

CITY OF MOSIER

small enough to make a difference

MOSIER CITY COUNCIL MEETING

August 1, 2018 at 6:30 P.M.

Mosier Senior Center at 500 Second Ave

I	6:30pm	Call to Order (please silence or turn-off cell phones)	
II		Agenda corrections or additions	5 min
III		Business from the Audience —This is an opportunity for Mosier residents and anyone else to express concerns, needs, or opportunities. Please keep your comments succinct and under two minutes. You may bring in written materials for Council and Staff to review. The Mayor can assign the issue to a future Council meeting, to a Council Committee, or to staff. Please realize that council cannot offer any response immediately, but will give the matter due consideration.	10 min
IV		Approval of: 07/11/18 - City Council Meeting Minutes	
V		BUSINESS	
1.	6:45 pm	USDA Presentation – as Noticed – John Grim	10 min
2.	6:55 pm	Community Center / JUF – IGA and Scope – Witt Anderson/Emily Reed	10 min
3.	7:05 pm	Franchise Agreement – Mosier WiNet – Todd Reeves/Laura Westmeyer	10 min
4.	7:15 pm	Senator Bentz Request for JUF Funds – letter – Mayor Burns	10 min
5.	7:25 pm	C40 Global Climate Summit 9/12 – 9/14 – Mayor Burns	5 min
6.	7:30 pm	Site Restoration Progress - Colleen	5 min
7.	7:35 pm	Announcements	5 min
VI	7:40 pm	Adjourn	

MINUTES

MOSIER CITY COUNCIL MEETING

MOSIER SENIOR CENTER, 500 SECOND AVE. MOSIER, OREGON 97040
JULY 11, 2018 6:30 PM

Call to order 6:30

Present:

Witt Anderson

Ann Van Osdol, Meeting Chair

Lacy Gries

Penny Wallace

Colleen Coleman, City Manager

Jayme Bennett, City Recorder

Absent (excused):

Arlene Burns, Mayor

Emily Reed, President

Acacia Berry

Councilor Van Osdol volunteered to Chair the meeting.

Business from the audience: none

Additions to agenda or corrections to minutes: Councilor Gries suggests City Recorder revisit the spelling of Nick Kraemer's first name and amend accordingly, also the verbiage on "the City agreed to donate as it has in the past...as precedent" should read without reference to procedure or precedence.

Councilor Van Osdol makes motion to approve minutes as corrected above, Councilor Wallace seconds.

1. Union Pacific Rail Road restoration (UPRR) progress report from City Manager:

Protocol development for PFAS/PFOS testing: Marc Ochsner, (Project Manager for UPRR) reported that PFAS/PFOS is an unregulated toxin that is emerging on the list of many new compounds, therefore there is no standard for PPM/PPT at this time. Because it there is not an existing standard, the process requires considerations of setting precedent for State or national limits. Currently waiting on a scope of work (restroom facility, utilities, system development improvements), UPRR engineers will review and

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JULY 11, 2018 6:30 PM

approve prior to initiating project design and associated permits. Discussion was had around the amenities, community values and how best to ensure we are inclusive of community participation. Mike Igo will oversee habitat restoration, we have recently removed dead trees, guided by Mark Ochsner and his team. (South side of Rock Creek Road). Tuesday morning weekly calls for Project Management are ongoing, on the 25th, Mike Igo, the Botanist on record, and Colleen will present updates to the Watershed Council at their meeting.

2. Community Center/Joint Use Facility Update (Councilor Anderson)

Meeting Minutes are available online. When a decision is taken on a final location, there will be a comprehensive report inclusive of community outreach and workshops. Councilor Anderson walked both sites and again recommended the rest of the Council do the same to experience the natural elements of each. Council is encouraged to join the Community Center/JUF and see the process - the Council doesn't have a decision-making power, yet you can still provide historical knowledge and input.

3. Maintenance, Utility Tech and Water Operator vacancy

Councilor Anderson expresses concern about our system, explaining the Water System Plan is good, emphasizing the need to keep the associated East Side project on schedule and as our top priority. The system we have is vulnerable and fragile. Discussion was had around the day to day operations and maintenance on top of the trouble shooting required for ongoing water security. Councilor Anderson suggests performing an extensive outreach, recommending we have a committee with expert input, explaining legally, the Water Operations position requires a certification. In performing our due diligence, we can ensure we are being competitive in a difficult employment market and offering fair remuneration.

The City staff will ensure to meet and maintain compliance throughout the recruitment and employment process, publish the position as appropriate, seek guidance, and report back. The current structure of the utility technician and park maintenance responsibilities has been successful and encouraging.

Announcements: Councilor Gries wants to announce that her street is having increasing theft and vandalism activity, with vehicles being damaged and broken into.

Councilor Van Osdol is working with Wasco County Sheriff Magill to get neighborhood watch signage in place. There will be a Public notice period, organizational meeting, and outreach for participation. This system is also applicable for organized hierarchy and command in natural disasters and emergency management protocol. City Recorder will work to assist Councilor Van Osdol in any way required.

Councilor Wallace inquired about the parking signs on Center, City Manager is meeting the appropriate entities on the 12th of July to secure best locations and inquire into any additional needs. She will also be

MINUTES

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JULY 11, 2018 6:30 PM

following up on the striping near the one lane bridge, and the "No Compression Brakes" sign that was damaged and subsequently removed from Huskey Road.

