SIGN-UP TO SPEAK FOR SPECIFIC ACTION ITEMS ON THE AGENDA: If you have signed up prior to the Council meeting to speak with respect to a particular ordinance or resolution appearing on the agenda, you will be recognized to address the Council for up to one minute before the Council takes action on that item. Those wishing to address such items on the “Consent Agenda” should do so during the “Citizen Comments” portion of the Agenda. If the Council chooses to discuss the item further after taking comments, they may restrict additional public comment before taking action. Please look for the sign-up sheets near the Council Chamber doorway. (See Item II. B. for Citizen Comments on other items of City business.)

Location: Bonney Lake Justice Center, 9002 Main Street East, Bonney Lake, Washington.

I. CALL TO ORDER – Mayor Neil Johnson, Jr.
   A. Flag Salute – Mayor Neil Johnson, Jr.
   B. Roll Call: Deputy Mayor Dan Swatman, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis, Councilmember Randy McKibbin and Councilmember James Rackley.
   C. Announcements, Appointments and Presentations:
      1. Announcements:
         2. Appointments: None.
         3. Presentations: None.
   D. Agenda Modifications:

II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:
   A. Public Hearings:
   B. Citizen Comments:
      You may address the City Council on matters of City business for up to 5 minutes. Those commenting about ordinances or resolutions on the “Consent Agenda” should limit their comments to one minute per item. When recognized by the Mayor, please state your name and address for the official record. Designated representatives speaking on behalf of a group may take up to 10 minutes on matters of general City business.
   C. Correspondence:

III. COUNCIL COMMITTEE REPORTS:
   A. Finance Committee
B. Community Development Committee
C. Public Safety Committee
D. Other Reports

IV. CONSENT AGENDA:
The items listed below may be acted upon by a single motion and second of the City Council. By simple request to the Chair, any Councilmember may remove items from the Consent Agenda for separate consideration after the adoption of the remainder of the Consent Agenda items

A. Approval of Corrected Minutes: August 16, 2011 Council Workshop; August 23, 2011 Council Meeting; and August 30, 2011 Special Joint Council/Planning Commission Meeting.

B. Approval of Accounts Payable and Utility Refund Checks/Vouchers: Accounts Payable checks/vouchers #61834 thru 61878 (Including Wire Transfer #s 7932127, 8082011) in the amount of $460,925.39; Accounts Payable checks/vouchers #61879 thru 61881 in the amount of $148.00; Accounts Payable checks/vouchers #61882 thru 61833 in the amount of $212.88; Accounts Payable checks/vouchers #61884 thru 61885 in the amount of $1,350.00; Accounts Payable checks/vouchers #61886 thru 61933 (Including Wire Transfer # 9012011) in the amount of $569,149.01; Accounts Payable checks/vouchers #61934 thru 61972 in the amount of $86,759.36; Accounts Payable checks/vouchers #61973 thru 61974 in the amount of $938.31; Accounts Payable checks/vouchers #61975 thru 61975 in the amount of $134.62, for a grand total of $1,119,617,57. VOIDED CHECKS: Accounts Payable checks/vouchers #61910 in the amount of $900.00 and Accounts Payable checks/vouchers #61926 in the amount of $500.00.

C. Approval of Payroll: Payroll for August 16-31st 2011 for checks 29968-29997 including Direct Deposits and Electronic Transfers in the amount of $ 608,421.38.


E. AB11-103 – Resolution 2148 – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing An Updated Client Services Agreement With Pinnacle Investigations For Pre-Employment Background Checks For Applicants Considered For A Regular Or Temporary Position Of Employment With The City.


H. AB11-105 – A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Accept As Complete The Interim Justice Center With M.J. Takisaki Inc.

I. AB11-106 – A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Accept As Complete The Angeline Force Main Project With Archer Construction, Inc.
J. **AB11-107** – A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Accept As Complete The North Debra Jane Lake Watermain Replacement Project With Jennings NW LLC.

V. **FINANCE COMMITTEE ISSUES:**

A. **AB11-80** – A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Setting A Public Hearing At 7:00 P.M., Or As Soon Thereafter As Possible, During The Regular Council Meeting Of September 27, 2011 For The Renewal Of A Cable Television Franchise Agreement With Comcast Of California / Colorado / Washington I, Inc; And For The Establishment Of A Franchise Fee Of Five Percent.

VI. **COMMUNITY DEVELOPMENT COMMITTEE ISSUES:** None.

VII. **PUBLIC SAFETY COMMITTEE ISSUES:** None.

VIII. **FULL COUNCIL ISSUES:**

A. **AB11-110 – Resolution 2151** – A Resolution Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign An Agreement With Swiss Sportsman’s Club Of Tacoma Regarding Fire Hydrant Installation And Water Connections.

IX. **EXECUTIVE SESSION:** Pursuant to RCW 42.30.110, the City Council may hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

X. **ADJOURNMENT**

For citizens with disabilities requesting translators or adaptive equipment for communication purposes, the City requests notification as soon as possible of the type of service or equipment needed.

THE COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA
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City of Bonney Lake, Washington
City Council Agenda Bill (AB)

<table>
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<th>Department/Staff Contact:</th>
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<tr>
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**Agenda Subject:** A Public Hearing on the Council's 8/23/11 Adoption of Ordinance 1396 - Declaring a Moratorium on Collective Medical Marijuana Gardens.

**Full Title/Motion:** n/a

**Administrative Recommendation:** Hold Public Hearing.

**Background Summary:** On August 23, 2011, the City Council adopted Ordinance 1396 adopting a 6-month zoning moratorium on the establishment, maintenance or continuation of medical marijuana collective gardens. Section 4 of the ordinance provides that a public hearing will be held on September 13th to take public testimony and to consider adopting further findings justifying the imposition of the moratorium.

**Attachments:** Ordinance 1396

**BUDGET INFORMATION**

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**Budget Explanation:** n/a.

**COMMITTEE, BOARD & COMMISSION REVIEW**

**Council Committee Review:**
- Date: 
- Approvals:
  - Chair/Councilmember: ☐ Yes ☐ No
  - Councilmember: ☐ Yes ☐ No
  - Councilmember: ☐ Yes ☐ No

**Forward to:**

- Consent Agenda: ☐ Yes ☐ No

**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

- Workshop Date(s): 8/16/11
- Public Hearing Date(s): 9/13/11
- Meeting Date(s): 8/23/11
- Tabled to Date:

**APPROVALS**

- Director: HTE
- Mayor: NJ
- Date Reviewed by City Attorney: n/a
ORDINANCE NO. 1396

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, ADOPTING A TEMPORARY ZONING MORATORIUM ON THE ESTABLISHMENT, MAINTENANCE OR CONTINUATION OF MEDICAL MARIJUANA COLLECTIVE GARDENS.

WHEREAS, the cultivation, possession or distribution of marijuana has been and continues to be in violation of federal and state laws; and

WHEREAS, in 1998 the voters of Washington State approved Initiative 692, codified as Chapter 69.51A RCW, creating a limited defense to state marijuana charges for qualifying patients and designated providers of medical marijuana; and

WHEREAS, in 2011, the Legislature adopted E2SSB 5073, purporting to authorize medical marijuana dispensaries and collective gardens; and

WHEREAS, the Governor vetoed significant portions of E2SSB 5073, including those pertaining to purported legalization of dispensaries, but leaving intact provisions purporting to authorize collective gardens; and

WHEREAS, it appears to the Council that establishment of collective gardens would violate federal law, notwithstanding E2SSB 5073;

WHEREAS, the Council notes E2SSB 5073’s definitions related to medical marijuana collective gardens, and further notes that said law imposes no limits regarding the number of such gardens that may be located at any particular site, nor any other restriction as to where such gardens may be located, including in relation to other uses; and

WHEREAS, medical marijuana collective gardens are not presently addressed in the Bonney Lake zoning code, and E2SSB 5073 authorizes adoption of zoning regulations regarding such gardens; and

WHEREAS, unless a zoning moratorium is imposed, medical marijuana collective gardens may be located within the City while the City lacks the necessary tools to ensure that the location of collective gardens is appropriate, and to ensure that potential secondary impacts of such gardens are minimized and mitigated, and prior to the City having the opportunity to analyze whether such gardens are permitted under federal law; and

WHEREAS, the Council deems it to be in the public interest to establish a zoning moratorium pending consideration of land use regulations to address medical marijuana collective gardens; and

WHEREAS, under RCW 35A.63.220 and RCW 36.70A.390, a public hearing must be held within 60 days of the passage of this Ordinance;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are hereby adopted as the Bonney Lake City Council’s preliminary findings in support of the moratorium imposed by this Ordinance. The Council may, in its discretion, adopt additional findings following the public hearing referenced in Section 4 below.
Section 2. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Bonney Lake prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden. A “medical marijuana collective garden” is an area or garden where qualifying patients engage in the production, processing, transporting and delivery of marijuana for medical use as set forth in E2SSB 5073 and subject to the limitations therein.

Section 3. Medical marijuana collective gardens as defined in Section 2 and E2SSB 5073 are hereby designated as prohibited uses in the City of Bonney Lake. In accordance with the provisions of RCW 35A.82.020 and Chapter 5.08 BLMC, no business license shall be issued to any person for a medical marijuana collective garden, which use is hereby defined to be a prohibited use under the ordinances of the City of Bonney Lake.

Section 4. As provided in RCW 35A.63.220 and RCW 36.70A.390, the City Council sets a public hearing for September 13, 2011, which begins at 7:00 p.m. or as soon thereafter as the business of the City Council shall permit in order to take public testimony and to consider adopting further findings justifying the imposition of the moratorium set forth in Section 2 above.

