establishment of a system of stormwater user fees and provide that the fees collected are set aside and designated solely for use for the maintenance, operations, improvements, regulatory requirements, and program costs of the City's Stormwater Control System.

To provide that all services mandated or authorized by this Chapter be furnished to customers at the lowest possible cost.

To establish standards and implement programs necessary and/or convenient to comply with the requirements of the City's MS4 Permit as well as the rules governing collection, treatment, detention and disposal of stormwater over the shallow and deep aquifers that underlie Moscow.

To establish a City Stormwater Division to operate and maintain the City's Stormwater Control System and to manage stormwater and drainage issues within the City.

Sec. 19-3. DEFINITIONS.

For purposes of this Chapter, the following terms and acronyms shall have the meaning herein set forth unless the text of the use of the term clearly requires otherwise:

Administrator or Stormwater Administrator. The person serving under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Division, the Stormwater Control System, and the City's system of stormwater user fees.

Impervious Surface. Material which resists or blocks the passage of water into soils as would occur under natural conditions. Examples include but are not limited to, rooftops, roads, alleys, parking lots, sidewalks, patios, decks, and swimming pools.

MS4 Permit. The national pollutant discharge elimination system (NPDES) permit issued to the City by the Environmental Protection Agency in compliance with the provisions of the Clean Water Act, 33 USC section 1251 et seq., as amended by the Water Quality Act of 1987, PL 100-4, for stormwater discharges from small municipal separate storm sewer systems also known and referred to as an MS4 Permit. Idaho is in the process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.

Stormwater Control System. The City-maintained system of ditches, channels, swales, culverts, basins, treatment systems, gutters, inlets, storm pipes, outfalls, ponds, creeks, rivers, wetlands, and any other appurtenances necessary, useful or convenient for the orderly collection, conveyance, treatment, and disposal of municipal stormwater runoff.

Stormwater Fund. A dedicated stormwater enterprise fund that is kept separate from the City's General Fund and solely used to cover stormwater costs, such as but not limited to: updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and

codes; studying, planning, operating, maintaining, and constructing the Stormwater Control System; and complying with all applicable stormwater regulations.

Stormwater Review Board. A group of people chosen by the Deputy City Supervisor to review appeals of the Stormwater Administrator's user fee determination.

Stormwater User Fee. A reasonably individualized fee charged to property owners or tenants for stormwater services provided by the City Stormwater Control System.

Sec. 19-4. APPLICABILITY.

All property, within the corporate limits of the City, containing impervious surface that drains stormwater runoff into the City's Stormwater Control System is subject to this Chapter. Properties that are not subject to the Chapter are exempt from the Stormwater user fee created by this Chapter.

Sec. 19-5. STORMWATER DIVISION CREATED.

- A. Stormwater Division Created. There is hereby created and established a Stormwater Division for the City. The Stormwater Division will have regulatory authority and responsibility for planning, design, construction, maintenance, operation, and administration of the City's Stormwater Control System, and the services provided by the City's Stormwater Control System.
- B. Stormwater Division's Regulatory Functions. The Stormwater Division is charged with administering and enforcing the City's existing stormwater ordinances, codes, and standards, as well as developing, administering, and enforcing future stormwater ordinances, codes, and standards necessary to comply with State and Federal regulations affecting the City's provision of stormwater services to customers within the City.

Sec. 19-6. STORMWATER DIVISION ADMINISTRATION.

- A. Stormwater Division Administration. The Stormwater Division shall be administered under the direction of a Deputy City Supervisor. The Stormwater Division will be administered in a manner similar to the City's existing Public Utilities.
- B. Stormwater Administrator. The Stormwater Division, Stormwater Control System, and City system of stormwater user fees shall be under the supervision of the Stormwater Administrator who shall serve in such capacity under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Division.
- C. Annual Reports. In order for the City Council to exercise its authority under I.C. § 50-1031, the Stormwater Division shall provide the Council with an annual report of the activities funded by stormwater user fees during the preceding year and a projection of the upcoming year's expenditures.

Sec. 19-7. POLICIES AND PROCEDURES.

The Stormwater Administrator is authorized to establish and update, from time to time, written policies and procedures to implement the provisions of this Chapter.

Sec. 19-8. STORMWATER USER FEE.