ADJOURN 7:50

RESOLUTION NO. 2018-06

A RESOLUTION OF THE CITY OF MOSIER, OREGON AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS UP TO \$1,400,000 IN AGGREGATE PRINCIPAL AMOUNT TO FINANCE WATER SYSTEM IMPROVEMENTS AND EXTENSIONS

WHEREAS, the City of Mosier, Oregon (the “City”) is authorized to issue revenue bonds for any public purpose under ORS 287A.150. Revenue bonds issued under ORS 287A.150 may be payable from all or any portion of the “revenue” or other property of the City. ORS Chapter 287A defines “revenue” to include all fees, tolls, excise taxes, assessments, property taxes and other taxes, rates, charges, rentals and other income or receipts derived by a public body or to which a public body is entitled;

WHEREAS, ORS 287A.150 permits the City to authorize revenue bonds by enacting a resolution. The City may not sell those revenue bonds for 60 days after publication of notice of the resolution. If the resolution is referred to a vote during that 60-day period, the City may not sell the revenue bonds described in that resolution unless the voters approve the issuance of the revenue bonds;

WHEREAS, the City has identified the need to finance capital improvements to the City’s water system, including upgrading Well 5, the Eastside booster pump station and telemetry, and other capital improvements (collectively, the “Project”);

WHEREAS, the estimated total cost of the Project is expected to be \$1,500,000, which the City expects to finance with (a) approximately \$100,000 of funds of the City, (b) a grant from the United States Department of Agriculture, Rural Development (“USDA”) of approximately \$420,000, and (c) a loan from USDA (to be evidenced by the revenue bonds authorized by this resolution) for the remaining portion;

WHEREAS, the City adopts this resolution to authorize the issuance of up to \$1,400,000 in aggregate principal amount of water revenue bonds to finance the Project and the costs of issuing the revenue bonds;

NOW THEREFORE, the City of Mosier, Oregon, resolves as follows:

Section 1. Revenue Bonds Authorized. The City hereby authorizes the issuance of up to \$1,400,000 in aggregate principal amount of revenue bonds under ORS 287A.150 to finance costs of the Project and the costs of issuing the revenue bonds. The bonds shall be payable from the revenue of the City’s water system and the City may pledge those revenues, and any other “revenue” as defined in ORS Chapter 287A or property of the City to pay the bonds authorized by this resolution. Prior to the selling the bonds described herein, the City Council shall adopt a resolution or ordinance, or delegates to the City Manager to sign a declaration, establishing the terms and conditions of the bonds, including the final principal amount, or delegating the authority to establish those terms and conditions, and may issue a bond anticipation note,

pursuant to a separate resolution or ordinance, to finance costs of the Project pending the issuance of the bonds.

Section 2. No Additional Taxes Authorized; Bonds Payable Solely from Revenues. Neither the authorization nor the issuance of the bonds described in Section 1 of this resolution shall authorize the City to levy any additional taxes.

Section 3. Procedure. The bonds described in Section 1 of this resolution shall not be sold until the period of referral of this resolution has expired. If this resolution is referred, the City may not sell the bonds described in Section 1 of this resolution unless the voters approve the issuance of the bonds.

Section 4. Reimbursement. The City hereby declares its official intent to reimburse its expenditures on the Project with the proceeds of the bonds described in Section 1 of this resolution pursuant to United States Treasury Regulation 1.150-2.

Passed and adopted by the Mosier City Council this 3rd day of June, 2018

By: _____
Arlene C. Burns, Mayor

Acknowledged by: _____
Jayme Bennett, City Recorder

Affidavit of Publication

PUBLIC NOTICE

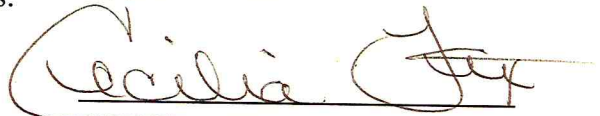
The City of Mosier will hold a regularly scheduled council meeting at 6:30 p.m., Wednesday August 1, at Mosier Senior Center, 500 Second Ave., Mosier, Oregon, 97040. The agenda will include providing information to the public regarding the City's action to apply to the USDA Rural Development Water and Waste Disposal Loan and Grant Program to complete a proposed water system improvements and extensions project. Total cost of the project is estimated at \$1,500,000.00. The application for the water system improvements and extensions project will be in the amount of \$1,400,000.00, with \$100,000.00 of City Funds, a grant from the USDA in the amount of \$420,000.00. Contact Colleen Coleman, City Manager at City Hall with any questions.

July 18, 2018
#8194

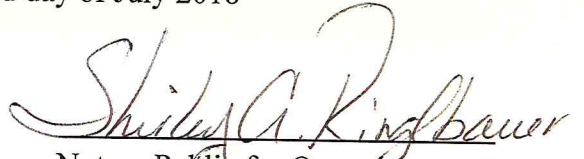
STATE OF OREGON, }
County of Wasco

Cecilia Fix, being first duly sworn, depose and say that I am the principal clerk of the Dalles Chronicle, a newspaper of general circulation, published in Hood River, Oregon in the aforesaid state and county of Wasco; that I know from my personal knowledge that the **Public Notice**, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper once in each of one consecutive weeks in the following issues:

July 18, 2018



Subscribed and sworn to before me this 23rd day of July 2018



Notary Public for Oregon
My commission expires 10-25-19



LEGAL INVOICE
DUE UPON RECEIPT

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF MOSIER AND THE MOSIER FIRE DISTRICT
FOR A JOINT-USE FACILITY**

This amended and restated Agreement is made and entered into this _____ day of _____, 2018, by and between the City of Mosier (“City”) and the Mosier Fire District (“Fire District”), hereinafter collectively referred to as “the Parties.” This Agreement amends and restates in its entirety the Intergovernmental Agreement between the City of Mosier and the Mosier Fire District regarding the holding of funds for a joint-use facility dated December _____, 2017 (“Original Agreement”). To the extent this Agreement is the same as the Original Agreement, it shall be deemed a continuation thereof. To the extent this Agreement differs from the Original Agreement, it shall be deemed an amendment thereof.

