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MEMORANDUM

To: Fraser Board of Trustees

cc: Mr. Jeff Durbin, Town Manager;
Antoinette McVeigh, Town Clerk

From: Rod McGowan, Town Attorney

Date: January 21, 2020

Subject: January 22nd Board Meeting – MPEI Franchise Consideration

Your January 22, 2020 agenda includes an item for consideration of the application by Mountain Parks Electric, Inc. (MPEI) for a franchise to operate an electric utility within Fraser, and for first reading of the Ordinance to grant such franchise. We have included in the packet a copy of the proposed Ordinance, with a copy of the latest draft of the proposed Franchise Agreement provided by MPEI. Prior to this time, MPEI has been operating without a franchise, pursuant the general statutes and regulations applicable to utility installations.

Previously, staff had some concerns regarding the terms of the Franchise Agreement proposed by MPEI; specifically, with regard to the provisions that would require Fraser to enforce the requirements of the National Electrical Safety Code. The Town has not adopted that Code a part of its building regulations and the state's inspector, not the Town building official, performs electrical inspections for new construction. Accordingly, the Town has no authority to enforce the electrical code and we asked MPEI to agree to remove the objectionable provisions from the proposed Franchise Agreement. Just last week, MPEI agreed to that proposal, with the inclusion of an additional provision allowing MPEI the opportunity to review subdivision applications (which it already does) and to receive notice of proposed amendments to the land use code. Staff feels that the draft Franchise Agreement in the packet, with these changes, is acceptable.

As a refresher, the following is an outline of the procedures provided in state statutes for the grant of a municipal franchise:

1. The proposed franchisee is required to publish notice of its intention to apply for the grant of a franchise prior to the Board meeting at which such application will be presented. This notice has been published in advance the January 22nd Board meeting for purposes of starting the process.
2. At the initial Board meeting the applicant presents the proposed franchise agreement, and the ordinance to approve the agreement and grant the franchise is introduced and read for

the first time. This first reading of the ordinance can be accomplished by reading the title only, provided the Board members are given copies of the proposed ordinance and franchise agreement in advance of the meeting.

3. No formal Board action is taken at this first meeting, other than to schedule the matter for further consideration and to order publication of the ordinance in advance of the meeting where the ordinance will be read again and put forward for passage. Although the statute calls for publication of the ordinance, Fraser has adopted the option of publishing ordinances by title only, which will likely be utilized in this instance. Assuming the Board desires to move the franchise forward, the appropriate motion could take the following form:

“I move that the proposed ordinance granting Mountain Parks Electric, Inc., an electric utility franchise be passed on first reading, that the Board desires to further consider the grant of such franchise and that the proposed ordinance and notice of the meeting for such further consideration be published in advance of such meeting as required by law”.

4. At the following noticed meeting, the ordinance approving the franchise is read again and put to a vote on passage. The affirmative vote of a majority of all members of the Board is required for passage.
5. If the ordinance is adopted as a non-emergency measure, it will take effect 30 days after adoption and publication, and after execution of the franchise agreement by the parties.

I look forward to meeting with you and answering any questions you may have regarding the franchise application.