- A. Stormwater User Fee. The City may establish a system of periodic stormwater user fees that are proportionate to the costs of providing proprietary stormwater services to customers within the City in accordance with the costs of the operation and maintenance of the City's Stormwater Control System, including administration, planning, repair, improvement, regulatory compliance, and other stormwater costs, and for any redemption of bonds that are used to finance any system improvement.
- B. Fee Established by Resolution. The fee authorized by this Chapter will be set by Resolution of the City Council.
- C. Nature and Purpose of User Fee. The fees authorized by this Ordinance are not a one-time impact fee, capitalization fee, or buy-in fee. Rather, the fees will be charged to users on an ongoing, periodic basis. Revenue collected may be used for ongoing and recurring stormwater expenses, such as operations and maintenance, as well as capital expenditures and retirement of debt associated with capital expenditures.
- D. Quantification of User Fee. The amount of a customer's stormwater user fee shall be based on the user's pro-rata share of the cost of service a City stormwater customer receives from the City Stormwater Control System. The fee shall be reasonably determined based on the volume of runoff from a customer's property (as reflected in the extent of impermeable surface) into the City Stormwater Control System. Impervious surface area is well correlated with urban runoff volume; therefore, the volume of runoff into the City Stormwater Control System will be based on the amount of impervious surface on a customer's property that drains into the City Stormwater Control System. In addition, to better individualize user fees, customers may provide information to the City under Subsections 'E' and 'I' of this Section regarding on-site factors that eliminate or reduce the volume of customer's runoff, or the pollution it contains.
- E. System of User Fee Credits. The City shall provide a written system of user fee credits to better individualize fees to reflect a customer's stormwater burdens and services. The system of user fee credits will reasonably account for on-site practices or conditions that significantly (1) affect the expected volume and pollution of runoff flowing from a customer's property to the City Stormwater Control System; or (2) otherwise affect the cost for the City to manage and dispose of the customer's runoff. Some classes of stormwater customers may provide information to the Administrator and apply for applicable user fee credits. A decision regarding credit eligibility will be made by the Administrator within thirty (30) days of receiving a complete application. The burden of proof for initial and ongoing credit eligibility shall lie with the customer. The City may, at its discretion, charge a credit application processing fee that reasonably reflects the administrative cost of reviewing and processing the application.
- F. Exemption from User Fee. Properties that do not use the Stormwater Control System are exempt from the Stormwater User Fee because: (1) the property has no impermeable surface, (2) the property is served by its own stormwater system such that the property's stormwater

runoff does not discharge to the City's Stormwater Control System, or (3) the property is directly and indirectly hydraulically disconnected from the City's Stormwater Control System. Customers may submit a request for an exemption under Subsections 'E' and 'I' of this section.

- G. **Periodic Revisions to Fee Calculation.** The City shall periodically revisit the stormwater fee structure and rate and make adjustments as necessary to account for the most recent information on anticipated stormwater costs, debt obligations, revenue on hand, and anticipated fees and other revenue.
- H. **Customer Database.** The City will use readily available information, such as aerial photographs or other data, to prepare a stormwater customer database containing calculations of impervious surface area on parcels within the City, along with parcel ownership. The City shall keep and maintain the customer database of impervious surface and fees over time. The City will recalculate a customer's impervious surface and fee, including reviewing whether the property is exempt, each time additional development occurs on the property that would significantly increase or decrease the amount of the fee. The recalculation of the fee will be triggered by an application for a building or site development permit.
- I. **Stormwater User Fee Corrections.** The City shall provide a process for customers to submit information to the Administrator to adjust or eliminate their stormwater user fee. A customer who believes that their fee is based on an incorrect calculation of impervious surface, that the subject property does not receive any drainage services from the City Stormwater Control System (for the reasons described in Subsection F above), or otherwise has an incorrect fee, may submit a written recalculation request to the Administrator within thirty (30) days after the fee is established or adjusted. The request must identify the basis for disagreement with the user fee and be accompanied by relevant supporting documentation. The City shall determine whether the fee should be recalculated and, if so, recalculate the fee, and notify the requestor, in writing, no later than thirty (30) calendar days following receipt of the completed written request for recalculation.
- J. **Appeal of Stormwater User Fee Correction Decision.** The Stormwater Administrator's decision regarding user fee credits or correction of user fees, as allowed under Subsections 'E' and 'I' of this Section, may be appealed to the Stormwater Review Board by submitting a written appeal to the Stormwater Administrator within thirty (30) calendar days after the Administrator issues its decision. The request must identify the error(s) committed by the City in recalculating the fee and any other basis for claim of incorrect calculation and be accompanied by relevant supporting documentation. The Stormwater Review Board will not hold a public hearing on the appeal but will meet and review all submitted information and decide on the appeal. A final written decision from the Review Board will be issued no later than thirty (30) calendar days following receipt of the completed written request for recalculation unless the appellant agrees to an extension.
- K. **Refund of Overpayment.** The City will refund any stormwater user fee overpayment, plus any statutory interest, within thirty (30) calendar days if either the Stormwater Administrator

or the Review Board determines that a user fee was improperly calculated as allowed by this Section.