RECITALS

- A. The City of Mosier is incorporated and operating under ORS Chapter 221. The Mosier Fire District is organized and operating under ORS Chapter 478.
- B. This Agreement is made pursuant to ORS 190.010, which authorizes governmental entities to enter into written agreements for the performance of any or all functions and activities that either party, its officers or agencies, has the authority to perform on its own.
- C. The Parties anticipate the development of a joint-use facility (hereinafter “the Joint-Use Facility” or “Project”) in downtown Mosier, between the City and the Fire District, with shared uses to include the Mosier Fire Station, the Mosier City Hall, and spaces for community use.
- D. The City and the Fire District have jointly and independently sought funds for the development of the Joint-Use Facility and the Parties have earmarked all funds received for the Joint-Use Facility.
- E. The Parties desire to form a Joint-Use Facility Committee (hereinafter “the JUF Committee”) for the purpose of developing the Joint-Use Facility via the authority granted herein to raise and spend earmarked funds, enter into agreements, and make decisions in furtherance of the Project.

AGREEMENT

1. Formation of Committee.

The Parties hereby create the JUF Committee comprised of an equal number of representatives from the City and the Fire District to act as the Parties’ agent in developing the Joint-Use Facility. The JUF Committee will meet at least monthly to carry out its duties, as authorized and limited by this Agreement.

2. Treatment of Incoming Funding for Joint-Use Facility.

A Party that receives funding for the purpose of the Joint-Use Facility shall, upon receipt of any such funds, assign the funds a unique tracking number identified exclusively for the Joint-Use Facility or shall otherwise place the funds in a separate account or separate Fund that is designated exclusively for the Joint-Use

Facility. Any interest that accrues from money held for the Joint-Use Facility shall be allocated and distributed to that Party's Joint-Use Facility Fund. The Parties shall collect and handle funding under this Section in accordance with applicable law and government accounting principles.

3. Establishment of Joint Savings Account.

The Parties shall open a joint savings account upon the execution of this Agreement. The account shall be the highest interest-bearing savings account available to the Parties. Upon opening the joint savings account, each Party shall deposit one half of the amount required by the financial institution to open the joint savings account from that Party's individually held JUF Fund. All JUF Committee funds raised on or after the execution of this Agreement shall be deposited into the joint savings account. Any draw on the joint savings account must be authorized by each Party and contain the signature of both the Mayor and the President of the Fire District Board.

4. Establishment of Joint Checking Account.

- A. The Parties shall open a joint checking account upon the execution of this Agreement. All funds deposited into the joint checking account shall be made available to the JUF Committee for the Joint-Use Facility project, pursuant to the spending authority and limitations set in Section 6 of this Agreement. The City and the Fire District shall each deposit \$5,000.00 from their respective Joint-Use Facility Funds into the joint checking account upon opening the account.
- B. The Parties shall appropriate such funding amounts from their respective Joint-Use Facility Funds so that the joint checking account initially contains an equal amount of funds from the City and Fire District, and thereafter reflects the Project cost allocations approved by the Parties.

5. Duties of the Joint-Use Facility Committee.

The JUF Committee shall perform the following listed duties, and those as otherwise assigned by the Parties:

- A. **Phase Plan Proposals, Cost Estimates, and Cost Allocations.** The JUF Committee shall develop and propose a plan for each Phase of the Project. Each Phase plan shall: (1) provide a total cost estimate for that Phase; (2) include a cost estimate and cost allocation between the Parties for individual Project components within that Phase, including materials and staff; (3) estimate the number of hours that staff for each Party is anticipated to work on that Phase; and, (4) indicate which final decisions within that Phase will be approved by the Parties. Project Phases shall include Site Selection, Design, Fundraising, Construction, and any additional phases, as determined by the Parties or the JUF Committee (individually referred to as a "Phase" herein).
- B. **Reports to City Council and Fire District Board.** The Party-appointed JUF Committee members shall report to their respective Party on all JUF Committee actions and deliberations no less than once per month.
- C. **Recommendation for Ownership and Maintenance of the Joint-Use Facility.** Before the Project's Construction Phase is approved by the Parties, the JUF Committee shall recommend an ownership and maintenance

framework for the Joint-Use Facility to each Party, including cost sharing and responsibility for operation and maintenance of the Project.

D. Accounting and Reporting of Certain Funding. City, on behalf of the JUF Committee, shall be responsible for the accounting of funds designated for development of the Joint-Use Facility, including providing the required annual narrative and financial report to the Department of Administrative Services for the House Bill 5006 (2017) funds, per the terms that accompanied the funding. The JUF Committee shall assist the “Working Group” identified in the 2017 Mosier Community Settlement Agreement with the Union Pacific Railroad (UPRR) in determining the proper use of the funding received from UPRR for the Joint-Use Facility in the event that construction of the Joint-Use Facility is not commenced within five years after the execution of the 2017 Mosier Community Settlement Agreement.