Section 5. The moratorium set forth in this Ordinance shall be in effect for a period of six months from the date this Ordinance takes effect and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Bonney Lake City Council.

Section 6. The Mayor and/or City Administrator are hereby authorized and directed to develop draft regulations regarding collective gardens. The regulations shall be referred to the Planning Commission for review and recommendation for inclusion in the City’s zoning code.

Section 7. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

Section 8. This Ordinance concerning powers vested solely in the Council, it is not subject to referendum, and shall take effect five (5) days after its passage, approval and publication as required by law.

PASSED by the City Council and approved by the Mayor this 23rd day of August, 2011.

Neil Johnson, Mayor

ATTEST:
Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:
James L. Dionne, City Attorney

Passed: 8/23/11
Valid: 8/23/11
Published: 8/31/11
Effective Date: 9/4/11
There are 2 Pages to this Ordinance
City of Bonney Lake, Washington
City Council Agenda Bill (AB)

<table>
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<th>Department/Staff Contact: Admin Srvc / Edvalson</th>
<th>Meeting/Workshop Date: 23 August 2011</th>
<th>Agenda Bill Number: AB11-102</th>
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| Agenda Item Type: Ordinance | Ordinance/Resolution Number: D11-102 | Councilmember Sponsor: |

Agenda Subject:

**Full Title/Motion:** An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Adopting A Temporary Zoning Moratorium On The Establishment, Maintenance Or Continuation Of Medical Marijuana Collective Gardens.

**Administrative Recommendation:** None.

**Background Summary:** Recently adopted state law failed to clarify the legality of medical marijuana collective gardens. With no case law to assist with the interpretation of the new law, some cities have adopted moratoria to give them time to study the issues. Others have taken the approach that the collective gardens are simply illegal under federal law. The City Council majority indicated at the August 16, 2011 Council Workshop their desire to consider an ordinance adopting a moratorium on the development of medical marijuana collective gardens, particularly on public property. Attached is a proposed ordinance from the City Attorney's Office.

**Attachments:** Ordinance D11-102

**BUDGET INFORMATION**

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**Budget Explanation:**

**COMMITTEE, BOARD & COMMISSION REVIEW**

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**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

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**APPROVALS**

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<th>Director: HTE</th>
<th>Mayor: NF</th>
<th>Date Reviewed by City Attorney: 8/18/2011</th>
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Agenda Packet p. 8 of 140
I. Call to Order: Deputy Mayor Swatman called the Workshop to order at 5:31 p.m.

II. Roll Call: [A1.3]

Administrative Services Director/City Clerk Harwood Edvalson called the roll. In addition to Deputy Mayor Dan Swatman, elected officials attending were Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis Councilmember Randy McKibbin and Councilmember James Rackley. Mayor Neil Johnson Jr. was absent.

Staff members in attendance were City Administrator Don Morrison, Chief Financial Officer Al Juarez, Public Works Director Dan Grigsby, Community Development Director John Vodopich, Chief of Police Mike Mitchell, City Attorney Jim Dionne, Administrative Services Director/City Clerk Harwood Edvalson, and Facilities & Special Project Manager Gary Leaf, Administrative Specialist Shawn Campbell.

III. Agenda Items:

A. Presentation: Proposed Flood Control Zone District from Pierce County.

Brian Ziegler from Pierce County thanked Council for allowing him to come and share the current County Proposed Flood Control District Plan with the City. He introduced Jeff Cox, Legal Counsel for Pierce County Council and Kjristine Lund, Executive Director for the King County Flood Control District. He gave a brief history of the Flood Control District that Pierce County established last year. He said he would like the Council to consider supporting the proposed Flood Control District. He said just because the District was disbanded did not mean the risk went away. He gave a synopsis of risks the County has identified, and the mitigation of flooding options. He gave a brief description of what a Flood Control District is, how it is funded, and outlined the benefits of creating a district to the County as a whole and to each partner. He added the district could charge every property owner in the County up to 50 cents per thousand dollars of property value, or charge in subzones according to Water Resource Inventory Area (WRIA). He gave a timeline for the District and said the collecting of funds could not start before 2013. He added the County is only considering 10 cents per thousand dollars of property value. He said the County has collaborated with the federal government to do a 6-year study of the issues in Pierce County. He added when the study is complete the recommended projects will be federally funded at 65%.

Councilmember Rackley asked if the City would be reimbursed for the construction of a floodwall to protect the Sumner/Bonney Lake Sewer Treatment Plant. Mr. Ziegler said if the wall is not completed, the district could pay for it but there would not be retroactive funds available, so if the City paid for the wall before the District, the funds that would otherwise be allocated to the floodwall project would fund other projects. Deputy Mayor Swatman noted the City of Bonney Lake is in the same WRIA zone as the City of Sumner and Orting. He said the
City of Bonney Lake does not have the same flooding concerns as the cities in the valley. Bonney Lake should not have the same contribution amount. He added it is nice to hear the County is only planning to take 10 cents per thousand but that is approximately 1/10 of the City of Bonney Lake’s entire levy amount. Deputy Mayor Swatman said citizens bought property on the hill to protect themselves from flooding and he does not feel it is fair to ask the citizens of Bonney Lake to pay to protect development in the valley. He added assets should no longer be placed in the valley knowing the flood concerns. He asked about restrictions for jurisdictions expanding their UGA into the flood zones. Mr. Jones said Washington State law restricts jurisdictions from expanding into flood plains. Councilmember Hamilton noted the advisory committee from last year was made up primarily of people in the valley. He feels more representation from the plateau is needed. He added development on the hills affects the land below and he does not see any projects planned for the plateau. Mr. Ziegler said an urban area can be 10 times more likely to flood than a forested area. City Administrator Morrison said much of the City’s water is retained in the City’s storm water retention ponds. He asked if Pierce County followed the King County model of putting aside 10 - 20% of the total funds for the local jurisdictions to deal with their local flood control projects, and if the percentage would be the same for the cities who benefit from the direct flood control projects. Mr. Ziegler said the district has not yet been formed so those decisions have not been made.

Councilmember Carter asked why the city would want to join the Flood Control District if there are no projects planned that will benefit the City. She would like to see equitable amounts for the City.

Mayor Johnson joined the meeting by speakerphone.

At 6:47pm, Councilmember Rackley moved to have a 10-minute recess. Councilmember Decker seconded the motion.

Motion approved 7 – 0.

The Workshop reconvened at 6:58pm.

B. Council Open Discussion:

Collective Gardens: Councilmember Carter asked Council if they wanted to consider an ordinance establishing a moratorium for Collective Marijuana Gardens. City Attorney Dionne said his office could draft an ordinance for consideration at the next Council Meeting. Councilmember Lewis asked for the ordinance to be forwarded to Council as soon as possible so they could review it and possibly act on it at the next meeting.

Lighting Ordinance: Deputy Mayor Swatman asked if the Council is interested in considering a light pollution ordinance. He said he could present sample ordinances for council review. Councilmember Decker said this is an issue the Council needs to consider.

Sumner/Bonney Lake Sewer Treatment Plant: Deputy Mayor Swatman asked why the City is paying for part of the flood protection wall. He said the City owns capacity in the treatment plant, but does not own any part of the plant. Councilmember Hamilton said the two cities do not have a current agreement, and both City Councils must sign off on the agreement before it is final. Director Grigsby said the City agreed to move forward with the design of the expansion due to time constraints. The City of Sumner must expand the plant by 2014. City Administrator Morrison said when he spoke to the City of Sumner they presented three governance models: the City could buy capacity in the plant, become a wholesale customer, or
join a joint sewer district. He said regardless of which option the City chooses a completely new agreement must be written. Councilmember Decker asked about the option of partnering with the City of Buckley for sewer treatment capacity. Director Grigsby said the option was cost prohibitive. Councilmember Hamilton said a letter of understanding from County Executive Ladenburg stated the City and the County would work together to develop a sewer treatment plant on the plateau. He said the City could petition the County to work with the City to develop a sewer treatment plant together. He said it does not make sense to have two sewer treatment plants close together. City Administrator Morrison said Director Grigsby is working on a letter requesting the County work with the City on this issue. Deputy Mayor Swatman said he feels it is important to have Council input on the negotiations with Sumner. Mayor Johnson said it may work best to have two councilmembers from both cities participate in the negotiations. He said the Councilmembers could then report to the remainder of the Council.

Heritage Garden: Mayor Johnson suggested removing several of the rhododendrons from the Moriarty Property and placing them in current City parks as an alternative to the Heritage garden plan Winnona Jacobsen presented to Council at the August 9, 2011 Council meeting. He said he is concerned about creating a larger Heritage Garden on the Moriarty Property because there is currently no park development plan for the property.

Councilmember Rackley moved to add a draft ordinance regarding amending Bonney Lake Municipal Code 12.13 as item “F” to the Workshop Agenda. Councilmember Decker seconded the motion. Motion approved 7 – 0.


Councilmember Lewis asked for p.3 of the August 9, 2011 minutes to be amended to “29th & 30th, giving given, and for of”. The corrected minutes were forwarded to the August 23, 2011 meeting for action.


Director Grigsby said the City is required to submit this report every year but it does not obligate the City to spend the funds allocated to each project. He outlined the changes from the report last year. He added this report allows the City to apply for some grant funds. Councilmember Carter said she is disappointed in not seeing any trails included in the plan. She would like to see a trail that connects Angeline Road to Midtown. Director Grigsby said the trails are a part of the Non-Motorized Transportation plan, which is funded by the General Fund. City Administrator Morrison said the funds are currently allocated to Safe Routes to School and future Fennel Creek property acquisitions. Deputy Mayor Swatman asked if these are the same type of funds citizens were discussing at the Public Hearing during the August 9th Council Meeting. Director Grigsby said the Citizens were requesting a Transportation Impact Fee fund credit. Councilmember Lewis noted the Eastown property owners still have not formed a group or come to Council with a proposal for the sewers in Eastown.

