

AGENDA ITEM SUMMARY

DATE: 08/10/2009 **DEPARTMENT:** Finance & Legal **DEPT. HEAD SIGNATURE:** NW

SUBJECT

Public Hearing on new franchise ordinance and agreement with Cox Cable Company

AUTHORITY: ID Code 50-329 IAR _____ City Ordinance/Code _____

BACKGROUND:

The cable franchise with Cox will expire on October 20, 2009. The proposed franchise agreement and franchise ordinance is virtually identical to the existing agreement and ordinance. The present franchise is four years. The proposed franchise is for five years. We went through extensive negotiations with Cox four years ago and feel that the proposed agreement and ordinance is the best we can negotiate at this time under state and federal law.

The procedure for adopting the franchise agreement and ordinance is as follows:

Following this meeting to introduce the Cox franchise agreement will be a 30 day waiting period before council reviews and makes a decision. Within this 30 day period the Public Hearing will be noticed for the proposed franchise agreement.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Budget Line Item # _____ YTD Line Item Balance \$ _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

____ City Attorney ____ Clerk / Finance Director ____ Engineer ____ Mayor
____ P & Z Commission ____ Parks & Lands Board ____ Public Works ____ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discussion of agreement, including any direction to amend draft terms of either agreement or ordinance.

FOLLOW UP NOTES:

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, GRANTING COXCOM, INC. D/B/A COX COMMUNICATIONS A FIVE (5) YEAR NON-EXCLUSIVE FRANCHISE TO BUILD, CONSTRUCT, MAINTAIN AND OPERATE A CABLE SYSTEM IN THE CITY OF HAILEY, IDAHO; PROVIDING FOR RIGHTS AND OBLIGATIONS OF THE FRANCHISEE AND CITY; PROVIDING FOR THE OBLIGATIONS OF THE FRANCHISEE'S CUSTOMERS; REQUIRING A FRANCHISE FOR CABLE SERVICES; PROVIDING FOR EXTENSION OF THE FRANCHISE IN ANNEXED AREAS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Hailey City Council finds that Coxcom, Inc. d/b/a Cox Communications, an Idaho corporation, is capable providing cable services to the citizens of Hailey;

WHEREAS, the Hailey City Council previously granted CoxCom, Inc. d/b/a Cox Communications a non-exclusive four (4) year franchise to provide cable services to the citizens of Hailey, pursuant to Hailey Ordinance No. 926; and

WHEREAS, the Hailey City Council finds that it is in the best interests of the citizens of Hailey to grant CoxCom, Inc. d/b/a Cox Communications a non-exclusive five (5) year franchise to provide cable services to the citizens of Hailey.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HAILEY, BLAINE COUNTY, IDAHO:

Section 1. GRANT OF FRANCHISE.

Pursuant to Idaho Code §50-329, the City of Hailey hereby grants to CoxCom, Inc. d/b/a Cox Communications ("Franchisee"), the authority, right, privilege and non-exclusive franchise for a term of five (5) years, beginning October 21, 2009, in accordance and subject to the Franchise Agreement executed by the City of Hailey and Franchisee on _____, 2009, and as subsequently amended ("Franchise Agreement") for the term of the franchise granted hereunder (unless otherwise lawfully terminated in accordance with the terms of the Franchise

Agreement), to construct and operate a cable system in, along, among, upon, across, above, over, under or in any manner connected within public streets, alleys and public ways within the City of Hailey, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public streets, alleys and public ways and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units and other related property or equipment as may be necessary or appurtenant to the cable system, and to engage in the business of providing cable services within the corporate limits of Hailey, Idaho.

Section 2. RIGHTS AND OBLIGATIONS OF THE FRANCHISEE AND CITY.

- A. The Franchisee shall have the right and privilege to use the streets, alleys and other public right-of-ways within the City of Hailey, in accordance with this Ordinance and the Franchise Agreement.
- B. The City of Hailey is responsible for maintaining the streets, its alleys and its public ways in a passable condition.
- C. The Franchisee shall provide cable services in accordance with this Ordinance and the Franchise Agreement.
- D. The Franchisee shall comply with all ordinances of the City of Hailey and all applicable state and federal laws.
- E. Unless otherwise provided in this Ordinance, the specific duties and obligations of the City of Hailey and Franchisee are more particularly described in the Franchise Agreement.