- 6. Authority of Joint-Use Facility Committee.** The JUF Committee is generally authorized to spend funds to hire contractors; pursue site feasibility, design, and construction; and fundraise on behalf of the Parties for the Joint-Use Facility, subject to the following restrictions and guidelines:
- A. Spending Authority.** The JUF Committee may spend up to \$10,000 on each Project Phase from the joint checking account without prior approval of the Parties. Additional spending authority for each Phase shall be established by the Parties upon approval of each Phase and associated cost estimates, or upon written request of the JUF Committee. The City Manager and Fire Chief shall have signing authority over the Joint Checking Account and the signatures of both the City Manager and Fire Chief shall be required for any draw on the Joint Checking Account.
 - B. Additional Draws on the Joint Checking Account.** In addition to the amount of Spending Authority provided for under Section 6(A), the JUF Committee may direct the City Manager and Fire Chief to draw on the Joint Checking Account for work performed by City and Fire District contractors at the contractors’ contractual rate for work performed on behalf of the Project.
 - C. Contracting Authority.** The JUF Committee may direct the City Manager and Fire Chief to execute and administer contracts for the Project, including contracts for personal services and purchases. The City of Mosier procurement rules and procedures shall govern JUF Committee contracts and purchases.
 - D. Site Selection.** The Joint-Use Facility shall be located within the city limits of the City of Mosier. Accordingly, the JUF Committee may pursue site feasibility studies for any site within the city limits identified by the JUF Committee as desirable for the Joint-Use Facility.
 - E. Fundraising Authority.** The JUF Committee may fundraise for the Project on behalf of the Parties. Fundraising efforts may include soliciting and contracting with a fundraising consultant.
 - F. Decision-making Authority.** The JUF Committee may take action and make decisions in all Phases of the Project, provided, however, that each Party approve all JUF Committee final decisions made in any Phase, as such final decisions are identified for each Phase plan under Section 5(A), or otherwise as requested by one or both Parties.

7. **Amendments.** This Agreement may only be amended in a writing that references this Agreement and is signed by both Parties.
8. **Severability.** If any provision of this Agreement is held, in whole or in part, to be unlawful or unenforceable in any respect and for any reason, the remainder of that provision and of the entire Agreement will remain in full force and effect.
9. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, among the Parties with respect to the subject matter of this Agreement.
10. **Effective Date.** This Agreement takes effect as of the day and year first written above.
11. **Notices.** Any notice relating to this Agreement shall be deemed sufficient if hand delivered or deposited in the custody of the United States Postal Service by registered or certified mail, if delivered to the person or sent to the address provided for in this Section. If the mailing address of either party changes, notice of the change in address shall be provided to the other party in writing:

CITY OF MOSIER
 Colleen Coleman
 City Manager
 P.O. Box 456
 Mosier, OR 97040

MOSIER FIRE DISTRICT
 Phil Evans
 Board President
 P.O. Box 689
 Mosier, OR 97040

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the day and year first written above.

CITY OF MOSIER

MOSIER FIRE DISTRICT

 Arlene Burns Date
 Mayor

 Phil Evans Date
 Board President

APPROVED AS TO FORM:

 Laura Westmeyer Date
 City Attorney

ORDINANCE NO. ____

An Ordinance granting a non-exclusive telecommunications franchise to Mosier WiNet, LLC.

WHEREAS, Mosier WiNet LLC is an Oregon business entity providing internet telecommunication services in the City of Mosier and requiring the installation, operation, and maintenance of fiber optic lines, cables, and related facilities to be located within the public rights-of-ways of the City;

WHEREAS, Mosier WiNet seeks permission to use the public rights-of-way and to compensate the City for use of the public rights-of-way in accordance with Mosier Municipal Code (MMC) Chapter 5.05;

WHEREAS, the City Council may enter into a written franchise agreement governing the rights and obligations of service providers with respect to use of the public rights-of-way under MMC Chapter 5.05 and the City Council feels is in the public interest that the City enter into a telecommunications franchise with Mosier WiNet LLC;

NOW, THEREFORE, THE CITY OF MOSIER ORDAINS AS FOLLOWS:

- 1. Grant of Franchise and Terms of Agreement.** MosierWiNet LLC (Grantee) is hereby granted a non-exclusive telecommunications franchise under the terms and governing provisions of the franchise as set forth in Exhibit A, attached hereto and incorporated herein by this reference.
- 2. Effectiveness.** This Franchise shall only be effective if Grantee signs the Franchise Agreement no later than 30 days after passage of this Ordinance and provides a certificate of insurance and endorsement to the City covering the insurance required under the Franchise.
- 3. Authority of City Manager.** The City Manager is authorized to sign the Franchise Agreement with Franchisee in substantially the same form as the attached Exhibit A.

READ FOR THE FIRST TIME this ____ day of _____ 2018.

READ FOR THE SECOND TIME and adopted this ____ day of _____ 2018.
This Ordinance shall take effect on the 31st day following the second reading.

Arlene Burns, Mayor

ATTEST:

APPROVED AS TO FORM:

Jayme Bennett, City Recorder

Laura Westmeyer, City Attorney

EXHIBIT A

FRANCHISE AGREEMENT FOR TELECOMMUNICATION SERVICES Mosier WiNet LLC

This Franchise Agreement (“Franchise” or the “Agreement”) is entered into by and between the CITY OF MOSIER (“Grantor” or “City”), an Oregon Municipal Corporation, and MOSIER WINET (“Grantee”), an Oregon Domestic Limited Liability Company, as evidenced by the signatures of the parties’ duly authorized representatives below. This Agreement shall become effective on the effective date of the Ordinance adopted by the City Council authorizing the execution of this Franchise.

Section 1. Rights Granted.

1.1. Subject to the terms and conditions provided in this Franchise and further subject to the applicable rules, regulations, and ordinances adopted by the City Council, the City of Mosier hereby grants to Grantee the right and privilege to provide internet telecommunication services within the City and to place, maintain, and operate in, upon, over, and under the streets, alleys, avenues, thoroughfares and public highways, all hereinafter referred to as “streets” within the City, cables, lines, wires, conduits, vaults, ducts, pads, cabinets, splicing boxes, surface location markers, and other appliances, conductors, and facilities for internet and similar telecommunications purposes (collectively referred to as “Facilities”).