Sec. 19-9. BILLING AND ENFORCING PAYMENT OF STORMWATER USER FEES.

All billings for user fees charged under the provisions of this Chapter will be billed and collected in the same manner as the City's other Public Utilities as it relates to billing, payment, delinquency, and penalty provisions.

Sec. 19-10. STORMWATER FUND AND EXPENDITURES.

- A. Segregation of Funds. All fees and charges received and collected under authority of this Chapter shall be deposited and credited to a special enterprise fund to be designated as the Stormwater Fund. All revenue accruing to the Stormwater Fund shall be maintained in a separate bank or financial account from, and shall not be co-mingled with, the City's general revenue fund.
- B. Accounting of Receipts and Expenditures. The accounts of the Stormwater Fund created by this Section shall show all receipts and expenditures for the maintenance, construction, operation, upkeep and repair of the City's Stormwater Control System, including the payment of any System bonds issued by the City, which, from time to time, may be outstanding.
- C. Other Revenue Sources. From time to time, the City, in its discretion, may deposit other monies into the Stormwater Fund to be used to cover stormwater costs, including, for example, revenue from grants, damages or penalties collected, or contributions of general revenue of the City.
- D. Expenditure on System Expenses Only. All funds generated by this Chapter, as well as other deposits to the Stormwater Fund as provided in Subsection C, will only be expended on the operation, maintenance and other expenses, including regulatory compliance, of the Stormwater Control System. No general street maintenance, repairs, or improvements such as filling potholes, repaving, striping, winter sanding, removal of limbs and other large debris from streets, or other general fund expenditures may be charged to the Stormwater Fund; however, repair and replacement of curbs and gutters and removal of pollutants from the Stormwater Control System via sweeping or other methods is authorized in order to maintain the integrity of the Stormwater Control System and comply with applicable regulations. The Stormwater Administrator and the Finance Director are charged with adopting additional policies and guidelines to ensure that monies in the Stormwater Fund are only spent on valid drainage system expenses.
- E. Availability of Deposited Funds. As provided by law, when budgeted and appropriated, the funds and credits to the account of the Stormwater Fund shall be available for the payment of maintenance, operation, repairs, and upkeep of the Stormwater Control System, compliance with the MS4 Permit, and to the extent legally available for payment into a sinking fund established for the payment of the principal and interest of any general obligation system bonds which shall from time to time be outstanding.

- F. Independence from the General Fund. The Stormwater Division shall operate independently of the City's general fund and shall have the same relationship to the City as the City's current Utility Programs. Upon creation of the Stormwater Division, the City's drainage facilities and assets, other than streets, shall be transferred to the Stormwater Division in accordance with Governmental Accounting Standards Board (GASB) Financial Reporting Principles.

SECTION 2. EFFECT ON OTHER ORDINANCES. *To the extent any provision of this Ordinance is inconsistent with any other City ordinance or resolution enacted prior to the date of this Ordinance, this Ordinance shall control.*

SECTION 3. ENFORCEMENT. *The adoption of this Ordinance shall not, in any manner, affect any prosecution for violation of any other ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any other ordinance, or in any manner affect the validity of any action heretofore taken by the City of Moscow City Council, or the validity of any such action to be taken upon matters pending before the City Council on the effective date of this Ordinance.*

SECTION 4. SEVERABILITY. *The provisions of this Ordinance shall be deemed severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair the validity of any of the remaining provisions, clauses, sentences, subsections, words or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause sentence, subsection, word, or part, had not been included therein, and if such person or circumstance to which the Ordinance or part thereof is held inapplicable, had been specifically exempt therefrom.*

SECTION 5. EFFECTIVE DATE. *After its passage and adoption, a summary of this Ordinance, under the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Moscow, and upon such publication shall be in full force and effect. This Ordinance shall be effective upon its passage, approval and publication according to law.*

PASSED by the City Council and APPROVED by the Mayor this ____ day of _____, 2021.

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk