

COUNCIL PROCEEDINGS  
Casper City Hall – Council Chambers  
November 20, 2018

1. ROLL CALL

Casper City Council met in regular session at 6:04 p.m., Tuesday, November 20, 2018. Present: Councilmembers Hopkins, Huber, Johnson, Laird, Morgan, Powell, Walsh and Mayor Pacheco. Absent: Councilmember Humphrey. Moved by Councilmember Morgan, seconded by Councilmember Walsh, to, by minute action, excuse the absence of Councilmember Humphrey. Motion passed.

2. PLEDGE OF ALLEGIANCE

Mayor Pacheco led the audience in the Pledge of Allegiance.

3. MINUTES

Moved by Councilmember Johnson, seconded by Councilmember Hopkins, to, by minute action, approve the minutes of the November 6, 2018, regular Council meeting, as published in the Casper-Star Tribune on November 14, 2018. Motion passed.

4. EXECUTIVE SESSION MINUTES

Moved by Councilmember Hopkins, seconded by Councilmember Walsh, to, by minute action, approve the minutes of the November 6, 2018, executive session. Motion passed.

5. MINUTES

Moved by Councilmember Walsh, seconded by Councilmember Powell, to, by minute action, approve the minutes of the November 13, 2018, Special Council meeting, as published in the Casper-Star Tribune on November 19, 2018. Motion passed.

6. BILLS & CLAIMS

Moved by Councilmember Morgan, seconded by Councilmember Johnson, to, by minute action, approve payment of the November 20, 2018, bills and claims, as audited by City Manager Napier. Motion passed.

Bills & Claims		
11/20/18		
33 MileRdImp	Svcs	\$238.56
71Construction	Projects	\$106,313.67
AAALandscaping	Services	\$388.50
AHiatt	Reimb	\$234.99
AKloke	Reimb	\$1,185.00
AllianceElec	Services	\$1,287.75
AMBI	Services	\$1,372.55
AmericanTitle	Services	\$125.00
ARaver	Reimb	\$5.35
ArrowheadHeating	Services	\$181.45
AvaEBell	Services	\$165.75
B Salisbury	Reimb	\$75.00

Balefill	Services	\$103,995.04
BankOfAmerica	Goods	\$187,222.02
BFawcett	Services	\$900.00
BHEnergy	Services	\$22,997.30
BigBrthsBigSstrs	Funding	\$2,623.41
BigWestLndscp	Services	\$13,357.00
CACVB	Funds	\$2,500.00
Caselle	Services	\$75.00
CasparBuildSystems	Services	\$654,536.61
CDWGvmt	Goods	\$280.86
Centurylink	Services	\$11,963.46
CIGNA	Services	\$11,957.40
CityofCasper	Services	\$23,448.69
CivilEngineeringProfessionals	Projects	\$23,597.50
CMITeco	Goods	\$188,580.00
CollectionCenter	Services	\$340.65
CommTech	Goods	\$1,493.50
ComputerPros	Goods	\$8,503.85
Dell	Goods	\$932.77
DeltaDental	Services	\$33,498.20
DrvrAlliantIns	Ins	\$489.00
DvdsnFxdMgmt	Services	\$3,859.22
EdenK-9	Training	\$522.00
EngDsgnAssoc	Services	\$875.00
EnvironmentalCivilSolutions	Services	\$11,520.95
ESOSolutions	Services	\$15,740.00
FConaway	Services	\$150.00
FirstData	Services	\$6,815.28
FirstInterstateBank	Services	\$3,008.59
FirstInterstateBank	Services	\$383.82
FmlyJrnyCtr	Services	\$4,548.70
Forterra	Supplies	\$23,625.00
FremontMotorCasper,Inc	Goods	\$91,933.00
FremontMtrCo	Services	\$33,128.46
GarageDoorDudes	Services	\$100.00
GlobalSpect	Funding	\$218,063.30
GMarshInc	Services	\$2,593.35
GSGArchitecture	Services	\$17,008.42
HDR Engineering	Projects	\$3,533.20
HighPlainsConstruction	Goods	\$235.44
HinspergPoly	Svcs	\$4,116.00
Hitek	Services	\$45,667.50
Homax	Goods	\$75,729.11