1.2. This Franchise is not exclusive, and the City reserves the right to grant a similar franchise to any other person or entity at any time during the period of this Franchise. This Franchise is subject to all prior rights, interests, agreements, permits, easements, or licenses granted by the City, and is subject to the City’s right to use rights-of-way for any lawful purpose.

Section 2. Excavations and Right-of-Way Permit.

2.1. It shall be lawful for Grantee to make necessary excavations in any street, public right-of-way, or public utility easement in the City for the purpose of placing and maintaining Facilities or repairing, renewing, or replacing the same. Work by Grantee and agents, employees, and contractors of Grantee shall be performed in compliance with the rules, regulations, ordinances, orders, and permits, which may be adopted from time to time by the City of Mosier throughout the term of this franchise. The location of Grantee’s facilities shall be subject to prior approval by the City Engineer before commencement of any construction or installation work. Grantee shall construct and maintain its telecommunications system and all Facilities in such a manner as to not interfere with the City sewer or water systems or other City facilities.

2.2. All installations by Grantee in, and to serve, new development shall be placed underground in conjunction with all other utility installations and in compliance with then-current regulations.

2.3. Prior to commencing any construction, installation, extension, or relocation of any of Grantee’s Facilities in the streets or public places within the City, Grantee shall apply for and

obtain a Right-of-Way Permit, by which it shall give the City reasonable advance notice of the time and location of the proposed construction, installation, extension, or relocation. Notwithstanding Section 12.4 allowing Grantee to deduct permit fees from payments made to the City under Section 12, whenever Grantee submits plans to the City for review for construction, maintenance, or relocation of its Facilities, even when part of a Right-of-Way permit, Grantee shall reimburse the City its actual costs incurred in having the City Engineer review those plans. This reimbursement shall be paid by Grantee to the City in addition to payments required and made under Section 12. Grantee shall obtain from the City Engineer, or authorized designee, approval for the proposed work prior to commencing the work.

2.4. In the event that emergency repairs are necessary for Grantee's Facilities, Grantee may immediately initiate such emergency repairs, provided that Grantee gives notice to the City Engineer and the City Manager, by e-mail, telephone, or personal notice, as soon as practicable. Grantee shall make such repairs in compliance with requirements for ordinary repairs and maintenance under this Franchise, and shall apply for any necessary permits no later than the business day next following the discovery of the need for emergency repairs.

2.5. The City Engineer or authorized designee shall have the right to inspect all construction or installation work performed pursuant to this Franchise, and to make such tests as the City Engineer feels necessary to ensure compliance with the terms of this Franchise.

Section 3. Restorations. Whenever Grantee disturbs any of the streets, sidewalks, or other portion of the public right-of-way in the City for any of the purposes provided herein, Grantee shall restore the same to as good a condition as existed before the work was undertaken in accordance with the requirements of this Section and as soon as practicable without unnecessary delay:

3.1. When Grantee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or City property, it shall, at its sole expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition (as good a condition as existed before the work was undertaken) unless otherwise directed by the City and as determined by the City Engineer.

3.2. If weather or other conditions do not permit the complete restoration required by this Section, the Grantee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the Grantee's sole expense, and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to review and approval by the City Engineer.

3.3. Subject to the delay provisions of Section 3.2 above, if the Grantee fails to restore rights-of-way or City property to good order and condition, the City shall give the Grantee written notice and provide the Grantee a reasonable period of time, not exceeding 30 days, to restore the rights-or-way or property. If after such notice, the Grantee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the City shall cause such repairs to be made at the sole expense of Grantee, and Grantee

expressly agrees to pay any and all actual and documented costs incurred by the City for doing so.

3.4. Grantee or any person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

Section 4. Insurance, Grantee Liability, Indemnification of City.

4.1. Insurance. Grantee shall purchase and maintain, at Grantee's expense, at all times during this Franchise, General liability insurance covering bodily-injury and property damage in an amount of \$2 million per occurrence and \$4 million in aggregate. General liability insurance shall include contractual liability coverage for the indemnity provided under this Section 4 and naming the City, its officials, officers, employees, volunteers, and agents as additional insureds with respect to Grantee's work or services conducted under this Franchise.

Grantee shall remain fully responsible for any claims resulting from negligence or intentional misconduct of Grantee and its subcontractors, employees, or agents in performance of this Agreement, even if not covered by, or in excess of insurance limits. Grantee will require that its insurance carrier give the City 30 days' written notice of any cancellation of or reduction in insurance coverage. Any failure to comply with this provision will not affect the insurance coverage provided to the City.

Insurance coverage required under this Section 4 must be underwritten by an insurance company authorized to do business in the State of Oregon. Grantee shall provide proof of insurance required under this Section 4 by acceptable Certificate of Insurance and signed Endorsement from the carrier(s).

4.2. Indemnification. Grantee agrees and covenants to indemnify, hold harmless, and defend the City of Mosier, its agents, employees, volunteers, and officers, from any and all damages, suits, costs, or claims of any kind to which the City, or its agents may be subjected which are caused by any action of Grantee or its agents, which in any manner arise from Grantee's exercise of the rights or privileges granted herein or under a Right-of-Way Permit issued by the City. Grantee's indemnification and defense obligations under this Section 4.2 do not include indemnification from or defense against (a) damages, suits, costs, or claims arising out of the negligent acts of the City or its employees, agents, or contractors. Franchisee agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

4.3. Workers Compensation. During the term of this Franchise, Grantee shall maintain, at its own expense, worker's compensation insurance for all subject workers as required by ORS Chapter 656 and meeting the minimum requirements therein.