Section 3. OBLIGATION OF CUSTOMERS.

Except as otherwise provided in the Franchise Agreement, customers of the Franchisee shall pay the applicable charge established for cable services in accordance with this Ordinance and the Franchise Agreement.

Section 4. FRANCHISE REQUIRED.

It shall be unlawful for any person or legal entity to engage in the business of providing cable services over and upon the public right-of-ways within the City of Hailey, unless the person or legal entity is granted a franchise pursuant to Idaho Code §50-329.

Section 5. ANNEXATIONS.

If the City of Hailey annexes additional areas during the term of this franchise, the Franchisee shall have the non-exclusive authority and privilege to provide cable services within the City of Hailey shall extend to the newly annexed area.

Section 6. SEVERABILITY.

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 7. REPEALER.

Hailey Ordinance No. 926 is hereby repealed in their entirety and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. PENALTY.

Any person, firm or other legal entity violating any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300.00) or imprisonment in the county jail for a period not to

exceed six (6) months, or both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Section 9. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ___ DAY OF _____, 2009.

Richard L. Davis, Mayor

Attest:

Mary Cone, City Clerk

FRANCHISE AGREEMENT

(Cable Services)

This Franchise Agreement ("Agreement") is made and entered into this ____ day of _____, 2009, by and between the City of Hailey, a municipal corporation ("Hailey") and CoxCom, Inc., d/b/a Cox Communications ("Franchisee").

RECITALS

A. Hailey is a municipal corporation and political subdivision of the State of Idaho, and has authority to enter into this Agreement. Richard L. Davis is the duly elected Mayor of Hailey. The Hailey City Council has authorized the Mayor to execute this Agreement.

B. Franchisee is a duly organized and acting corporation in the State of Idaho. David Blau is the duly appointed Senior Vice President and General Manager of Franchisee and has the authority to enter into this Agreement.

C. Subject to the terms and conditions set forth herein and Hailey Ordinance No. _____, the parties hereto are desirous of entering into a non-exclusive five (5) year franchise agreement, with Franchisee providing cable services within the city limits of Hailey, Idaho.

D. Hailey having determined that the financial, legal and technical ability of the Franchisee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community during the term of this Agreement, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Agreement with the Franchisee for the construction and operation of a Cable System on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the parties agree as follows:

I. DEFINITIONS

For the purposes of this Agreement, the following terms have the meanings set forth herein:

"Cable Act" shall mean Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Telecommunications Act of 1996, and as the same may be further amended from time to time.

"Cable Services" shall mean (A) the one-way transmission to Customers of (i) video programming, or (ii) other programming service and (B) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Services which includes video programming and which is provided to multiple Customers within a community.

“Customer” shall mean a Person who lawfully receives Cable Services within the Service Area with the Franchisee's express permission.

“FCC” shall mean the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” shall mean the authorization, or renewal thereof, by Hailey under Hailey Ordinance No. ____, or as amended, authorizing the Franchisee to construct, maintain and operate the Cable System.

“Franchisee” shall mean CoxCom, Inc., d/b/a Cox Communications, a Delaware corporation with a local business office at 105 Lewis St., Ketchum, Idaho, 83340.

“Gross Revenues” mean any subscriber revenues received by the Franchisee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross Revenues shall not include: (i) any fees or taxes which are imposed directly or indirectly on any Customer thereof by any governmental unit or agency and which are collected by the Franchisee on behalf of such governmental unit or agency, including without limitation the franchise fee required by Section 5.1 hereof; (ii) any tax, fee, or assessment of any kind imposed by Hailey or other governmental entity on a cable operator, or Customer, or both, solely because of their status as such; (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax; and (iv) net unrecovered bad debt.

“Hailey” shall mean the City of Hailey, a municipal corporation and political subdivision of the State of Idaho.

“Person” shall mean any individual, firm, partnership, corporation, organization, association, trust, limited liability company or other legal entity.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by Hailey in the Service Area which shall entitle Hailey and the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by Hailey within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle Hailey and the Franchisee to the use thereof for the purposes of installing, operating, repairing

and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, power supplies, network reliability units and other property as may be necessary or pertinent to the Cable System.

“Service Area” shall mean the present municipal boundaries of Hailey, and shall include any additions thereto by annexation or other legal means.