I Hill	Reimb	\$22.25
Installation&Svc	Projects	\$10,300.00
IntgrtdTech	Supp	\$2,500.00
ISC	Supplies	\$27,478.72
JBA Alley	Refund	\$12.67
JTL Group	Services	\$274,503.26
KimleyHorn	Services	\$5,301.89
KMRoberts	Refund	\$43.22
LFritzler	Reimb	\$377.14
McMurryReadyMix	Goods	\$229.00
MDean	Reimb	\$26.24
Motorola	Services	\$3,725.99
MSanchez	Reimb	\$75.00
MtnWV altns	Appraisal	\$1,500.00
MunicipalCodeCorp	Goods	\$1,012.07
Nalco	Supp	\$20,602.80
Napa	Goods	\$51,182.16
NationalBenefitServices	Services	\$369.05
NCH ealth Dept	Funding	\$45,000.00
NCSheriffsOffice	Funding	\$7,500.00
NCTreasurer	Taxes	\$1,354.21
OneCallofWy	Services	\$522.00
PorterMuirhead	Services	\$50,000.00
PostalPros	Services	\$277.67
PreservationSolutions	Services	\$3,250.00
ProforceLawEnforcement	Goods	\$8,607.35
RegionalWater	Services	\$357,053.53
RLBrehmer	Refund	\$128.74
RockyMtnPower	Services	\$134,307.61
SDaley	Reimb	\$127.53
SeniorPatientAdvocates	Services	\$450.00
S Nunn	Reimb	\$50.00
Stateline7	Services	\$575.00
StateofWy-Trsr	Funding	\$2,177.43
StotzEquipment	Goods	\$6,300.00
TLehman	Refund	\$46.82
TopOffice	Goods	\$127.80
TretoConstruction	Projects	\$167,155.90
TrihydroCorp	Projects	\$6,166.58
UltraMax	Goods	\$2,152.00
UntdFire	Services	\$55,820.61
UrgentCare	Services	\$1,500.00
VisionServicePlan	Services	\$1,557.30

WayneColemanConstruction	Projects	\$146,048.96
WERCSCCommunications	Services	\$1,507.28
WyCfrncBldgOff	Training	\$600.00
WyDeptEmployment	Services	\$189.92
WyDeptRevenue	Taxes	\$915.36
WYDOT	Services	\$1,297.16
WyLawEnforcementAcademy	Services	\$10,402.00
WyOffice Products	Supplies	\$163,581.66
WYTnsfr	Services	\$500.00
		\$3,544,534.05

7. COMMUNICATIONS FROM PERSONS PRESENT

Individuals addressing the Council were: Dennis Steensland, 533 S. Washington, questioning expenditures and the need for the budget amendment; Amber O'Donnell, 3436 Whispering Springs, requesting improvements be made to the bullying policies in our community; Donnie O'Donnell, 626 Morgan, also requesting changes to bullying policies; and Carla Edwards, 5510 S. Oak, expressing support of a proposed draft of the animal control ordinance that varies from the one the City Council posted on-line.

8. ESTABLISH PUBLIC HEARINGS

Moved by Councilmember Morgan, seconded by Councilmember Walsh, to, by minute action, establish December 4, 2018, as the public hearing date for the consideration of new Distillery Satellite Tasting Room ordinance of the Casper Municipal Code; transfer of location for Retail Liquor License No. 5, Travis Taylor, d/b/a Cocktail's, located at 134 North Center, to Travis Taylor, d/b/a Cocktail's, located at 138 South Kimball; and, Establish January 8, 2019, as the public hearing date for consideration of appeal of Planning and Zoning Commission's decision to deny a Conditional Use Permit for an off-premise sign (billboard) in a C-2 (General Business) Zoning District, on Lot 4, Block 159, Casper Addition, located at 1329 South Poplar Street for applicants David DeWald and Lamar Advertising. Councilmember Laird abstained from voting on the transfer of Retail Liquor License No. 5. Motion passed.

9.A PUBLIC HEARING - ORDINANCE

Mayor Pacheco opened the public hearing for the consideration of the vacation of portions of South Oak Street, South Elm Street, West 8th Street, West 9th Street, West 10th Street, two alleys located in Block 84, Casper Addition, an alley located in Block 92, Casper Addition, and a portion of an alley located in Block 93, Casper Addition. City Attorney Henley entered two (2) exhibits: correspondence from Liz Becher to J. Carter Napier, dated November 9, 2018 and an affidavit of publication, as published in the Casper-Star Tribune, dated November 7, 2018. City Manager Napier provided a brief report. Speaking in support was Doug Tunison, Natrona County School District Project Manager. There being no others to speak for or against the issues involving the vacation, the public hearing was closed.

Following ordinance read:

ORDINANCE NO. 23-18

AN ORDINANCE APPROVING THE VACATION OF A PORTION OF SOUTH OAK STREET, SOUTH ELM STREET, WEST 8<sup>TH</sup> STREET, WEST 9<sup>TH</sup> STREET, WEST 10<sup>TH</sup> STREET, TWO ALLEYS LOCATED IN BLOCK 84, CASPER ADDITION, AN ALLEY LOCATED IN BLOCK 92, CASPER ADDITION, AND A PORTION OF AN ALLEY LOCATED IN BLOCK 93, CASPER ADDITION.

Councilmember Hopkins presented the foregoing ordinance for approval, on first reading. Seconded by Councilmember Johnson. Motion passed.

9.B PUBLIC HEARING - RESOLUTION

Mayor Pacheco opened the public hearing for the consideration of the amendment to the fiscal year 2019 budget. City Attorney Henley entered two (2) exhibits: correspondence from Tom Pitlick, to J. Carter Napier, dated November 13, 2018 and an affidavit of publication, as published in the Casper-Star Tribune, dated November 20, 2018. City Manager Napier provided a brief report. There being no one to speak for or against the issues involving the budget amendment, the public hearing was closed.

Following resolution read:

RESOLUTION NO. 18-250

A RESOLUTION AMENDING THE FISCAL YEAR 2019 BUDGET OF THE CITY OF CASPER, AUTHORIZING THE ADJUSTMENT OF FUNDS THEREUNDER.

Councilmember Laird presented the foregoing resolution for adoption. Seconded by Councilmember Walsh. Councilmember Morgan asked about staffing, and City Manager Napier addressed his question. Motion passed.

10. ORDINANCE— THIRD READING

Following ordinance read:

ORDINANCE NO. 19-18

AN ORDINANCE GRANTING A FRANCHISE TO QWEST CORPORATION D/B/A CENTURYLINK QC (“CENTURYLINK”) TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM (“THE SYSTEM”) IN THE CITY OF CASPER, WYOMING (“THE CITY”).

WHEREAS, under Wyoming Statute § 15-1-103(a)(xxxiii), a city may grant franchises for such terms as the governing body deems proper to any utility company, provided no franchise may be entered into with any person in which that person is given an exclusive right for any purpose whatsoever; and,

WHEREAS, CenturyLink is a utility company that desires a franchise from the City; and, WHEREAS, the City has determined that it is in the public interest to grant a franchise to CenturyLink under the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING:

## **SECTION 1. Grant of Franchise.**

A. Subject to the terms and conditions set forth in this Franchise, the City hereby grants to CenturyLink a nonexclusive authorization to construct, maintain, operate, upgrade, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, wires, conduits, conductors, pipes and related appurtenances ("Facilities") for its System in, under, along, over and across the present and future streets, alleys and avenues of the City ("Public Ways"), for the purpose of providing telecommunication services (as defined in 47 U.S.C. § 153) and related services to the City's inhabitants. This Franchise shall constitute both a right and an obligation to provide the System required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

B. Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the effective date of this Franchise.

C. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of Public ways, should CenturyLink provide services other than a telecommunication system (for example, a cable system for purposes of providing a cable service).

D. This Franchise is intended to convey limited rights and interests in Public Ways as set forth in Wyoming Statute § 15-1-103(a)(xxxiii) and its subsections. It is not a warranty of title or interest in any Public Way; it does not provide CenturyLink with any interest in any particular location within the Public Way; and it does not confer rights other than as expressly provided in the grant hereof.

**SECTION 2. Acceptance by CenturyLink.** This ordinance shall be published once in a newspaper of general circulation within the City, pursuant to Wyoming Statute § 15-1-116, and shall become effective on the day following its publication. Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file a signed copy thereof with the City Clerk, otherwise the Ordinance and the rights, privileges and authority granted herein shall be null and void.