E. **Discussion**: Metropolitan Park District
Councilmember Rackley moved to table the Metropolitan Park District discussion to the September 6, 2011 Council Workshop. Councilmember Decker seconded the motion.

Motion approved 6 – 1.
Councilmember Hamilton voted no.


Director Vodopich stated the idea behind this proposed ordinance is to help small businesses by eliminating the System Development Charges (SDC) on small tenant improvements that are accessory to an existing commercial business. Councilmember Rackley stated the City had already collected SDC’s from these businesses. Mayor Johnson said if a business wants to expand, the current fee structure is cost prohibitive and this ordinance will help small businesses expand in the City. Councilmember Lewis said if some of the current successful businesses are able to expand into the vacant spaces, it will be good for the City of Bonney Lake. Councilmember Hamilton asked why the City is charging SDC’s if the business is only expanding. Director Grigsby said the expansion would create more use of the City sewer. City Administrator Morrison said the Mayor has suggested passing this ordinance and then sending the issue back to the Community Development Committee to completely rework the chapter of the municipal code. Councilmember Carter asked if this would affect several businesses that have proposed tenant improvements in the area. Director Vodopich responded if their improvements fall into the parameters of the ordinance it would benefit them.

IV. Executive Session: None.

V. Adjournment:

At 8:10 p.m. Councilmember Rackley moved to adjourn the Workshop. Councilmember Lewis seconded the motion.

Motion to adjourn approved 7 – 0.

Harwood T. Edvalson, CMC
City Clerk

Neil Johnson, Jr.
Mayor

Items Submitted to the August 16, 2011 Council Workshop:

- City of Bonney Lake – Draft Ordinance – Community Development Director Vodopich.
- City of Bonney Lake – Creation of a Metropolitan Park District – Gary Leaf.
- Pierce County – Potential Pierce County Flood Control Zone District – Brian Zeigler.
- Pierce County – Power Point Presentation – Brian Zeigler.
Location: Bonney Lake Justice Center, 9002 Main Street East, Bonney Lake, Washington.

I. CALL TO ORDER – Deputy Mayor Dan Swatman called the meeting to order at 7:00 p.m.

A. Flag Salute: Deputy Mayor Swatman led the audience in the Pledge of Allegiance.

B. Roll Call: Administrative Services Director/City Clerk Harwood Edvalson called the roll. In addition to Deputy Mayor Swatman, elected officials attending were Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis, Councilmember Randy McKibbin, and Councilmember Jim Rackley. Mayor Neil Johnson, Jr. attended via video-conference.

Staff members in attendance were City Administrator Don Morrison, Public Works Director Dan Grigsby, Chief Financial Officer Al Juarez, Police Chief Mike Mitchell, Administrative Services Director/City Clerk Harwood Edvalson, City Attorney Jim Dionne, and Records & Information Specialist Susan Duis.

C. Announcements, Appointments and Presentations:

1. Announcements:

   Mayor Johnson read the proclamation aloud and proclaimed Saturday, September 17, 2011 as Beautify Bonney Lake Day in Bonney Lake. He encouraged citizens and business owners to participate in the yearly event. Lillian McGinnis accepted the proclamation on behalf of Beautify Bonney Lake and thanked Mayor Johnson for his participation since the organization’s beginning eight years ago.

2. Appointments:

   Judge Heslop administered the oath of office to Sergeant James Keller. Mayor Johnson, Councilmembers, staff, and family members in attendance congratulated Sgt. Keller on his accomplishment.

3. Presentations: None.

D. Agenda Modifications: None.

II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:

A. Public Hearings: None.
B. **Citizen Comments:** None.

C. **Correspondence:** None.

III. **COUNCIL COMMITTEE REPORTS:**

A. **Finance Committee:** Deputy Mayor Swatman said the committee met at 5:30 p.m. earlier in the evening and discussed a franchise agreement with Comcast, an amendment to the cable utility tax ordinance, and a proposed public hearing related to the franchise agreement. The committee also reviewed a proposed modification to the City’s legal services agreement with Dionne & Rorick. The committee forwarded Resolution 2148, an agreement for employee background investigations, and approved its meeting notes.

B. **Community Development Committee:** Councilmember Rackley said the committee met on August 16, 2011 and reviewed the 2011 CIP project status report. The committee forwarded Resolution 2144 and Resolution 2145 to the current agenda.

C. **Public Safety Committee:** Councilmember Hamilton said the committee has not met since the last Council meeting.

D. **Other Reports:**

Pierce Transit: Mayor Johnson said he will be forwarding correspondence to Councilmembers related to issues between Pierce Transit agency management and the employee union. He said it is not clear how these issues might affect transit services in Bonney Lake in the future.

Community Events: Councilmembers Carter and Lewis attended the White River Families First coalition meeting in August. She said White River School District wants to get more information out to Bonney Lake residents about events and services, and asked that the City help provide information online and in newsletters. She added that the 4th annual Health Summit is on September 1st, and will include drug and alcohol abuse and domestic violence awareness education.

Women’s Equality Day: Councilmember Carter said that August 26, 2011 is Women’s Equality Day, and the anniversary of the passage of the 19th Amendment to the U.S. Constitution, which gave women the right to vote.

IV. **CONSENT AGENDA:**


B. **Approval of Accounts Payable Checks/Vouchers:** Accounts Payable checks/vouchers #61728 thru 61764 (Including Wire Transfer #s 20010803, 20110802, 35271069) in the amount of $209,886.08; Accounts Payable checks/vouchers #61765 thru 61797 in the amount of $6,281.03; Accounts Payable
checks/vouchers #61798 thru 61833 (including Wire Transfer # 8122011) in the amount of $364,051.10 for a grand total of $580,218.21.

C. Approval of Payroll: Payroll for August 1-15th 2011 for checks 29939-29967 including Direct Deposits and Electronic Transfers in the amount of $ 432,058.72.


E. AB11-90 – Resolution 2139 – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A Renewal Agreement With Qwest To Provide ISDN PRI Circuit For A Term Of 36 Months With A Monthly Charge Of $580.00.

F. AB11-93 – Resolution 2142 – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The City To Submit An Application For The FY2013 Transportation Improvement Board Grant Programs In Connection With The State Route 410 & Sumner Buckley Highway Intersection Improvement Project.


Deputy Mayor Swatman requested that Item G., Resolution 2145, be moved to Community Development Issues, Item B.

Consent Agenda approved as amended 7 – 0.

V. FINANCE COMMITTEE ISSUES:


Councilmember Decker moved to approve Ordinance 1394. Councilmember Lewis seconded the motion.

Deputy Mayor Swatman noted that the Finance Committee has reviewed this item extensively.

Ordinance 1394 approved 7 – 0.


Councilmember Decker moved to approve Resolution 2141. Councilmember Lewis seconded the Motion.
Deputy Mayor Swatman said staff members have worked very hard to get this contract completed. Facilities & Special Project Manager Gary Leaf said the plans still have to be approved by WSDOT but this is a big step in the process. The School Board plans to approve the agreement at their next meeting.

Resolution 2141 approved 7 – 0.

C. **AB11-100 – Resolution 2147** – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Awarding A Contract To Wesco Cascade Controls For The Purchase And Installation Of Variable Frequency Drives.

Councilmember Rackley moved to approve Resolution 2147. Councilmember Decker seconded the motion.

Deputy Mayor Swatman said the Finance Committee reviewed the agreement, and although he has technical questions, he feels this is a good project. Councilmember Lewis noted the CDC also discussed the item.

Resolution 2147 approved 7 – 0.

VI. COMMUNITY DEVELOPMENT COMMITTEE ISSUES:

A. **AB11-96 – Resolution 2144** – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing Awarding The Contract With Northwest Concrete Waterproofing For The Sewer Manhole Rehabilitation Services.

Councilmember Decker moved to approve Resolution 2144. Councilmember Rackley seconded the motion.

Director Grigsby confirmed that the City Attorney’s office has reviewed the proposed agreement extensively. Deputy Mayor Swatman asked why some manholes have needed rehabilitation relatively quickly, and questioned the quality of the original equipment and the value of this project. Councilmembers Lewis and Rackley said staff keep records on each individual manhole and can identify which ones need rehabilitation. Councilmember Carter asked how the project is funded and prioritized. Director Grigsby said per the contract, staff and contractors will evaluate each manhole to determine which ones need work, and how much work each one needs, so the budgeted funds will be used as fully as possible. He added that this is a CIP project that has been in the budget for several years.

Resolution 2144 approved 6 – 1.
Councilmember Decker voted no.

B. **AB11-97 – Resolution 2145** – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing A Contract With RH2 Engineering For The On Site Sewer Abatement Master Plan.

Councilmember Decker moved to approve Resolution 2145. Councilmember Rackley seconded the motion.
Deputy Mayor Swatman asked if approval of this project implies that the City will continue funding future sewer abatement projects. Director Grigsby said the City has a recurring CIP project in the budget to reduce septic systems in the City limits. This proposed project would be the third project in the program. He said Community Development Committee members requested a master plan be created to better understand the project status and identify future project priorities. He said the City is currently working to install dry lines in the Cedarview development. He said the project is not yet complete, but the City will do a little more each year to extend sewer to the development. Councilmember Decker noted the area is zoned R-2 and he feels the residents do not want duplexes in the area, and therefore may not want sewer to be extended. Deputy Mayor Swatman said these projects increase rates for utility customers.