II.

GRANT OF FRANCHISE

Hailey hereby grants to the Franchisee, during the term of this Agreement and Hailey Ordinance No. _____, a non-exclusive Franchise which grants the Franchisee the right and privilege to construct and operate a Cable System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units and other related property or equipment as may be necessary or appurtenant to the Cable System. The Franchise granted shall not preclude Hailey from granting other or further franchises or permits or preclude Hailey from using any Public Way or affect its jurisdiction over them or any part of them, or limit the full power of Hailey to make such changes, as Hailey shall reasonably deem necessary, including but not limited to the dedication, establishment, maintenance and improvement of all new Public Ways.

III.

TERM

The Franchise granted hereunder shall be for a term of five (5) years commencing on the effective date of this Agreement as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Agreement. The effective date of this Franchise is October 21, 2009. This Franchise shall expire on October 20, 2014, unless extended by the mutual agreement of the parties.

IV.

DUTIES AND RESPONSIBILITIES OF FRANCHISEE

4.1 Conditions of Occupancy. The Cable System installed by the Franchisee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any Public Ways. Any obstruction in the Public Way that interferes with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any Public Way that, after proper notice to Franchisee demanding removal, is not promptly removed by Franchisee may be removed by Hailey and the costs thereof shall be immediately paid by Franchisee. All of the Cable System presently or in the future located, maintained or installed in the Public Ways within the Service Area shall at all

times be maintained in good order and condition, in accordance with standard engineering practices and in compliance with all applicable safety codes and lawful governmental regulations.

4.2 Restoration of Public Ways. If during the course of the Franchisee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by the Franchisee or its employees, contractors or agents, the Franchisee shall not unnecessarily or unreasonably obstruct the use of or damage any Public Way, and shall within a reasonable time as early as practicable replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance and in accordance with applicable city standards. Franchisee shall warrant and guarantee the portions of the Public Ways disturbed by Franchisee for a period of two (2) years following the repair and replacement of the Public Way. Said warranty and guarantee shall be null and void if Hailey authorizes the disturbance of the applicable portion of the Public Way by Hailey, its agent and/or a third party, above and beyond the normal usage of the Public Way for transportation.

4.3 Relocation at Request of Hailey. The Franchisee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, as necessary, any property of the Franchisee when lawfully requested by Hailey. The request to relocate by Hailey shall be preceded by the receipt of reasonable advance written notice, not to be less than ten (10) business days, except in an emergency in which case shall be preceded by such notice as is practicable. Whenever Hailey shall pave or repave a Public Way, shall change the grade or line of any Public Way or shall construct or reconstruct any conduit, sewer or water main, sewer or water connection or other public works or utility, it shall be the duty of the Franchisee when requested by Hailey to change any portion of the Cable System or other property of Franchisee so as to conform to the established grade or line of the Public Way and so as not to interfere with the conduits, sewer or water main, sewer or water connection or other public works or utility as constructed or reconstructed. Franchisee shall bear the sole cost of compliance with this Section 3.3, except in the event that public funds are made available to reimburse any other Person for the cost of moving that Person's facilities located in the Public Way in which case such funds shall be made available to Franchisee on equal and non-discriminatory terms. The City will make a reasonable effort to avoid the need for such moving or changing whenever possible. Franchisee shall not, however, be required to relocate pipes, mains and appurtenances when the Public Way is vacated, unless the reasonable cost of such relocation and the loss and expenses resulting is first paid to Franchisee.

4.4 Relocation at Request of Third Party. The Franchisee shall, on the request of any Person holding a lawful building moving permit issued by Hailey, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any Public Way, as necessary, any property of the Franchisee, provided: (a) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Franchisee, making such payment in advance; and (b) the Franchisee is given reasonable advance written notice to prepare for such changes. For purposes of this Section, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

4.5 Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, in accordance with the provisions of Chapter 12.20 of the Hailey Municipal Code, but only in a manner and to the extent needed to prevent trees from touching or interfering with the Cable System and to access and maintain the Cable System.