**SECTION 3. Term.** The Term of this Franchise is ten (10) years commencing on the date of Acceptance by CenturyLink as set forth in Section 2, above, and then from year-to-year until a party gives the other party at least ninety (90) days' notice in writing and in advance of expiration of the initial term or any subsequent term stating an intent to terminate the agreement at the end of such existing term.

## **SECTION 4. Franchise Fee.**

### **A. Payments and Reports.**

**1. Quarterly Payments.** From and after the date of CenturyLink's Acceptance of this Ordinance and until its expiration, CenturyLink will pay the City five percent (5%) of CenturyLink's local exchange access service Gross Revenue (as defined in Appendix A hereto). CenturyLink's Franchise fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than 30 days after those dates.

**2. No Accord and Satisfaction.** No acceptance of any payment shall be construed as an accord and satisfaction by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for additional sums payable or for the performance of any other obligation of CenturyLink.

**B. Franchise Termination.** If this Franchise terminates for any reason, and CenturyLink ceases operations in the City or is not in the negotiation with the City of a replacement Franchise, CenturyLink shall file with the City within 90 calendar days of the date of termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by CenturyLink since the end of the previous fiscal year.

**C. Late Payments.** If any payment due quarterly is not received within 30 days from the end of the calendar quarter, CenturyLink shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date that payment was originally due until the date the City receives the payment.

**D. Under Payments.** If a net franchise underpayment is discovered as a result of an audit, CenturyLink shall pay interest at the rate of eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date CenturyLink remits the underpayment to the City.

**SECTION 5. Records Inspection.** No more frequently than once every two years, the City shall have the right to audit records to ensure compliance with this Franchise. The City shall give reasonable written notice of its intent to audit. It is CenturyLink's responsibility to collect and to make available to the City for copying, at CenturyLink's local office, all records upon which a franchise fee is required to be paid. If a City review of payments shows that CenturyLink has underpaid the franchise fee by: (i) three percent (3%) or less for the year, the City shall bear the cost of the audit; (ii) more than three percent (3%) but less than or equal to five percent (5%) for the year, the City and CenturyLink shall each bear an equal amount of the cost of the audit; or (iii) more than five percent (5%) for the year, CenturyLink shall bear the cost of the audit.

**SECTION 6. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's use, however, shall not unreasonably interfere with CenturyLink's Facilities or the rights granted to CenturyLink herein.

**SECTION 7. City Regulatory Authority.** In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties, and exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Wyoming, the laws of the State of Wyoming or City Ordinance.

**SECTION 8. Indemnification.**

A. General Indemnification. CenturyLink shall indemnify, defend and hold harmless, the City, its officers, elected and appointed officials, employees, agents and volunteers, from any action or claim for injury, death, damage, loss, liability, cost or expense, including court appeal costs and reasonable attorney's fees or reasonable expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, construction, or any other act done under this Franchise, by or for CenturyLink, agents, or its employees, or by reason of any neglect or omission of CenturyLink. CenturyLink shall consult and cooperate with the City while conducting its defense of the City.

**B. Indemnification for Relocation.** CenturyLink shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, CenturyLink's failure to remove, adjust or relocate any of its facilities in the Public Ways in a timely manner in accordance with Section 12 of this Franchise.

**C. Hazardous Substances Indemnification.** CenturyLink shall indemnify the City against any claims, costs and expenses of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) caused by the System.

**SECTION 9. Insurance Requirements.**

A. Prior to the commencement of any work, CenturyLink shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, death or damages to property which may arise from or in connection with the performance of the work hereunder by CenturyLink, its subcontractors, agents, representatives, or employees.

**B. Minimum Scope and Limit of Insurance.** Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): On an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence. The WC policy shall be endorsed to contain Employers Liability/Stop Gap Coverage.

2. Automobile Liability: Covering, Code 1 (any auto), or if CenturyLink has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than Five Hundred Thousand Dollars (\$500,000) per accident for bodily injury and property damage.

3. Workers' Compensation: as required by the State of Wyoming with Statutory Limits.

4. Professional Liability (Errors and Omissions) Insurance appropriate to the CenturyLink's profession, with limit no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence.