Councilmember Rackley said the Community Development Committee felt that having a plan would help the City save money by planning for future projects, and would provide additional background for how projects are selected. Director Grigsby confirmed that homeowners in Cedarview would have to hook up to the sewer line, once it is available, if their septic system fails or at the time they sell their house. Director Grigsby said the City provides an agreement for realtors which includes the cost for sewer hookup in the closing costs for home sales.

Resolution 2145 approved 7 – 0.

VII. PUBLIC SAFETY COMMITTEE ISSUES: None.

VIII. FULL COUNCIL ISSUES:


Councilmember Decker moved to approve Ordinance 1395. Councilmember Lewis seconded the motion.

Councilmember Carter said this chapter needs additional amendments, and asked if this item could be tabled until the entire chapter has been reviewed. Mayor Johnson said the proposed amendments are time-sensitive and relate to a specific property owner who has been working with the Community Development Department to make improvements to his business, the Midtown Grill. He said the proposed ordinance helps small businesses by not requiring property owners to pay additional System Development Charges (SDC) when completing tenant improvements under a certain size limit. Mayor Johnson said Community Development Director Vodopich, who determined the calculations, was not in attendance to offer more details. Councilmember Lewis said based on committee discussions, the 50% threshold was based on other municipalities, as this level does not usually require additional sewer system upgrades. Councilmember Rackley noted that for the business in question, the City will not lose any fees because the business is expanding into another existing business space. Councilmember Hamilton expressed concern that the ordinance is too narrowly focused to a particular business owner and may not work.
for others, and could present unforeseen issues in the future. Mayor Johnson said Director Vodopich drafted the ordinance with various types of businesses in mind, to allow other owners to expand into neighboring vacant spaces.

City Administrator Morrison said that the adjacent business paid a lower SDC rate than a restaurant, as it was only a video game store. He added, however, that the original Chinese restaurant in the Midtown Grill space had more seats than the later restaurants that have taken its place, so the proposed tenant improvements even out the total seating.

Deputy Mayor Swatman said he supports the ordinance as it provides flexibility for different types of businesses, and noted that different restaurants can have very different impacts even when they are in the same class. Councilmember Lewis said other businesses have made inquiries to the City about similar improvements, so there is interest in this option for more than one business owner.

Councilmember Carter said the Council discussed a similar ordinance a year or two ago but did not act on it. She said this proposed ordinance came to Council very quickly, and said she has concerns that it is too site-specific. Councilmember Decker said he supports the ordinance but feels the whole chapter should still be reviewed for amendments in the future.

Motion approved 6 – 1.
Councilmember Carter voted no.


Councilmember Rackley moved to approve Ordinance 1396. Councilmember Decker seconded the motion.

City Administrator Morrison said the Council needs to select a date for a Public Hearing to complete Section 4 of the ordinance. City Attorney Dionne suggested that the Council set an open hearing at the next regular meeting.

Councilmember Carter moved to set a Public Hearing for the next regular Council Meeting, September 13, 2011, at 7:00 p.m. Councilmember Decker seconded the motion.

Motion to amend Ordinance 1396 approved 7 – 0.

Ordinance 1396 approved as amended 7 – 0.

C. AB11-104 – A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Setting A Joint Special Meeting Of The City Council And Planning Commission For August 30, 2011 At 5:30 p.m.
Councilmember Lewis moved to approve AB11-104. Councilmember Rackley seconded the motion.

Deputy Mayor Swatman said Planning Commissioners are eager to meet with the Council and asked if anyone would be unable to attend. All the Councilmembers said they should be able to attend the special meeting.

Motion approved 7 – 0.

IX. EXECUTIVE SESSION: None.

X. ADJOURNMENT:

At 7:50 p.m., Councilmember Rackley moved to adjourn the meeting. Councilmember Lewis seconded the motion.

Motion to adjourn approved 7 – 0.

Harwood Edvalson, CMC
City Clerk

Neil Johnson
Mayor

Items presented to Council at the August 23, 2011 Meeting: None.
CALL TO ORDER – Deputy Mayor Swatman called the meeting to order at 5:31 p.m.

Roll Call: Administrative Specialist Shawn Campbell called the roll. In addition to Deputy Mayor Dan Swatman, elected officials attending were, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis, Councilmember Randy McKibbin, Councilmember Jim Rackley. Appointed officials attending were, Commissioner Grant Sulham, Commissioner L. Winnona Jacobsen, Commissioner Richards Rawlings, and Commissioner Brad Doll. Commissioner Katrina Minton-Davis and Commissioner David Eck arrived at approximately 5:40 pm. Mayor Neil Johnson and Commissioner Brandon Fredrick were absent.

Staff members in attendance were City Administrator Don Morrison, Community Development Director John Vodopich, Planning Manager Heather Stinson and Administrative Specialist Shawn Campbell.

III. Agenda Items:

1. Discussion: Planning Commission Workplan.

Planning Manager Stinson provided an update on each item on the Planning Commission Workplan.

Update Title 14: Planning Manager Stinson said this item has been completed and is ready to bring forward to the Council for consideration.

Design Standards for Nightclubs and Noise Control Standards for New Construction or Redevelopment: Planning Manager Stinson said these two items have been combined in an ordinance and are currently being worked on by the Planning Commission.

Provisions for Stormwater Permits and Civil Permits: Planning Manager Stinson said these two items are still working though staff revision, and will not be ready for Council review during the 3rd quarter per the workplan schedule.

Update Comprehensive Plan Land Use Element to include CUGA subareas 1, 2, and 3 and Pre-Zone CUGA subareas 1, 2, and 3: Planning Manager Stinson said the Planning Commission is ready to bring a recommendation forward to Council that recognizes that area as the proposed Urban Growth Area. She said they are also considering adding a land use designation for the area after it is annexed. She said the Planning Commission is also working on a zoning designation for the area, but they will require more time. She said because the annexation did not go through, the Commission will continue working on the
zoning portion or postpone this portion until the annexation is closer to moving forward. Councilmember Rackley said the City needs to move forward with the zoning for the area. He said the City may need to update the zoning every year until the annexation is complete, but this would show Pierce County that the City is serious about planning for the area. He added the City could create a master plan community zone. Planning Manager Stinson said the zoning portion will need to be pushed into 2012 but the remainder of the update can move forward in 2011. Commissioner Minton-Davis said the first step is including the area in the proposed UGA, and then the Commission can work on the zoning issues.

Councilmember Lewis said Council can have proposed zoning for the area and make changes as necessary. Councilmember Hamilton said the City could have a pre-annexation development agreement with a developer. Commissioner Jacobsen said the City does not have any master plan community zoning currently. She added that since the zoning does not need to be completed by the end of the year the Planning Commission could focus on this issue in the first part of the new year. City Administrator Morrison reminded Council and the Commission that Pierce County has stated the City must plan for the area. He added the administration is moving forward with this item. Commissioner Sulham said the Planning Commission has a draft ordinance for the zoning that has been reviewed by the legal department. She said the commission is hesitant to recommend the ordinance because they feel it still needs substantial work.

Cultural Resources Plan: Planning Manager Stinson asked for clarification on Council’s intent in regards to the Cultural Resources Plan. She said the administration informed the Commissioners that it would be a standalone plan and not part of the Comprehensive Plan. She said the plan only needs to go through the Planning Commission if the Council intends to make it a part of the Comprehensive Plan. Commissioner Jacobsen said the Historical element of the Cultural Resources Plan came before the Council in January of 2009 and at that time, Council indicated they directed the Commission to include it in the Comprehensive Plan. She said the element needs to be part of the Comprehensive Plan to ensure it is enforceable and not forgotten. City Administrator Morrison said the Cultural Resources plan does not need to be part of the Comprehensive Plan. He said if the plan is intended to be a guide, then it could be enacted as a City policy. If the Council wanted the Cultural Resources Plan to be enforceable, then it would need to be a part of the Comprehensive Plan. Council expressed their desire to have this plan be a part of the Comprehensive Plan, and expressed concern that the plan was not moving forward with the other Comprehensive Plan amendments.

Midtown Plan: Planning Manager Stinson said this item is on schedule and moving forward as planned.

Shoreline Master Plan: Planning Manager Stinson said this item is also on schedule.

Update Title 18 including the Use Matrix: Planning Manager Stinson said the Planning Commission is looking at creating a new designation called Midtown zoning. She said they are looking at which commercial uses shall be included in the zones. Councilmember Hamilton suggested a Midtown overlay. Commissioner Minton-Davis said they are looking at changing the zoning instead of changing the allowed uses. Commissioner Sulham said the single zoning is more straightforward and simple than creating different zones for each area of the City.
Update the Transportation Plan: Planning Manager Stinson said this will be pushed to 2012 due to budget constraints. City Administrator Morrison said the Transportation plan is a budgeted item and will need to be updated to allow the City to apply for grants. He said the Pierce County Regional Council has granted the City provisional certification of the Transportation Plan with the understanding the City would update the plan by the end of 2012. He said the City has not missed any grant opportunities due to the outdated plan. He added Council would need to decide if they want to spend the money to update the plan now or wait until later next year. Director Vodopich said if the City was successful in winning a grant the update would need to be completed before the City could receive any of the funds.

Parks Element of the Comprehensive Plan: Planning Manager Stinson said the Park Element is on schedule. She added there is an element for Eastown ready for Council review.

2. Open Discussion

Planning Commission Work Plan: Commissioner Sulham said the Planning Commission Bylaws have not been updated since 2001. He suggested the Council add updating the Bylaws to the workplan. Deputy Mayor Swatman said the Commission could choose to work on this item administratively.

Commissioner Minton-Davis asked Council to provide more direction when they send an item to the Planning Commission. She suggested a staff report be included with each item. Councilmember Carter said it may be helpful for the commissioners to read the minutes and listen to the audio from the Council meetings regarding items sent from Council.