Section 5. Public Works and Improvements Not Affected by Franchise.

Nothing in this Franchise shall be construed to prevent the City of Mosier from installing or maintaining sewers, water lines, streets, grating, planking, rocking, paving, repairing, altering, or

improving any of the streets within the City or public property and rights-of-way upon which Grantee's Facilities may be placed.

Section 6. Use of Streets and Rights-of-Way by Grantee. The location and method of installation, repair and maintenance of Grantee's Facilities and any exercise of the rights of Grantee under the terms of this Franchise shall be subject at all times to reasonable regulation by the City of Mosier. Grantee's operation and work shall be carried on so as to avoid any unnecessary interference with traffic or other permissible uses of the streets of the City. Grantee's equipment or agents that interfere with allowable uses of the rights-of-way or City property shall be moved or removed upon notice from the City Engineer. If Grantee fails to move or remove such equipment or facilities within the reasonable time allowed in the notice from the City, then the City may remove any such equipment at the Grantee's sole expense, and Grantee expressly agrees to pay any and all actual and documented costs incurred by the City for doing so.

Section 7. Construction and Facility Maintenance Standards.

7.1. Grantee shall at all times keep and maintain all of its Facilities so as not to present a danger to the public or the City.

7.2. The location, construction, extension, installation, maintenance, removal and relocation of Grantee's Facilities must conform to:

7.2.1. The requirements of all State and Federal safety statutes and regulations in effect at the time the work is performed; and

7.2.2. Provisions of the Mosier Municipal Code and the City's standard specifications for construction in effect at the time the work is performed. The City will provide Grantee notice of any such requirements in the Right-of-Way Permit associated with the work.

Section 8. Relocation of Facilities.

8.1. Whenever the City initiates the construction, reconstruction, grading, or widening of any right-of-way for the benefit of the general public and that construction, reconstruction, grading or widening requires the relocation of Grantee's then existing Facilities, the City will:

8.1.1. provide Grantee, within a reasonable time prior to the commencement of such construction, reconstruction, grading or widening, written notice requesting such relocation; and

8.1.2. provide Grantee with reasonable plans and specifications for such construction, reconstruction, grading or widening.

After receipt of such notice and such plans and specifications, Grantee shall relocate such Facilities located in the right-of-way or on City property at no charge to the City.

8.2. Whenever any person or entity, other than the City, requires the relocation of Grantee's Facilities to accommodate the work of such person or entity; or, whenever the City requires the relocation of Grantee's Facilities within the service area for the benefit of any person or entity other than the City, then Grantee shall have the right as a condition of such relocation to require such person or entity to:

8.2.1. make payment to Grantee, at a time and upon terms acceptable to Grantee, for the actual direct and indirect costs incurred by Grantee in the relocation of Grantee's Facilities; and

8.2.2. indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Grantee's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Grantee's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Grantee's Facilities.

8.3. Any condition or requirement imposed by the City upon any person or entity, other than Grantee (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with land use or development approvals, construction or development) that requires the relocation of Grantee's Facilities shall be a required relocation for purposes of Section 8.2.

8.4. Nothing in this Section 8 "Relocation of Facilities" shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities on private property than then-existing under benefit of a recorded easement.

Section 9. Quality of Service. The service furnished by Grantee will be consistent with the standards promulgated by any rule, regulation, or order prescribed by any State of Oregon or federal government authority, including the Federal Communications Commission, that exercises jurisdiction over Grantee or this Franchise.

Section 10. Overhead Fixtures and Removal. Grantee shall make a good effort to convert, bury, or otherwise put underground all of its above-ground Facilities whenever feasible. If not feasible, such Facilities may be placed above ground on poles or other fixtures where Grantee has been granted the right and permission to do so by the appropriate parties. Grantee shall thereafter, whenever economically feasible, remove and replace overhead facilities underground at the request of the City. Costs of replacement may be assessed against property owners as provide in applicable sections of the Oregon Administrative Rules. Costs of removal of the existing overhead system and overhead retirement costs, including depreciation, shall be borne by Grantee.

Section 11. Temporary Removal of Aerial Cables or Facilities. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables or other aerial Facilities of Grantee, to permit passage of building, machinery, or other object, Grantee shall perform such rearrangement within a reasonable period after written notice from the person(s) desiring to move the building or object. The notice shall bear the approval of the City

Engineer and shall detail the route of movement of the building or object and shall provide that the cost of relocation shall be borne by the person(s) requesting the relocation.

Section 12. Privilege Tax.

12.1. Pursuant to ORS 221.515, as now constituted, in consideration of the rights, privileges, and franchise hereby granted, the Grantee shall pay to the City, from and after the effective date of this Franchise and until its expiration, on a quarterly basis, an amount equal to _____% of the gross revenue earned by the Grantee within the boundaries of the City. “Gross revenues” means any and all revenue, of any kind, nature, or form derived from the service of telecommunications under this Franchise, without including in such calculation any deductions as allowed under this Agreement, less net uncollectible from such revenues.

12.2. Grantee shall file with the City Recorder a sworn statement of the gross local service receipts of the Grantee derived from services within the corporate limits of the City on or before the _____ day of the month following each calendar quarter, and payment of the privilege tax shall be made on or before the _____ day of the month following each calendar quarter. Within 60 days after the termination of this Franchise, the privilege tax shall be paid for the period elapsing since the close of the last calendar quarter for which the privilege tax has been paid.

12.3. The compensation for the period covered by the sworn statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of the privilege tax due the City through error or otherwise, the difference due to the City shall be paid by Grantee within 15 days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.