**C. Higher Limits.** If CenturyLink maintains higher limits than required under this Agreement, then the City shall be entitled to coverage for the higher limits maintained by CenturyLink. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**D. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. *Additional Insured Status*

The City, its officers, elected and appointed officials, employees, agents and volunteers are to be included as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CenturyLink including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to CenturyLink's insurance).



## 2. *Primary Coverage*

For any claims related to this contract, CenturyLink's insurance coverage shall be primary insurance as respects the City, its officers, elected and appointed officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected and appointed officials, employees, agents or volunteers shall be in excess of CenturyLink's insurance and shall not contribute with it.

## 3. *Waiver of Subrogation*

CenturyLink hereby grants to the City a waiver of any right to subrogation which Commercial General and Auto Liability of CenturyLink may acquire against the City by virtue of the payment of any loss under such insurance, for losses caused by and to the extent of CenturyLink's negligence. CenturyLink agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

## 4. *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise agreed to in writing by the City.

5. *Claims Made Policies.* If any of the required policies provide coverage on a claims made basis:

a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.* However, CenturyLink's liabilities under this Contract shall not be deemed limited in any way by the insurance coverage required.

c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, CenturyLink must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work and at all times thereafter until the applicable statute of limitations runs.

## 6. *Verification of Coverage*

CenturyLink shall furnish the City with a Memorandum of Insurance coverage required by this clause. However, failure to obtain the required documents prior to the work beginning shall not waive CenturyLink's obligation to provide them.

## 7. *Subcontractors*

CenturyLink shall require and verify that all subcontractors maintain insurance appropriate for the work being performed and CenturyLink shall ensure that the City is an additional insured on insurance required from subcontractors.

## 8. *Special Risks or Circumstances*

The City reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **SECTION 10. Annexation.**

**A. Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All System Facilities owned, maintained, or operated by CenturyLink located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

**B. Notice of Annexation.** When any territory is approved for annexation to the City, the City's Community Development Director or his/her designee shall within ten (10) business days provide by certified mail to CenturyLink: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to the contact in Section 19, or such other updated address as Century Link shall provide to the City in writing by certified mail, return receipt requested. Notwithstanding the foregoing, failure of the City to provide the notice described herein shall not constitute a material breach of this Franchise.

## **SECTION 11. Plan, Design, Construction and Installation of CenturyLink's Facilities.**

**A.** All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law, codes and regulations.

**B.** CenturyLink shall, prior to commencing construction work in Public Ways or other public places, apply for a permit from the City. CenturyLink will abide by all applicable ordinances, rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. CenturyLink shall obtain excavation permits for streets and alleys, regardless of surfacing types, and traffic control permits for all streets, and shall not unnecessarily obstruct the use Public Ways. All mains, services, and pipes laid or installed under this franchise shall be so located and placed as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed, and all such mains, services and pipes shall be installed subject to approval of the City Manager or his/her designee. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs.

**C.** To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City, as they may be amended from time to time.

**D.** CenturyLink, in doing any work in connection with its Facilities, shall avoid, so far as practicable, interfering with the use of any Public Way or public place, and where the paving or surface of any street, alley or public place is disturbed, CenturyLink, at its own expense and in a manner satisfactory to the City Manager or his/her designee, shall replace such paving or surface in accordance with the City of Casper's Standard Specifications for Street Construction in the Casper Municipal Code, and any other applicable rules, ordinances and regulations, as they may be amended from time to time.

**E.** Paved streets shall be bored or drilled when crossed under the ground by CenturyLink's Facilities so that the City's paved Public Ways will not be unnecessarily damaged. The City Manager or his/her designee, in his sole discretion, may allow other construction methods when it is found that drilling or boring is unreasonable and will not provide a sufficient public benefit for the cost.

**F.** If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or public property at CenturyLink's expense to a condition equal to or better than the condition that existed immediately prior to such damage or alteration.

**G.** CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. All excavation shall be performed in a manner that creates the least inconvenience to the public, and in accordance with permits and manuals issued by the City. In doing any work in connection with said mains, pipes and services, CenturyLink shall avoid, so far as practicable, interfering with the use of any street, alley or public place.

**H. Strand Maps.** Upon reasonable request, CenturyLink agrees to provide strand maps or similar records kept in its usual course of business to an unaffiliated person engaged by City if such Person signs CenturyLink's nondisclosure agreement.