Planning Manager Stinson said if Council intends to add a Marijuana Collective Gardens ordinance to the Planning Commission’s Work Plan, it would need to be voted on by the Council. Councilmember Carter said the issue is scheduled for a Public Hearing at the September 13, 2011 Council Meeting, then it would be brought forward for a vote.

Joint Council / Planning Commission Meetings: Deputy Mayor Swatman asked if Commissioners and Councilmembers found the joint meetings effective. Commissioners and Councilmembers agreed the meetings are effective and would like to schedule them further in advance to ensure both groups are prepared for the meeting. Councilmember Carter suggested having a joint meeting in conjunction with a regular Council meeting.

Walkable Bonney Lake: Commissioner Jacobsen recommended reading an opinion piece in the Sumner Bonney Lake Patch on a walkable Bonney Lake. She said the article is well written and points out many concerns for pedestrian transportation for the area.

Planning Commission Meetings: Deputy Mayor Swatman said the Bonney Lake Planning Commission is one of the few in the State that receive a salary and commissioners need to be held accountable to the tax payers. He suggested members sign in and sign out at each meeting.

Council thanked the Planning Commission for their hard work and dedication to the City.

At 6:52 p.m., Councilmember Rackley moved for a 10 minute recess. Councilmember McKibbin seconded the motion.

Motion approved 7 – 0.
VI. **Executive Session:** Council Adjourned to Executive Session at 7:05 for 10 minutes to discuss the minimum price at which real estate will be offered for lease pursuant to RCW 42.30.110(c).

V. **Adjournment:**

At 7:15 p.m., Councilmember Rackley moved to adjourn the meeting. Councilmember Lewis seconded the motion.

Motion to adjourn approved 7 – 0.

____________________________________  ______________________________
Harwood Edvalson, CMC                  Neil Johnson
City Clerk                               Mayor

Items presented to Council at the August 30, 2011 Meeting: *None.*
City of Bonney Lake, Washington
City Council Agenda Bill (AB)

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<td>Resolution</td>
<td>2146</td>
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**Agenda Subject:** Modification to Legal Services Agreement with Dionne and Rorick

**Full Title/Motion:** A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, approving a modification to the Legal Services contract with Dionne and Rorick...

**Administrative Recommendation:** Approve

**Background Summary:** With the City's hiring of its own City Prosecutor as a City employee, Dionne and Rorick has proposed a modification to the legal services agreement to reflect this change. The base retainer rate remains the same as it is today.

**Attachments:** Resolution and Exhibit; Background Material

**BUDGET INFORMATION**

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**Budget Explanation:** NA

**COMMITTEE, BOARD & COMMISSION REVIEW**

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Forward to: Consent
Agenda: Yes No

**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

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**APPROVALS**

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<th>Mayor:</th>
<th>Date Reviewed by City Attorney:</th>
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*Version Oct. 2010*
RESOLUTION NO. 2146

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT AMENDMENT WITH DIONNE AND RORICK FOR LEGAL SERVICES.

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign a contract amendment with Dionne and Rorick for Legal Services, attached here to as Exhibit “A” and incorporated herein as if fully set forth.

PASSED by the City Council this ___ day of ____________, 2011.

______________________________
Neil Johnson, Mayor

ATTEST:

______________________________
Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

______________________________
James Dionne, City Attorney

Agenda Packet p. 26 of 140
Exhibit “A” to Resolution No. 2146

AGREEMENT MODIFICATION

For the purpose of providing legal services and in consideration of the following mutual promises and conditions, the law firm of Dionne & Rorick, hereinafter referred to as “Attorney,” and the City of Bonney Lake, hereinafter referred to as “City,” hereby agree to modify the current contract relationship dated October 12, 1999 by replacing the current section 2 of that contract to read as follows and to begin in effect as of September 1, 2011:

2. (a) Attorney agrees to provide up to 45 retainer hours per month for the flat fee of $4975 per month to the City of Bonney Lake for all Departments other than Public Works. For purposes of this subsection (a), Criminal Court shall be considered to be a City Department, provided that, Attorney shall only provide backup services to a City-hired and supervised prosecuting attorney/employee of the City. Additional hours will be billed at $165 per hour; (b) Attorney agrees to provide six (6) retainer hours per month for the Public Works Department for the flat fee of $900 per month. Additional hours will be billed at $175 per hour; (c) These amounts and rates shall increase each fiscal year, beginning in January 2012 by that percentage increase set forth in the All-Urban Consumers Index (CPI-U) for the Seattle-Tacoma-Bremerton area for the immediately preceding calendar year.
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City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Administrative Services / Jenna Richardson
Meeting/Workshop Date: 13 September 2011
Agenda Bill Number: AB11-103

Agenda Item Type: Resolution
Ordinance/Resolution Number: 2148
Councilmember Sponsor:

Agenda Subject: Client Services Agreement for employee background investigations.

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Authorize The Mayor To Sign An Updated Version Of The Client Service Agreement With Pinnacle Investigation.

Administrative Recommendation: Approve

Background Summary: The City of Bonney Lake requires a Pre-Employment background check for regular and temporary positions within the City. A Client Services Agreement with Pinnacle Investigations was signed in 2006, however, the company has updated the Agreement and has asked that it be signed. By signing the agreement, the City will be allowed to continue to use Pinnacle Investigations for Pre-Employment background checks.

Attachments: Agreement and cost listing for services

BUDGET INFORMATION

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Budget Explanation: This item is included in the 2011/2012 budget. The Required Expenditure will vary depending upon the number of employees hired in any given year.

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review:
Finance Committee
Date: 23 August 2011
Chair/Councilmember: Dan Swatman
Councilmember: James Rackley
Councilmember: Mark Hamilton

Consent Agenda: Yes No

Forward to: Council Meeting

Commission/Board Review:
Hearing Examiner Review:

COUNCIL ACTION

Workshop Date(s):
Meeting Date(s): September 13, 2011
Public Hearing Date(s):
Tabled to Date:

APPROVALS

Director: HTE
Mayor: 
Date Reviewed by City Attorney: 
(if applicable):
RESOLUTION NO. 2148

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING AN UPDATED CLIENT SERVICES AGREEMENT WITH PINNACLE INVESTIGATIONS FOR PRE-EMPLOYMENT BACKGROUND CHECKS FOR APPLICANTS CONSIDERED FOR A REGULAR OR TEMPORARY POSITION OF EMPLOYMENT WITH THE CITY.

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the agreement attached hereto and incorporated hereby in “Attachment A”.

PASSED by the City Council this 13TH of September, 2011.

__________________________
Mayor Neil Johnson, Jr.

ATTEST:

__________________________
Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

__________________________
James Dionne, City Attorney
Client Service Agreement

In consideration of Pinnacle Investigations Corp. agreeing to provide investigative and information services, and for the promise of payment to Pinnacle Investigations Corp. as set forth herein, the following terms and conditions are hereby agreed by and between Pinnacle Investigations Corp hereinafter referred to as Pinnacle and City of Bonney Lake, the entity contracting with Pinnacle (hereinafter referred to as “Client”). This agreement is hereinafter referred to as the “Contract”.

1) Payments for Services. The Client agrees to pay Pinnacle for its services and those of its employees at the rates set forth in any accompanying “Pre-Employment Package Price List” and “Element Price List”. Prices are subject to change with thirty (30) days notice. Payment will be made by company check or cashier check. Payment terms are Net 20, unless otherwise agreed upon in writing. The Client agrees that they will pay all bills for service at agreed upon rates. Pinnacle shall issue an invoice at the time such services are rendered, due and payable within twenty (20) days of receipt of invoice, with a 1-1/2% per month finance charge for payments made past that date. Such nonpayment may result in the termination of Client’s access privileges and suspension of Pinnacle’s obligation to perform any further services. Services are subject to Washington State sales tax, where applicable. Client shall be responsible for all costs of collection, including reasonable attorney fees and court costs.

2) Guarantee of Results. The Client acknowledges that Pinnacle does not guarantee results from its investigative efforts. The Client furthermore acknowledges that Pinnacle will use its best efforts and all resources readily available on behalf of the Client, but recognizes that we are limited to the accuracy of the information and/or materials resourced and makes no warranties or representations of the accuracy of the information it provides.

3) Compliance With Laws and Regulations. The parties agree that in connection with the investigation or consultation for which Pinnacle is retained by this Contract, Pinnacle and Client will at all times comply with the laws and regulations of the United States, the State of Washington, and any jurisdiction in which Pinnacle is performing services on Client’s behalf, and that the information provided by Pinnacle is intended solely for the furtherance of legitimate and lawful pursuits. In addition, Pinnacle strictly adheres to the Financial Services Act of 1999 and does not use pretext or other deceptive practices while conducting asset searches. Pinnacle and its employees use a combination of public records, private and court instrument sources to obtain all information within federal and state guidelines. Client agrees to hold Pinnacle harmless in regards to any legal issues that may occur after the final report is issued to the Client, due to Client’s failure to comply with the terms of this section or its misuse of the information contained in the final report, but specifically excluding any legal issues that arise due to the negligence of Pinnacle in performing its obligations under this Contract.

4) Confidentiality of Information. All information and personal identifiers submitted by the client to Pinnacle will be considered confidential and will not be sold or distributed to any individual, corporation or organization. Information provided will be used exclusively for the criminal background process and will not be utilized for any other purposes. If required by law, Pinnacle will comply with law enforcement inquiries for information that is requested by legal authorities.