4.6 Safety Requirements. Construction, operation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

4.7 Aerial and Underground Construction.

A. When Franchisee extends its cable system to areas within the City where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, Franchisee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. If the transmission or distribution facility of the Franchisee is aerial and located on the transmission and distribution facility of a public utility providing telephone communications or electric services, and if a public utility relocates its transmission and distribution facility underground, the Franchisee shall in conjunction with the public utility underground relocation efforts, construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, underground. Nothing contained in this Section shall require the Franchisee to construct, operate and maintain underground any ground-mounted appurtenances such as Customer taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, network reliability units, pedestals, or other related equipment.

B. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, the Franchisee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

C. Hailey shall provide Franchisee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. Hailey agrees to require as a condition of issuing any permit for open trenching to any utility or developer, that the utility or developer give Franchisee reasonable access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Franchisee at least ten (10) business days prior to availability.

4.8 Required Extensions of Service.

A. The Franchisee agrees to provide Cable Service to all the owners of

improved property in the Service Area, subject to the density requirements specified in this Section. Whenever the Franchisee receives a request for Cable Service from a potential Customer in an unserved area where there are at least forty (40) separate improved residential properties within one (1) mile from the portion of the Franchisee's trunk or distribution cable which is to be extended, the Franchisee shall extend its Cable System to such Customers at no cost to said Customers for the Cable System extension, other than the applicable installation charge, provided that such extension is technically feasible. Notwithstanding the foregoing, the Franchisee shall have the right, but not the obligation, to extend the Cable System into any area that does not otherwise qualify for extension of services.

B. If a potential Customer resides in an area that does not meet the density requirements of Section 4.8(A) above, the Franchisee shall only be required to extend the Cable System if the Customers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction, including cost of material, labor, and easements. Specifically, the Franchisee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile of its trunk or distribution cable, and whose denominator equals 40. Customers who request service hereunder shall bear the remaining construction costs on a *pro rata* basis. The Franchisee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance. Customers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

C. Franchisee shall not be required to offer Cable Service to individually rented units of a multiple dwelling unit ("MDU") within the Service Area unless the owner of the MDU consents in writing to the following: (i) to Franchisee's providing of Cable Service to individual units of the facility; (ii) to reasonable conditions and times for installation, maintenance and inspection of the portion of the Cable System on the facility premises; (iii) to reasonable conditions promulgated by Franchisee to protect Franchisee's equipment and to encourage widespread use of the Cable System; and (iv) to not demand payment from Franchisee for permitting Franchisee to provide Cable Service to the MDU and to not discriminate in rental charges, or otherwise, between tenants who receive Cable Service from the Franchisee and those who do not.

4.9 Service to Public Buildings. The Franchisee shall, upon request by and without charge to Hailey, provide Cable Services to those administrative buildings owned and/or occupied by Hailey within the Service Area. The Cable Service provided shall not be used to distribute or sell services in or throughout such buildings or for other commercial purposes, and such outlets shall not be located in areas open to the public, except in the case of an emergency. Hailey shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Hailey shall hold the Franchisee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Franchisee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds 125 cable feet, unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 125 cable feet. If additional outlets of

basic cable are provided to such buildings, the building owner shall pay the usual installation and service fees associated therewith, including, but not limited to, labor and materials.

4.10 Permit Required. Franchisee shall secure all necessary permits within the Public Ways within the Service Area and shall be subject to all applicable ordinances, but no fee shall be required of Franchisee for any such permit.

4.11 Emergency Use. The Franchisee shall comply with the applicable rules and regulations of the FCC regarding Emergency Alert Systems ("EAS") (47 C.F.R. Part 11). If the Franchisee provides an EAS, then Hailey shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, Hailey shall hold the Franchisee, its employees, officers and assigns harmless from any claims arising out of Hailey's use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

4.12 Discrimination Prohibited. Franchisee shall not, because of age, race, creed, color, national origin or sex, unlawfully (i) refuse to hire or employ, (ii) bar or discharge from employment, or (iii) discriminate against any person in terms, conditions or privileges of employment.

4.13 Customer Inquiries. Franchisee shall respond to Customer requests about service options and procedures, fees, start-up or termination of service, conversion of accounts and billing and payment inquiries in a prompt and reasonable fashion.

4.14 Local Office. Franchisee shall maintain a local office in Blaine County with telephone service and such staff as needed to respond to contacts and inquiries from the Service Area. Office hours shall be 9:00 o'clock a.m. to 5:00 o'clock p.m. of each weekday, except when holidays fall on weekdays.