**I.** Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of CenturyLink's Facilities.

**J.** CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

**K.** This Agreement does not establish priority for use of Public Ways over holders of other permits or franchises; it grants no vested interest in occupying any particular position in the Public Ways. The City shall control distribution of space in the Public Ways, but may not exercise that authority unreasonably. No location of any of the Facilities shall give rise to a vested interest in public property.

## **SECTION 12. Relocation of Facilities and Discontinuing Use/Abandonment.**

### **A. Relocation for the City.**

1. CenturyLink shall protect, support, adjust, raise, lower, temporarily disconnect, relocate, or remove any CenturyLink Facilities, property or equipment located in a Public Way when required by the City consistent with its police powers or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Public Way vacation, Public Way construction, change or establishment of Public Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes, but excluding projects undertaken for beautification or aesthetics). Such work shall be performed at CenturyLink's expense. Except during emergency, the City shall provide reasonable notice to CenturyLink of its need to relocate that is commensurate with the complexity of the project, but in all events never less than sixty (60) days, and allow CenturyLink an opportunity to perform such action. Following notice by the City, CenturyLink shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Public Way, or on any other property of the City. If the City requires CenturyLink to relocate its facilities located within the Public Way, the City shall provide CenturyLink's alternative location within the Public Way.

2. Excluding circumstances or events outside of its reasonable control, if CenturyLink fails to complete this work within the time prescribed to the City's satisfaction, the City may cause such work to be done at CenturyLink's cost; and provided further that the City shall

not be liable for any damage to any portion of the System except to the extent caused by the negligence of the City or its contractor. Within 30 days of receipt of an itemized list of those costs CenturyLink shall pay the City.

**B. Relocation for a Third Party.** CenturyLink shall, at the request of any person or entity holding a lawful permit issued by the City, protect, support, adjust, raise, lower, temporarily disconnect, relocate or remove any CenturyLink Facilities, property or equipment located in the Public Ways, provided that the cost of such action is borne by the person requesting it and CenturyLink is given advance written notice of not less than 60 days. In such situation, CenturyLink may also require advance payment by the benefited person or entity.

**C. Temporary Changes for Other Permittees.** At the request of any person or entity holding a valid permit upon reasonable advance notice, CenturyLink shall temporarily raise, lower or remove its Facilities, property or equipment as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and CenturyLink may require a reasonable deposit of the estimated payment in advance.

**D. Alternatives to Relocation.** CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by CenturyLink full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, CenturyLink shall relocate the components of the System as otherwise provided herein.

**E. Discontinuing Use/Abandonment of System Facilities.** Whenever CenturyLink intends to discontinue using any facility in the Public Ways, CenturyLink shall submit for the City's approval a complete description of the facility and the date on which CenturyLink intends to discontinue using the facility. CenturyLink may remove the facility or request that the City permit it to remain in place and to convey same to City through a letter of abandonment or bill of sale. The City may require CenturyLink to perform a combination of abandonment, modification or removal of the facility upon a reasonable schedule set by the City. Until such time as CenturyLink abandons, removes or modifies the facilities, as directed by the City, CenturyLink shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Way, in the same manner and degree as if the facility were in active use, and CenturyLink shall retain all liability for such facility during such time. If CenturyLink abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to access purposes.

**SECTION 13. Vegetation Management.** CenturyLink shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on CenturyLink; instead, this grant gives permission to CenturyLink should CenturyLink elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

**SECTION 14. Omitted.**

**SECTION 15. Franchise Noncompliance; Claims Under Agreement.**

**A.** In the event that the City believes that CenturyLink has not complied with the terms of the Franchise, the City's Public Services Director or his/her designee shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

**B.** CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 15.A. to either respond to the City, contesting the assertion of noncompliance and requesting a public hearing of same, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed. A public hearing shall be held within 60 days' of the request.

**C.** The City and CenturyLink agree that, except to the extent inconsistent with applicable law, any and all claims asserted and arising under this Agreement, including from the determination of a public hearing held pursuant to subsection 15.B., above, shall be heard and determined either in a state or federal court located in the City.

**SECTION 16. No Waiver of Rights.** Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

**SECTION 17. Transfer of Franchise.** CenturyLink's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness.

**SECTION 18. Amendment.** Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and CenturyLink and formally adopted by the City Council as an ordinance amendment.