12.4. The privilege tax payments made by the Grantee under this Section 12 shall be compensation for use of the public rights-of-way for its Facilities. Any permit fees for excavation or similar work may be deducted from the privilege tax. Acceptance by the City of any payment due under this Section 12 shall not be deemed to be a waiver by the City of any breach of this Franchise occurring prior thereto, nor shall acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. Notwithstanding the foregoing, whenever Grantee submits construction plans for review by the City in connection with construction, maintenance, repair, or relocation of its Facilities, Grantee shall reimburse the City its actual costs incurred in having the City Engineer review those plans. This reimbursement shall be paid by Grantee to the City in addition to payments required and made under this Section 12.

Section 13. Franchise Not Exclusive. This Franchise is not exclusive, and shall not be construed as a limitation on the City in:

13.1. Granting rights, privileges, and authority to other persons or utilities similar to or different from those granted by this ordinance.

13.2. Constructing, installing, maintaining, repairing, or operating any City-owned public utility.

Section 14. Term. This Franchise shall be valid for a term of 7 years from the date that the Mosier City Council authorizes execution of this Franchise by adoption of an Ordinance. The rights, privileges, and franchise granted herein shall continue and be in force for this 7-year term following adoption of this Agreement, subject to early termination as provided in Section 17.

Section 15. Reports and Right to Inspect Records. The Grantee shall keep accurate financial books of account for the purpose of determining the amounts due to the City under Section 12 of this Franchise, and for two years after the expiration or termination of this Agreement. The City may inspect the books of account at any time during business hours and may audit the books from time to time throughout the term of this Franchise and for up to two years after the expiration or termination of this Agreement. The City Council may require periodic reports from the Grantee relating to its operations and revenues within the City, but Grantee will not be required to disclose any information that would violate state or federal laws related to the protection of proprietary customer information.

Section 16. Assignment of Franchise. Grantee shall not transfer or assign this Franchise or any right, privilege, or obligation imposed or accorded hereby without the written approval by the City prior to any such transfer or assignment. In the event of any such request by Grantee, the City reserves the right to revise, amend, or renegotiate the terms of this Franchise before the City allows any such transfer or assignment. Any transfer of ownership without written consent of the City shall render this Franchise subject to revocation.

Section 17. Termination for Cause. In the event that after 30 days of the City submitting written demand, Grantee fails, neglects, or refuses to perform any or all of the obligations or requirements specified in this Franchise to be performed by Grantee, then the rights and privileges granted may be terminated by the City, and the Grantee shall forfeit all rights and privileges granted herein.

Section 18. Additional Provisions.

18.1. Severability and Amendment. A determination by a court of competent jurisdiction that any section of this Franchise is unenforceable or unlawful, shall not affect the validity or enforceability of the remaining portions. The Parties agree that any invalidated portions of this Franchise may be renegotiated and in the event of invalidation the Parties may amend the Franchise.

18.2. Change of Law and Renegotiation. In the event of significant change in the law regulating Grantee's activities under this Franchise, or change in municipal authority to act under the terms of the Franchise, or significant change or advancement in technology governing Grantee's functions, the Parties, upon mutual agreement, may renegotiate any or all provisions of this Franchise. However, this Subsection does not create a legal obligation for either Party to renegotiate the Franchise.

18.3. Revocation for Noncompliance. In the event that Grantee or any of Grantee's agents, employees, or contractors fail to comply with any requirement, condition, or obligation imposed by this Franchise, the City Council may, after notice to Grantee and opportunity to respond, revoke this Franchise. The City's failure to enforce any requirement, condition, or obligation of this Franchise shall not constitute a waiver or estop the City from exercising its right to enforce any requirement, condition, or obligation.

18.4. Abandonment of Franchise. Grantee may abandon and surrender its Franchise to the City upon 6 months written notice to the City Recorder. Abandonment shall be subject to acceptance by the City by a resolution of acceptance adopted by the City Council.

18.4.1. Upon abandonment, non-renewal, revocation, or expiration of this Franchise, and if no extension is granted, Grantee may, at the discretion of the City Engineer, be required to remove all or part of its above-ground Facilities installed under the Franchise. The City Engineer may require Grantee to remove its below ground Facilities from the right-of-way if those Facilities are deemed by the City Engineer to interfere, potentially or actually, with the right-of-way. If removal of Facilities is required, Grantee shall remove all Facilities within 180 days from Grantee's notice of requirement to remove. Should Grantee fail to remove all Facilities within the 180-day period, the City may remove with costs to be paid by Grantee. Alternatively, the City Engineer may direct, limit, or condition Grantee's removal, sale, or continued use or abandonment of Grantee's Facilities, either by agreement or through means of any other lawful municipal power or right. The City may take all other actions deemed necessary and proper by the City Council to accommodate the transition to Grantee's successor(s) as may be in the best interests of the City and its residents. Any declaration by the City that Grantee has abandoned the Franchise shall have a reasonable basis, such as not providing service for a period of 6 months or longer, or other expression of abandonment; in which case, the City shall provide Grantee with notice and an opportunity to respond.

18.5. Extension of City Limits. Upon the annexation of any property to the City, the rights granted herein shall extend to the annexed property to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public rights-of-ways of the annexed property shall be subject to all terms and provisions of this Agreement.

18.6. This Franchise is governed by the laws of the State of Oregon, and venue for any claim or legal action arising out of, or in connection with, the privileges extended herein shall be in the Wasco County Circuit Court.