V.

REGULATION BY HAILEY

5.1 Franchise Fee. The Franchisee shall pay to Hailey a franchise fee equal to five percent (5%) of Gross Revenues received by the Franchisee from the operation of the Cable System to provide Cable Services on a quarterly basis. The quarterly payment for the franchise fee shall be due and payable at the end of the calendar quarter which shall terminate at midnight on March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be paid within forty-five (45) days after the end of each calendar quarter and shall be accompanied by a brief report from a representative of the Franchisee showing the basis for the computation. All sums which become delinquent shall accumulate interest at the statutory rate established by Idaho Code § 28-22-104(1). In addition, where the Franchisee has underpaid the franchise fee and where payment was not received by Hailey when due, Franchisee may be required to pay all franchise fees and interest due on the total amount owed. The accrual of interest is not intended to waive or in any manner restrict Hailey's ability to elect any procedure

or method of collection permissible by law or under this Agreement to enforce all the terms and conditions of this Agreement and the Franchise.

5.2 Rates and Charges.

A. Hailey may regulate rates for the provision of Cable Services and equipment as expressly permitted by applicable law.

B. The Franchisee may charge a fee for the recovery of costs incurred to collect late payments for Cable Services if the following conditions have been met:

- (1) The Customer's bill sets forth when the fee will be assessed;
- (2) The fee is not assessed any earlier than the tenth (10th) day after the due date as reflected on the Customer's bill; and
- (3) The bill sets forth the amount of the fee.

Any fee imposed by the Franchisee that does not exceed \$5.00 in 2005 dollars (as adjusted annually for inflation based on the Consumer Price Index) shall be presumed reasonable to cover the costs associated with the delinquent payment. The assessment of a fee pursuant to this Section shall not be construed as a limitation on the Franchisee's right to charge any other lawful fees or charges.

VI. COMPLIANCE AND MONITORING

The Franchisee agrees that Hailey, upon thirty (30) days prior written notice to the Franchisee, may review such of its books and records as is necessary to ensure compliance with the terms of this Franchise. Notwithstanding anything to the contrary set forth herein, the Franchisee shall not be required to disclose information that contains trade secrets or is proprietary or confidential in nature, nor disclose books and records of any affiliate. The Franchisee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any comparable state law or regulation regarding the protection of Customer privacy. Upon request by Hailey, the Franchisee shall furnish Hailey with a complete set of maps, including plans and profiles of the Cable System. The Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years.

VII. INSURANCE AND INDEMNIFICATION

7.1 Insurance Requirements. The Franchisee shall maintain in full force and effect, at its sole cost and expense, during the term of this Agreement, commercial general liability insurance for the purpose of protecting Hailey against liability for loss or damage, for bodily injury, property damage, personal injury, death, civil rights violations, and errors and omissions, relating to the operations of the Franchisee under this Agreement or the Franchise. Such policy

shall provide insurance against property damage in an amount not less than \$500,000.00 and bodily injury with limits of not less \$500,000.00 per person and \$1,000,000.00 total for each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of Hailey are increased pursuant to the Idaho Tort Claims Act (*Idaho Code Sections 6-901 et seq.*). Such insurance shall be noncancellable except upon thirty (30) days prior written notice to Hailey. All of the insurance policies shall contain provisions that the insurers shall have no right of recovery or subrogation against Hailey, or Hailey's insurer with regard to the aforementioned losses or damages. The Franchisee's certificates of insurance shall name Hailey and its officials, employees and agents as additional named insured and shall be endorsed to specify that such policies cover the liability assumed by Franchisee under this Agreement. Franchisee shall also secure and maintain at least the statutory amounts of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho. Such insurance shall provide at least thirty (30) days written notice to Hailey before such policy is suspended, canceled, amended or terminated. The Franchisee shall provide evidence of acceptable insurance at limits listed above to City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

7.2 Indemnification. The Franchisee and its employees are not, under this Agreement, employees or agents of Hailey. The Franchisee covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any act or omission on the part of Franchisee, its agents, employees, assigns or anyone subcontracting with Franchisee, related to damages that arise out of the Franchisee's installation, construction, operation, or maintenance of its Cable System, to bodily injury, property damage, personal injury and death that arise out of the Franchisee's construction, operation or maintenance of the Cable System and to the provision of any service or duty under this Agreement. Franchisee shall have the duty to appear and defend any such demand, claim, suit or action on behalf of Hailey, without cost or expense to Hailey.