**SECTION 19. Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) business days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City of Casper, Wyoming  
Attn: City Attorney's Office  
200 N. David Street  
Casper, WY 82601  
CenturyLink:  
Franchise Rights-of-Way Attorney  
100 CenturyLink Dr.  
Monroe, LA 71203

**SECTION 20. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SECTION 21. Governmental Claims Act.** The City does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, W.S. § 1-39-101, et seq., and the City specifically reserves the right to assert any and all rights, immunities, and defenses it may have pursuant to the Wyoming Governmental Claims Act.

PASSED on 1st reading the 16<sup>th</sup> day of October, 2018

PASSED on 2nd reading the 6<sup>th</sup> day of November, 2018.

PASSED, APROVED AND ADOPTED on the 3rd and final reading the 20<sup>th</sup> day of November, 2018.

Councilmember Walsh presented the foregoing ordinance for approval, on third reading. Seconded by Councilmember Morgan. There being no one to speak regarding the ordinance, and no discussion or amendments, motion passed.

11.A ORDINANCE— SECOND READING

Following ordinance read:

ORDINANCE NO. 20-18

AN ORDINANCE APPROVING THE ANNEXATION, PLAT/REPLAT AND ZONING CREATING THE STATE OFFICE BUILDING ADDITION; AND ALSO APPROVING THE STATE OFFICE BUILDING ADDITION SUBDIVISION AGREEMENT.

Councilmember Hopkins presented the foregoing ordinance for approval, on second reading. Seconded by Councilmember Johnson. There being no one to speak regarding the ordinance, and no discussion or amendments, motion passed.

11.B ORDINANCE— SECOND READING

Following ordinance read:

ORDINANCE NO. 21-18

AN ORDINANCE REPEALING AND REPLACING CHAPTER 9.18 OF THE CASPER MUNICIPAL CODE PERTAINING TO PANHANDLING.

Councilmember Johnson presented the foregoing ordinance for approval, on second reading. Seconded by Councilmember Walsh. No one addressed Council. Councilmember Laird moved to amend the ordinance by changing the fine to the amount of five (5) dollars. Seconded by Councilmember Johnson. Council discussed the matter. Councilmember Laird reconsidered his amendment and requested changing it to specify the five (5) dollar fine for a first offense. City Attorney Henley recommended voting on the amendment as presented before considering other amendments. Councilmembers further discussed the proposed amendment. Councilmember Laird voted aye, motion to amend failed. Councilmember Laird indicated that he had no further amendments. Councilmember

Morgan moved to amend the ordinance to make the fine for the first offense five (5) dollars and the penalties for a second offense to be up to seven hundred fifty (750) dollars and up to six (6) months in jail. Councilmember Laird seconded the motion. Councilmembers Laird and Morgan voted aye, motion to amend failed. Council then voted on the ordinance, as presented on second reading. Councilmembers Laird and Morgan voted nay, motion passed.

11.C ORDINANCE— SECOND READING

Following ordinance read:

ORDINANCE NO. 22-18  
AN ORDINANCE REPEALING AND REPLACING SECTION  
10.12.010 OF THE CASPER MUNICIPAL CODE PERTAINING  
TO POSSESSION OF MOTOR VEHICLE OPERATOR'S  
LICENSE REQUIRED.

Councilmember Walsh presented the foregoing ordinance for approval, on second reading. Seconded by Councilmember Hopkins. There being no one to speak regarding the ordinance, and no discussion or amendments, motion passed.

12.A RESOLUTION

Following resolution read:

RESOLUTION NO. 18-257  
A RESOLUTION AUTHORIZING AN AGREEMENT WITH  
INSTALLATION AND SERVICE COMPANY, INC., FOR THE  
POLICE DEPARTMENT SHOOTING RANGE  
IMPROVEMENTS, PROJECT NO. 17-065.

Councilmember Laird presented the foregoing resolution for adoption. Seconded by Councilmember Johnson. City Manager Napier provided a brief report. Councilmember Morgan shared that his concerns with the contract had been addressed. Motion passed.

12.B CONSENT RESOLUTIONS

The following resolutions were considered, by consent agenda:

RESOLUTION NO. 18-251  
A RESOLUTION AUTHORIZING THE RELEASE OF THE  
CITY'S LIEN ON THE TRACTOR TRUCK AND TRAILER OF  
THE FOOD BANK OF THE ROCKIES.