5) Indemnification. The Client agrees to indemnify, protect and hold harmless Pinnacle for any losses and expenses that Pinnacle may incur or become liable as a result of the willful or negligent acts or omissions of the Client in performing its obligations under this Contract. By signature on this Contract, Client asserts, that in the event they have requested a credit report, they will abide by all requirements of the Fair Credit Reporting Act (FCRA), 15 U.S.C. &1681 et seq. Pinnacle agrees to indemnify, protect and hold harmless, Client for any losses or expenses that Client may incur or become liable as a result of the willful or negligent acts or omissions of Pinnacle in performing its obligations under this Contract.

6) Limitation on Liability. Neither party will be liable special, indirect, or consequential damages arising out of or in connection with this Contract, whether based on contract, tort, including negligence or otherwise.
7) **Dispute Resolution Through Binding Arbitration.** Except that either party may seek any appropriate action (such as injunctive, equitable, or similar relief of a court order, with or without penalties, to comply with the terms of this Contract) from a court to prevent or mitigate a breach or a further breach, as the case may be, of this Contract, all disputes, controversies, or claims arising out of or in relation to this Contract shall be finally settled under the rules of the American Arbitration Association. The place of arbitration will be determined and agreed on by both parties. The cost of the American Arbitration Association will be divided equally between the Client and Pinnacle.

8) **Information is proprietary.** All educational materials provided by Pinnacle to the Client remains the exclusive property of Pinnacle for use by the Client, and are not to be redistributed without prior permission.

9) **Applicable Laws.** This Contract and any disputes, civil actions or other proceedings shall be governed by the laws of the State of Washington and the arbitration provisions set forth in Section 6 above.

10) **Forum Selection.** The Courts of the State of Washington shall have exclusive jurisdiction over any dispute related to this Contract.

11) **Severability.** In the event that a term or condition of this Contract is held to be invalid or unenforceable, the remainder of the remaining terms of the Contract shall stay remain in full force or effect.

12) **Required Documents** The Client agrees to provide Pinnacle with a signed Client Service and End-User Agreement and copies of their Business License and/or Articles of Incorporations, Bank References, etc. as proof of their legitimacy.

13) **Contract Represents Entire Agreement.** This Contract constitutes the entirety of the agreement between Client and Pinnacle Investigations. This Contract supersedes any previous oral or written communications. This Contract may not be modified or amended except in writing and mutually agreed upon by both parties.

**I STATE THAT I HAVE READ THIS CONTRACT IN IT’S ENTIRETY, UNDERSTAND IT’S TERMS AND CONDITIONS AND AGREE TO BE BOUND BY THOSE TERMS AND CONDITIONS.**

By: ____________________________  By: Pinnacle Investigations
City of Bonney Lake  
*Company Name*

By: ____________________________  By: ____________________________
Signing Agent  
*Pinnacle Investigations Signing Agent*

Date: 09 / 13 / 2011  
Date: _____ / _____ / _____

By: ____________________________  By: ____________________________
*Neil Johnson, Mayor*  
*Printed Name*

P.O. Box 7380  
*Company Address*

Bonney Lake  
*City*  
WA  
*State*  
98391  
*Zip*

(253) 862-8602  
*Company Phone*  
(253) 862-8538  
*Company Fax*
END-USER AGREEMENT & CERTIFICATION FROM EMPLOYER TO CONSUMER REPORTING AGENCY

In compliance with the Fair Credit Reporting Act (the “Act”) and applicable state law, Employer hereby certifies to [Consumer Reporting Agency] that it will comply with the following provisions.

Employer certifies that prior to obtaining or causing a “consumer report” and/or an “investigative consumer report” to be obtained for employment purposes:

1. A clear and conspicuous disclosure, in a document consisting solely of the disclosure, will be made in writing to the consumer. The disclosure will explain that a consumer report and/or an investigative consumer report may be obtained for employment purposes, and will be presented to the consumer before the report is procured or caused to be procured. The disclosure will satisfy all requirements identified in Section 606(a)(1) of the Act.

2. The consumer will have authorized, in writing, the obtaining of the report by Employer.

Should the consumer make a written request within a reasonable amount of time, Employer will provide:

1. Information about whether an investigative consumer report has been requested;

2. If an investigative consumer report has been requested, written disclosure of the nature and scope of the investigation requested; and

3. The name and address of the outside agency to whom requests for any of these reports has been made.

This information will be provided no later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

Should the consumer be denied employment, or other adverse action taken, in whole or in part on the basis of the report, Employer will provide to the applicant or employee:

1. A copy of the report; and


The information from the report will not be used in violation of any applicable federal or state equal employment opportunity laws or regulations.

California Employers Only: In compliance with applicable provisions of California state law, Employer certifies the following:

Employer has made all disclosures required by California Civil Code section 1786.16(a) and will comply with all of the requirements of California Civil Code section 1786.16(b).

1. [If a copy of the report will be provided to the consumer directly by the employer, include the following: If an investigative consumer report is requested for reasons other than suspicion of wrongdoing or misconduct by the consumer, then Employer will provide the consumer with a copy of the report, as required by California Civil Code section 1786.16.] [If a copy of the report will be provided to the consumer by the consumer reporting agency, include the following: If an investigative consumer report is requested and the consumer checked the box on the authorization
form signifying s/he wants a copy of the investigative consumer report when and if s/he is entitled to one under California law, then Employer hereby requests that a copy of the report be sent to the subject of the report unless the report is requested in connection with an investigation based upon suspicion of wrongdoing or misconduct by the consumer and Employer has notified you that a copy should not be provided to the consumer, in accordance with California Civil Code section 1786.16.

2. If a credit report is requested, and if the consumer checked the box on the authorization form signifying s/he wants a copy of the credit report, then the Company hereby requests that a copy of the credit report be sent to the subject of the report, in accordance with California Civil Code section 1785.20.5.

Section 604 of the FCRA states any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

1. In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.
2. In accordance with the written instructions of the consumer to whom it relates.
3. To a person which it has reason to believe:
   a. intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or
   b. intends to use the information for employment purposes; or
   c. intends to use the information in connection with the underwriting of insurance involving the consumer; or
   d. intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or
   e. intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
4. Otherwise has a legitimate business need for the information
   a. in connection with a business transaction that is initiated by the consumer; or
   b. to review an account to determine whether the consumer continues to meet the terms of the account.

Please state Employer’s Permissible Purpose for acquiring an (Investigative) Consumer Report, and sign below to acknowledge receipt of the Notice of Users to Consumer Reports.

______________________________  ________________________________
Permissible Purpose

______________________________  ________________________________
Company Representative       Title

______________________________  ________________________________
Signature        Date

Applicant / Employee Background Check

______________________________  ________________________________
Neil Johnson, Jr.               Mayor, City of Bonney Lake
Company Representative         Title

______________________________  ________________________________
Signature        Date
**PRE-EMPLOYMENT PACKAGES**

UNLIMITED COURT DOCKET LOCATIONS AND NAME CHECKS FOR ONE FLAT FEE - BRONZE AND ABOVE**

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<tr>
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<th>Copper Star</th>
<th>Brass Star</th>
<th>Bronze Star</th>
<th>Silver Star</th>
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<tr>
<td>NationalFlash Criminal History - <strong>Note:</strong> Most Background Screening Companies call this a National Search but it includes only 3% of Court Records across the United States! Caution – This search alone does not constitute due diligence for Employment Background purposes and should only be used in combination with a Court Docket level Criminal History Search. <strong>$6.00</strong></td>
<td>Criminal History <em>(1 name – 1 location)</em> <strong>$10.00</strong></td>
<td>Social Security Association Alias &amp; Maiden Name Research National Sex Offender Search Federal Court Criminal Check Criminal History – <em>(All names–Current location only)</em> Caution – This search may not constitute a due diligence search for Employment purposes. <strong>$25.00</strong></td>
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<td>Social Security Association Alias and Maiden Name Research National Sex Offender Search Criminal History † <em>(All names – All locations)</em> Federal Court Criminal Check <strong>$35.00</strong></td>
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<tr>
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<td><strong>Platinum Star</strong></td>
<td><strong>Brass Star</strong></td>
<td><strong>Bronze Star</strong></td>
<td><strong>Silver Star</strong></td>
</tr>
<tr>
<td>Social Security Association Alias and Maiden Name Research National Sex Offender Search Criminal History † <em>(All names – All locations)</em> Federal Court Criminal Check Federal Court Civil Check Traffic Report Professional Certification/License (1) Education/Degree Verification (1) Employment Verification (1) <strong>$80.00</strong></td>
<td>Social Security Association Alias and Maiden Name Research National Sex Offender Search Criminal History † <em>(All names – All locations)</em> Federal Court Criminal Check Federal Court Civil Check Traffic Report Professional Certification/License (1) Education/Degree Verification (2) Employment Verification (2) Listed References (2) Developed References (1) Credit Report* <strong>$145.00</strong></td>
<td>Social Security Association Alias &amp; Maiden Name Research National Sex Offender Search Federal Court Criminal Check Criminal History † <em>(All names – All locations)</em> Federal Court Criminal Check <strong>$35.00</strong></td>
<td>Social Security Association Alias and Maiden Name Research Address History NationalFlash Criminal History <strong>$25.00</strong> Criminal History † <em>(All names – All locations)</em> Federal Court Criminal Check Federal Court Civil Check Patriot Act / OFAC Search Traffic Report Driver’s License Validation Professional Certification/Licensing Education/Degree Verification (3) Employment Verification (3) Listed References (2) Developed References (3) Credit Report* <strong>$185.00</strong></td>
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**STAND ALONE ADD-ON SERVICES**

| NationalFlash Criminal History | **Education Verification** | **Patriot Act/OFAC Search** |
| Credit Report* | Employment Verification | Address History |
| Traffic Report | Professional Certification/Licensing | State Civil Court Records |
| Driver's License Validation | Listed Reference | Federal Civil Court Records |
| Motor Vehicles Report | Developed Reference | **UNIQUE METHODS** |

| Real-Time Court Record | **Law Enforcement Experience** |
| Searches Access to Every Court in the Nation | Quick Turnaround on All Reports |
| Identity Verification Process | Customized Packaging |
| Background Investigations, not Data Screening | Broad Spectrum of Other Investigative Services |
| Women-Owned Business | Educational Seminars |

* Requires pre-authorization  **additional Court Access fees may apply  † all permanent address locations within last seven years
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

<table>
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<tr>
<th>Department/Staff Contact:</th>
<th>Meeting/Workshop Date:</th>
<th>Agenda Bill Number:</th>
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<td>PW / John Woodcock</td>
<td>13 September 2011</td>
<td>AB11-108</td>
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<th>Agenda Item Type:</th>
<th>Ordinance/Resolution Number:</th>
<th>Councilmember Sponsor:</th>
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<tr>
<td>Resolution</td>
<td>2149</td>
<td>Councilmember Rackely</td>
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**Agenda Subject:** Award Contract with Henderson Partners, LLC for West Tapps Sidewalk and Watermain Improvements.