VIII. ANNEXATION

In the event Hailey annexes additional territory during the term of this Agreement, the Franchisee shall have the non-exclusive authority and privilege to engage in the provision of Cable Services, in the annexed territory subject to this Agreement. In the event that the newly annexed territory is already served by a facilities based cable services provider, Franchisee may choose to or refrain from overbuilding at its sole discretion based on business and/or financial considerations.

IX. DEFAULT AND REMEDIES

9.1. Termination for Cause. Hailey may terminate this Agreement for cause if Franchisee fails to perform or defaults on any of the duties or responsibilities set forth in this Agreement.

9.2 Corrective Action. If the Hailey City Council finds that Franchisee has failed to perform or defaulted on any or all of the duties or responsibilities set forth in this Agreement, Hailey shall provide Franchisee a written "Notice of Default" in accordance with paragraph 10.12 of this Agreement. The Notice of Default shall describe with sufficient detail Franchisee's failure to perform and/or default. Franchisee shall have a period of thirty (30) days from the receipt or delivery of the Notice of Default to correct the failure to perform or default. If Franchisee fails to correct the failure to perform and/or default within thirty (30) days, the City may terminate this Agreement and revoke the Franchise in accordance with the procedures described in paragraph 9.4 of this Agreement.

9.3 Enforcement. Subject to applicable federal and state law, in the event Franchisee is in default of any provision of the Franchise, Hailey may:

A. Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages;

B. Commence an action at law for monetary damages or seek other equitable relief; and/or

C. In the case of a substantial default of a material provision of this Agreement or the Franchise, seek to terminate this Agreement and revoke the Franchise in accordance with Section 9.4 of this Agreement.

9.4 Revocation.

A. Should Hailey seek to revoke the Franchise after complying with the procedures set forth in Sections 9.2 of this Agreement, Hailey shall give written notice to the Franchisee of its intent to terminate this Agreement and to revoke the Franchise ("Notice of Intent to Revoke") based on a substantial default of a material provision of this Agreement or the Franchise. The Notice of Intent to Revoke shall contain the following:

- (1) A description of the specific nature of the default(s);
- (2) A statement of intent to revoke the Franchise;
- (3) A statement that a public hearing shall be held to consider the grounds for the termination of this Agreement and the revocation of the Franchise; and
- (4) The date, time and place of a hearing.

The public hearing described herein shall be scheduled between ninety (90) days and one hundred twenty (120) days from the date of the Franchisee's receipt of the Notice of Intent to Revoke. The Franchisee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection.

B. At the designated hearing, Hailey shall give the Franchisee a full and fair opportunity to state its position on the matter, including without limitation the right to introduce evidence, to require the production of evidence, to question witnesses and to obtain a transcript

of the proceeding, after which Hailey shall determine whether this Agreement shall be terminated and the Franchise revoked.

C. Hailey may, at its sole discretion, take any lawful action that it deems appropriate to enforce Hailey's rights under the Franchise in lieu of revocation of the Franchise.

D. The Franchisee may appeal any determination of Hailey to an appropriate court, which shall have the power to review the decision of Hailey "de novo". Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of Hailey.

X.

MISCELLANEOUS PROVISIONS

10.1 Paragraph headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

10.2 Provisions Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

10.3 Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.4 Attorney's Fees. In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding.

10.5 Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

10.6 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

10.7 Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

10.8 No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

10.9 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.10 Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties. Neither party may unilaterally alter the material rights and obligations set forth in this Agreement.

10.11 Savings Clause. If any of the provisions of this Agreement shall be held to be unenforceable or unconstitutional, the remaining provisions shall nevertheless be enforceable.

10.12 Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service, or by leaving a copy of such notice or demand at the address hereinafter set forth, whereupon service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, airmail if the address is outside the state in which the same is mailed, postage prepaid, with return receipt requested, addressed as follows:

HAILEY: City of Hailey
 c/o City Clerk
 115 South Main Street
 Suite H
 Hailey, Idaho 83333

FRANCHISEE: CoxCom, Inc.
 11505 W. Dodge Road
 Omaha, NE 68154
 Attention: General Manager

with a copy to:

Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319
Attention: Legal Department

In case of service by mail, it shall be deemed complete on the day of actual delivery as shown on the addressee's registry of certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

10.13 Assignment. The parties agree that this Agreement shall not be assigned, in whole or in part, to any other person or entity without the prior written consent of Hailey, which

consent cannot be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness.