RESOLUTION NO. 18-252  
A RESOLUTION ACCEPTING A GRANT FROM THE  
WYOMING OFFICE OF HOMELAND SECURITY.

RESOLUTION NO. 18-253  
A RESOLUTION AUTHORIZING A PROCUREMENT  
AGREEMENT WITH ANDRITZ SEPARATION INC. FOR  
THREE AIR CONDITIONING UNITS FOR USE AT THE SAM  
H. HOBBS WASTEWATER TREATMENT PLANT.

RESOLUTION NO. 18-254

A RESOLUTION AUTHORIZING AN AGREEMENT WITH DAVIDSON MECHANICAL, INC., FOR THE CASPER EVENTS CENTER COMBINATION OVEN/STEAMER REPLACEMENTS, PROJECT NO. 18-087.

RESOLUTION NO. 18-255

A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 TO THE AGREEMENT WITH TRETO CONSTRUCTION, LLC, FOR FINAL QUANTITY VARIATIONS FOR THE 2018 BEVERLY STREET IMPROVEMENTS, PROJECT NO. 17-083.

RESOLUTION NO. 18-256

A RESOLUTION AUTHORIZING AN AGREEMENT WITH MODERN ELECTRIC CO., FOR THE RWWS LIFT STATION GENERATOR— RIVERWEST, PROJECT NO. 18-008.

RESOLUTION NO. 18-258

A RESOLUTION AUTHORIZING AN AGREEMENT WITH CASPAR BUILDING SYSTEMS, INC., FOR COMPOST EQUIPMENT BUILDING HEATING, PROJECT NO. 17-017.

Councilmember Walsh presented the foregoing seven (7) resolutions for adoption. Seconded by Councilmember Powell. Councilmember Laird voted nay on Resolution No. 18-255. Motion passed.

13. MINUTE ACTION— CONSENT

Moved by Councilmember Hopkins, seconded by Councilmember Walsh, to, by consent minute action:

- 1) approve a one year extension for Bar and Grill Liquor License No. 10, Marvin Piel Family, LLC d/b/a The Tower, located at 100 North Center Street.
- 2) authorize the discharge of \$22,430.30 of uncollectible accounts receivable balances, aged between the dates of July 1, 2013 and September 30, 2013, including a more recent bankruptcy.
- 3) authorize the purchase of one (1) new trailer mounted air compressor, from United Rentals, Inc., in the total amount of \$22,375.00.
- 4) authorize the purchase of one (1) new one-ton crew cab pickup truck with 8" bed and accessories, from Fremont Motors, in the total amount of \$44,746.00, before the trade-in allowance.
- 5) authorize the purchase of three (3) new half-ton regular cab pickup trucks, from Fremont Motors, in the total amount of \$74,802.00, before the trade-in allowance.
- 6) authorize the purchase of one (1) hydraulic material handler, from Power Equipment Company, in the total amount of \$383,368.00.
- 7) authorize the purchase of two (2) new flatbed haul trailers, from CMI Teco, the total amount of \$91,894.00.



8) reject all bids received for the Wastewater Treatment Plant Dewatering Building Heater Replacement Project.  
Motion passed.

14. INTRODUCTION OF MEASURES AND PROPOSALS

Councilmember Morgan requested information on the type and amount of training Casper Police Department School Resource Officers receive. Councilmember Laird requested one time money for City employees. And Councilmember Powell requested that Council consider some type of historic district zoning at a future session.

15. ADJOURNMENT

Mayor Pacheco noted the next meetings of the City Council will be a work session to be held at 4:30 p.m., Tuesday, November 27, 2018, in the Council's meeting room; and, a regular Council meeting to be held at 6:00 p.m., Tuesday, December 4, 2018, in the Council Chambers. Moved by Councilmember Laird, seconded by Councilmember Johnson, to, by minute action adjourn. Motion passed. The meeting was adjourned at 7:45 p.m.

ATTEST:

CITY OF CASPER, WYOMING  
A Municipal Corporation

\_\_\_\_\_  
Fleur D. Tremel  
City Clerk

\_\_\_\_\_  
Ray Pacheco  
Mayor