**Full Title/Motion:** A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Awarding The Contract For West Tapps Sidewalk And Watermain Improvements To Henderson Partners, LLC.

**Administrative Recommendation:**

**Background Summary:** The City opened bids for the project on August 31, 2011. 4 Bids were received and Henderson Partners, LLC was the apparent low bidder with a bid of $529,672.30, 14% below the Engineer's Estimate of $615,808.23. Staff has determined that their proposal is consistent with the requirements of the contract and bid specifications.

The City of Bonney Lake has a pedestrian link gap of 680 feet between Allan Yorke Park and the overflow parking area located on the recently acquired property to the south. To provide a pedestrian link between the two areas the city will construct this sidewalk link in conjunction with approximately 1,400 feet on new watermain to replace the line that has a history of leakage.

**Attachments:** Resolution 2149, Agreement, Bid Tabulation, Map

**BUDGET INFORMATION**

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<td>$600,000.00</td>
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**Budget Explanation:**

- Drainage Improvements- $100,000
- Neighborhood Sidewalk Improvements- $33,580.55
- Leaky Mains (PWTFL 2): Phase 2D- $475,542.60

Construction contract amount: $529,672.30 +10% Contingency: $52,967.23 + 5% project mgt: $26,483.62= Total: $609,123.

**COMMITTEE, BOARD & COMMISSION REVIEW**

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<td>Chair/Councilmember: James Rackley</td>
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<td>Councilmember: Donn Lewis</td>
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<td>Councilmember: Randy McKibbin</td>
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<td>Forward to:</td>
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**Commission/Board Review:**

**Hearing Examiner Review:**
## COUNCIL ACTION

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## APPROVALS

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<th>Director:</th>
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<tr>
<td>D. Grigsby</td>
<td></td>
<td>(if applicable):</td>
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*Version Oct. 2010*
RESOLUTION NO. 2149

A RESOLUTION OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING AWARDING THE CONTRACT WITH HENDERSON PARTNERS LLC FOR THE CONSTRUCTION OF THE WEST TAPPS SIDEWALK AND WATERMAIN IMPROVEMENTS.

WHEREAS, the City Council by Resolution 1253 adopted the Non-Motorized Transportation Plan on August 28, 2007 identifying the area along the West Tapps Highway as an area in need of a pedestrian path; and

WHEREAS, the City has approved a budget in 2011 Street CIP for Neighborhood Sidewalk Improvements; and

WHEREAS, the City has approved a budget in 2011 that includes the Leaky Water Main Replacement effort; and

WHEREAS, the City advertised the West Tapps Sidewalk and Watermain Improvements and opened bids on August 31, 2011 and has determined the lowest responsible bid for the contract was received from Henderson Partners, LLC; and

NOW, THEREFORE, BE IT RESOLVED that the City of Bonney Lake Council does hereby authorize the Mayor to sign the attached contract with Henderson Partners LLC in the amount of $529,672.30, which includes tax.

BE IT FURTHER RESOLVED that the City of Bonney Lake Council does hereby authorize a 10% Construction Contingency ($52,967.23) amount based on the contract bid amount as well as a 5% Construction Engineering ($26,483.62) amount based on the contract bid.

PASSED by the City Council this 13th day of September, 2011.

__________________________________________
Neil Johnson, Mayor

AUTHENTICATED:

Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

__________________________________________
James J. Dionne, City Attorney
PUBLIC WORKS CONTRACT

THIS AGREEMENT is made and entered into in duplicate this 6 day of Sept, 2011, by and between the CITY OF BONNEY LAKE, hereinafter called the "City," and

of __________________________, hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Agreement, the parties hereto covenant and agree as follows:

1. The Contractor shall do all work and furnish all labor, materials, and equipment for:

CITY OF BONNEY LAKE

West Tapps Sidewalk and Water Main Improvements

In accordance with and as described in the attached Plans and Specifications, and the 2010 Standard Specifications for Road, Bridge, and Municipal Construction, prepared by the Washington State Department of Transportation with the Washington State Chapter of the American Public Works Association (APWA) and all amendments thereto, which are by this reference incorporated herein and made a part hereof, and shall perform any alterations in, or additions to, the work provided under this Contract and every part thereof.

Work shall start immediately after Notice to Proceed and be completed within the time specified in the Special Provisions of the attached Plans and Specifications.

If said work and identified milestones are not completed within the time specified, the Contractor agrees to pay to the City liquidated damages as specified in the Standard Specifications for each working day said work remains incomplete after expiration of the specified time.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract and every part thereof, except such as that mentioned in the Specifications to be furnished by the City.

2. The City hereby promises and agrees with the Contractor to employ, and does employ, the Contractor to provide the materials and to do and cause to be done the above-described work and to complete and finish the same according to the attached Plans and Specifications and the terms and conditions herein contained; and hereby contracts to pay for the same according to the attached Specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in the Contract.
3. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, particularly public and private utilities; or reasonably foreseeable delays.

4. In addition to limiting claims for unreasonable delays to the actual downtime of labor and equipment, as above provided, Contractor agrees that the City’s liability to the Contractor for payment of claims or damages of any kind whatsoever relating to this Contract shall be limited to direct costs as provided under the force account provisions of the Standard Specifications. Contractor waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that do not relate to the prices stated herein or are not specific as to the actual, direct costs of contract work as defined in the Standard Specifications force account provisions.

5. For purposes of applying RCW 4.24.115 to this Contract, Contractor and City agree that the term “damages” applies only to the finding in a judicial proceeding and is exclusive of third-party claims for damage preliminary thereto. The Contractor agrees to defend, indemnify, and hold harmless the City from all claims for damages by third parties, including costs and reasonable attorney’s fees in the defense of claims for damages arising from performance of the Contractor’s express or implied obligations under this Contract. Contractor specifically and expressly waives immunity under Industrial Insurance Law, Title 51 RCW. This provision has been specifically negotiated. Contractor further waives any right of contribution against the City. The Contractor agrees that all third-party claims for damages against the City for which Contractor’s insurance carrier does not accept defense of the City may be tendered by the City to the Contractor who shall, if so tendered by the City, accept and undertake to defend or settle with the claimant. The City retains the right to approve claims investigation and counsel assigned to said claim, and all investigation of legal work performed regarding said claim shall be performed under a fiduciary relationship to the City. In the event that the City agrees or a court finds that the claim arises from the sole negligence of the City, this indemnification shall be void, and the City shall be responsible for all damages payable to the third-party claimant. In the event that the City and Contractor agree or a court finds that the claim arises from or included negligence of both the Contractor and the City, the Contractor shall be responsible for all damages payable by the Contractor to the third-party claimant under the court findings, and, in addition thereto, the Contractor shall hereunder indemnify the City for all damages paid or payable by the City under the court findings in an amount not to exceed the percentage of total fault attributable to the Contractor.

6. Contractor does hereby agree, and for his/her heirs, executors, administrators, successors, and assigns, agrees, to the full performance of all the covenants herein upon the part of the Contractor.

7. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as previously provided herein.
8. The obligations under this Contract shall not be assigned without prior written approval of the City.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed the day and year first hereinabove written.

CITY OF BONNEY LAKE

By: ________________________________  
(Signature)  
Mayor, City of Bonney Lake  
(Title)

ATTEST:

______________________________  
(Signature)  
City Clerk  
(Title)

Approved as to Form:

______________________________  
(Signature)  
City Attorney  
(Title)

CONTRACTOR:

______________________________  
(Signature)  
[Signature]  
City Attorney  
(Title)

By: ________________________________  
(Signature)  
[Signature]  
City Attorney  
(Title)

Sept 8, 2011
(Date)
## City of Bonney Lake

### Lake Tapps Watermain & Sidewalk Project

#### Schedule A -

<table>
<thead>
<tr>
<th>Bid Item</th>
<th>Description</th>
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<th>Engineers Estimate</th>
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<th>Titan</th>
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**TOTAL Schedule A** $283,090.75

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**TOTAL Schedule B** $354,422.30

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9/1/2011 9:59 AM

N:\Public Works\01 City Projects\01 Current City Projects\West Tapps Watermain and Sidewalk Project\Bid Forms\Project Name - Bid Tabulation
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**TOTAL SCHEDULES**: $12,609.63 Total Costs for Roadway Excavation and Gravel Borrow Incl. Haul-Sidewalk Project.
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

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<th>Agenda Bill Number:</th>
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<td>Resolution</td>
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<td>James Rackley</td>
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**Agenda Subject:** Award Contract to Waunch Construction and Trucking Inc. for construction of the Prairie Ridge Booster Pump Station and Wholesale Intertie Project.