18.7. Whenever any notice, request, consent, approval, document, demand, authorization and the like (collectively, "Notice") is required or permitted under this Franchise, that Notice must be in writing. All Notices must be personally delivered, or sent by United States certified mail with postage prepaid and return receipt requested, or by nationally recognized overnight courier to the Parties at the following addresses:

If Notice to Grantee:

Mosier WiNet
Attn: Todd Reeves
P.O. Box 623
Mosier, OR 97040

If Notice to City:

City of Mosier
Attn: City Manager
P.O. Box 456
Mosier, OR 97040

Notice will be deemed effective on the date of acceptance if personally delivered, on the date shown on the return receipt if Notice is given by certified mail, or on the date of the confirmation of delivery form if Notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal, or inability to deliver. Either party may change its address for Notice by giving Notice of an address change to the other Party in the manner for giving Notice prescribed in this Section 18.7.

Section 19. Effective Date. This Franchise shall be effective as of the date the City Council adopts an Ordinance ratifying its provisions and remain in force and effect for the remainder of the term.

ACKNOWLEDGED AND AGREED:

BY THE FRANCHISEE:

BY THE CITY:

By: _____

By: _____

Title: _____

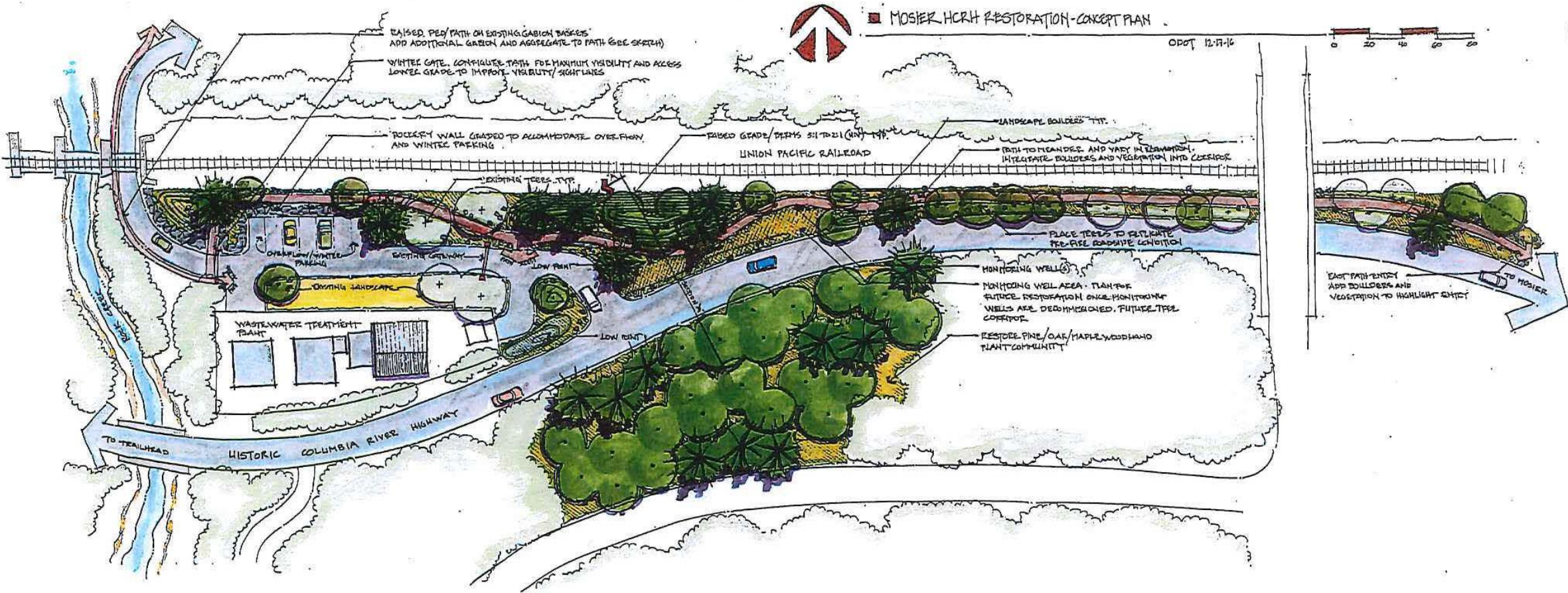
Title: _____

Date: _____

Date: _____

SITE RESTORATION PLAN

PROGRESS SO FAR





Team

1. UPRR Project Manager – Mark Ochsner (will provide engineer, landscape architect and consultation with railroad engineer)
2. DEQ – Bob Schwarz
3. City Botanist – Mike Igo
4. City Project Manager – Colleen Coleman
5. Other local contractors as needed --
 - Humble Roots – Drew Merritt or Kristen Curran
 - Kennedy Excavating – Dale Kennedy
 - Land Electric – Peter Kinsey
 - Tree Care Cascadia – Anthony ViaGomez

Design Process

1. Review of Proposed Scope of Work (Mike, Colleen & Bob will review UPRR scope and revise according to original agreement)
2. Kickoff Meeting w/ Key Team Members
 - Determine how project construction will be phased to locate utilities, restrooms, rod iron fence, trail and plantings with least disturbance and efficient timeline
3. 60% Design (with several design team reviews) – 1-3 months
4. Public Presentation at 60% Completion
5. Final Design and Construction Drawings – 2 months
6. Public Presentation of 100% Design
7. Construction (Next Spring)

PFAS/PFOS (your flavor)

1. Jacobs/CH2MHill has provided a technical memo to UPRR outlining current practices and EPA limits safety (2 wks ago)
2. UPRR is reviewing and hasn't responded with a work order
3. Bob Schwarz and Mark are insisting on getting underway
4. Question is treatment (what to do—no national EPA standards for this substance).
5. If found, decision on how to treat will set a state wide (if not national) precedent.

Volunteer Opportunities

1. Invasives Removal this Spring
2. Show up for Public Presentation Meetings (we need your input)