10.14 Force Majeure. Neither party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy (including acts of terrorism), fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by Franchisee, whether now existing or hereafter created.

10.15 Compliance with Laws. Franchisee shall comply with all applicable federal, state and local statutes, laws, rules, regulations and ordinances, including the Federal Occupational Safety and Health Act of 1970, as amended. Excluding the City's lawful exercise of police powers related to the use and occupation of the Public Way, if a local statute enacted subsequent to the effective date of this agreement conflicts with the terms of this agreement, the terms of this agreement shall prevail.

10.16 Publication Costs. Franchisee shall assume all costs of publication required by law for the grant of the Franchise.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement on the day and year first above written.

CITY OF HAILEY

By _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

FRANCHISEE

CoxCom, Inc, d/b/a Cox Communications

By: Kristin Beck
Name: Kristin Beck
Title: Vice President Government Affairs

AGENDA ITEM SUMMARY

DATE: August 10, 2009 DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: DR

SUBJECT: Designation of Bus Loading Zones.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code Chapter 10.08
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Mountain Rides has requested a bus loading zone in front of the bus stops located within the City of Hailey. Chapter 10.08 of the Hailey Municipal Code allows the Council to establish loading zones by the adoption of a resolution and by installation of appropriate signage. A bus loading zone meets the definition of loading zone in the code.

A minimum of (40) feet is required to accommodate a bus pulling to and from the bus stop.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

The cost of the signage and striping can be used as part of the City's grant match commitment related to the circulator bus.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---------------------------------------------|----------------------------------------------|-------------------------------------------|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Safety Committee |
| <input type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor | <input type="checkbox"/> Streets |
| <input type="checkbox"/> City Clerk | <input type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Review the attached draft resolution and approve as drafted or as amended.

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

*Additional/Exceptional Originals to: _____
Copies (AIS only)

RESOLUTION NO. 2009 - ____

A RESOLUTION OF THE HAILEY CITY COUNCIL ENACTED PURSUANT TO HAILEY MUNICIPAL CODE CHAPTER 10.08, PROVIDING FOR DESIGNATION OF LOADING ZONES

WHEREAS, Mountain Rides Transportation Authority has requested bus loading zones in front of bus stops located within the City of Hailey; and

WHEREAS, the City of Hailey has adopted Chapter 10.08 of the Hailey Municipal Code which allows the Council to establish loading zones by the adoption of a resolution and by installation of appropriate signage; and

WHEREAS, the definition of Loading Zone is, "a space or section of a public right of way which has been set aside for the exclusive purpose of loading and unloading property or persons"; and

WHEREAS, bus stops have been located within the City of Hailey since June 2001; and

WHEREAS, bus loading zones are essential to the efficient operation of transit service and the safety of passengers.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hailey, Idaho that forty (40) feet of public right-of-way adjacent to signed bus stops at the following locations be designated and signed as a bus loading zone:

Stops on east side of Woodside Boulevard and Main Street

Woodside & Glenbrook
Woodside & Berry Creek
Woodside & Snow Bank
Woodside & Winterhaven
Woodside & Moonlight
Woodside & Red Ash
Woodside & Baldy View
Woodside & Fox Acres
Main & Maple
Main & Walnut
Main & Myrtle
Main & N. 1st

Stops on east side of Woodside Boulevard,

Main Street and River Street

Main & McKercher
Main & Myrtle
River & Bullion Park-&-Ride
Main & Croy
Main & Maple
Woodside & Fox Acres
Woodside & Baldy View
Woodside & Red Ash
Woodside & Shenandoah
Woodside & Winter Fox
Woodside & Pinion
Woodside & Cherry Creek
Woodside & Glenbrook

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR ON
AUGUST 10TH 2009 AND EFFECTIVE THE 10th DAY OF AUGUST, 2009.

Richard L. Davis
Mayor City of Hailey

ATTEST:

Mary Cone, City Clerk

Publish: Idaho Mountain Express, _____, 2009