**Full Title/Motion:** A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Approve The Contract With Waunch Construction And Trucking For Construction Of The Prairie Ridge Booster Pump Station And Wholesale Intertie Project.

**Administrative Recommendation:**

**Background Summary:** The City opened bids for the project on August 31, 2011. Ten bids were received and Waunch Construction and Trucking Inc. was the apparent low bidder with a bid of $1,242,013.66, 9% below the Engineer's Estimate of $1,366,250.27. Staff has determined that their proposal is consistent with the requirements of the contract and bid specifications. This work is part of an agreement with Tacoma Water District for the City to build a permanent intertie to Tacoma's water system. The City has identified a location for the connection point adjacent to Pierce County's Prairie Ridge Transfer Station located along Prairie Ridge Drive E.

**Attachments:** Resolution 2150, Agreement, Bid Tabulation, Map

**Budget Information**

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**Budget Explanation:**

401.049.034.594.34.63.04 - Tac. Water Dept. Booster Pump Station (title in adopted budget) - $1,680,000
401.050.034.594.34.63.04 - Tac. Water Dept. Intertie (title adopted in budget) - $300,000
Construction contract amount: $1,243,013.66 + 10% Contingency $124,301.37 +5% Project Mgt. $62,150.68 = Total $1,429,465.71.

**Committee, Board & Commission Review**

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| Chair/Councilmember       | James Rackley |
| Councilmember             | Randy McKibbin |
| Councilmember             | Donn Lewis    |

**Forward to:**

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**Commission/Board Review:**

| Hearing Examiner Review: |

**Council Action**

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## APPROVALS

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<th>Director:</th>
<th>Mayor:</th>
<th>Date Reviewed by City Attorney:</th>
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<tr>
<td>Dan Grigsby</td>
<td>Neil Johnson</td>
<td>(if applicable):</td>
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**Agenda Packet p. 48 of 140**
RESOLUTION NO. 2150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,
AWARDING THE PRAIRIE RIDGE BOOSTER PUMP STATION
PROJECT TO WAUNCH CONSTRUCTION AND TRUCKING
INC.

WHEREAS, the City Council approved the contract with RH-2 for design of the
Prairie Ridge Booster Pump Station; and

WHEREAS, the City advertised the Prairie Ridge Booster Pump Station Project
and opened bids on August 31, 2011 and has determined the lowest responsible
bid for this contract was received from Waunch Construction and Trucking Inc.; and

WHEREAS, the City Council adopted this project as part of the Tacoma Public
Utilities Intertie Project in the Water CIP budget for construction in 2011; and

NOW, THEREFORE, BE IT RESOLVED that the City of Bonney Lake
Council does hereby authorize the Mayor to sign the attached contract with
Waunch Construction and Trucking Inc. in the amount of $1,243,013.66 which
includes tax.

BE IT FURTHER RESOLVED that the City of Bonney Lake Council does
hereby authorize a 10% Construction Contingency ($124,301.37) amount based
on the contract bid amount as well as a 5% Construction Engineering
($62,150.68) amount based on the contract bid.

PASSED by the City Council this 13th day of September, 2011.

__________________________
Neil Johnson, Jr., Mayor

ATTEST:

__________________________
Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

__________________________
James Dionne, City Attorney
CITY OF BONNEY LAKE CONTRACT

THIS CONTRACT, is made and entered into this 13TH day of September, 2011 by and between the CITY OF BONNEY LAKE, a Washington municipal corporation, hereinafter referred to as the "Owner" and WAUNER CONSTRUCTION, hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Owner desires to have certain work, services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, the Contractor represents that the Contractor is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, to perform the work, services and/or tasks set forth in this Agreement; and

WHEREAS, the Owner has heretofore caused to be prepared certain plans and specifications described as the Prairie Ridge Booster Pump Station and the Contractor did on the 31st day of August, 2011, file with the Owner a proposal to construct said work and agreed to accept as payment therefore the sum fully stated and set forth in the proposal; and

WHEREAS, the said Contract Documents fully and accurately described the terms and conditions upon which the Contractor proposes to furnish said equipment, labor, materials, and appurtenances and perform said work, together with the manner and time of furnishing same;

IT IS THEREFORE AGREED, first, the Contractor shall perform such work and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Contractor responsibilities throughout this Agreement and as detailed in the plans and specifications described as Prairie Ridge Booster Pump Station. It is agreed that a copy of said General Conditions and other Contract Documents filed with the Owner, as aforesaid, do, in all particulars, become a part of this Agreement by and between the parties hereto in all matters and things therein set forth and described;

AND FURTHER, that the Owner and the Contractor hereby accept and agree to the terms and conditions of said Contract Documents as filed as completely as if said terms and conditions and plans were herein set out in full.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY OF BONNEY LAKE

Neil Johnson, Jr., Mayor

Date: ______________

CONTRACTOR: WAUNER CONSTRUCTION

By: ____________________________

Title: Project Manager

Date: 9/1/2011
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</table>

Subtotal Schedule A------------------------------------------------- $1,250,000.25 | $1,137,249.46 | $1,170,876.00 | $1,238,892.00 | $1,260,175.00

SCHEDULE A WSST @ 9.3%--------------------------------------------- $116,250.02 | $105,764.20 | $108,891.38 | $115,226.28 | $117,196.28

Total Schedule A Incl. WSST ---------------------------------------- $1,368,250.27 | $1,243,013.66 | $1,279,768.38 | $1,354,218.28 | $1,377,371.28
### City of Bonney Lake
#### Prairie Ridge Booster Pump Station & Wholesale Intertie

**8/31/2011**

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<td>$3.202,262.54</td>
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</table>

**Agenda Packet p. 52 of 140**
PRAIRIE RIDGE BOOSTER PUMP STATION
AND WHOLESALE INTERTIE
AB11-109
RESOLUTION 2150

VICINITY MAP
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City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Public Works / Marlyn Campbell
Meeting/Workshop Date: 13 September 2011
Agenda Bill Number: AB11-105

Agenda Item Type: Motion
Ordinance/Resolution Number: Councilmember Sponsor:

Agenda Subject: Interim Justice Center project with M.J. Takisaki Inc as complete.

Full Title/Motion: A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Accept As Complete The Interim Justice Center With M.J. Takisaki Inc.

Administrative Recommendation:

Background Summary: Resolution 1964, dated September 8, 2009 awarded the construction contract to M.J. Takisaki Inc for the Interim Justice Center project. This project included the base bid for the site improvements; building and shell core and the alternative bid for the additional parking lot and 90th Street improvements.
See attached Project Completion Report for detail information on this project.
As a matter of housekeeping, this project has been reconciled, accepted by the City Engineer and project close out documents are complete. DOR, Employment Security and L & I have been notified and we are awaiting confirmation from these three organizations that there are no unpaid taxes and wages.

Attachments: Project Completion Report, Notice of Completion of Public Works Contract and 4 photos of project, before, during and after.

BUDGET INFORMATION

<table>
<thead>
<tr>
<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td></td>
<td></td>
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</tbody>
</table>

Budget Explanation: Retainage release of $202,958.56

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review: Community Development Date: 6 September 2011

Yes No
Chair/Councilmember James Rackley □ □
Councilmember Donn Lewis □ □
Councilmember Randy McKibbin □ □

Forward to: Consent Agenda: □ Yes □ No

Commission/Board Review:
Hearing Examiner Review:

COUNCIL ACTION

Workshop Date(s):
Meeting Date(s): 13 September 2011
Public Hearing Date(s):
Tabbed to Date:

APPROVALS

Director: D. Grigsby
Mayor:
Date Reviewed
by City Attorney:
(if applicable):

Agenda Packet p. 55 of 140
# PUBLIC WORKS - PROJECT COMPLETION REPORT

## Project Title:
Interim Justice Center

### Project Financing Summary:

#### Project Revenue Sources:
- City Fund Source(s):
  - Civic Center, bond proceeds = $5,190,787
  - (2007 LTGO Justice Center)

#### Total Project Budget =
$5,190,787

### Project Expenditures:

#### Study =
N/A

#### Design =
$772,736

#### Total Construction

<table>
<thead>
<tr>
<th>Architect’s Estimate</th>
<th>Contract Award Amount</th>
<th>Actual</th>
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</thead>
<tbody>
<tr>
<td>4,200,000-5,200,000</td>
<td>$3,942,040</td>
<td>3,918,101.03</td>
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<tr>
<td>$394,204</td>
<td>473,178.78</td>
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<tr>
<td>$0</td>
<td>26,771.00</td>
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<tr>
<td>$4,336,244</td>
<td>4,418,050.81</td>
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</table>

#### Total Project Cost =
$5,190,787

#### Total Budget for construction=
$4,336,244

#### Actual

#### Over Budget=
$81,807
Planning
Comprehensive Facilities Plan Approved by City Council: 8/14/2007
Study Required: N/A
FY Funding in Budget: N/A
Study Contract NTP Date: N/A
Study Contract Completion Date: N/A
Change Order Summary: 

Planning Actual Total $0

Design
Date RFP Issued 12/10/2007
Design Contract Award Date: 3/8/2008
Design Contract Completion Date: 11/15/2010
Design Consultant(s): Group Mackenzie $772,736

Scope of Work Changes:
1
2

Change Order Summary: 1

Design Actuar Total $772,736

Construction
Date of Advertisement: 7/22/2009
Bid Opening Date: 8/17/2009
Architect's Estimate = 4,200,000-5,200,000
Low Responsive/Responsible Bid: $3,942,040 3,918,101.03
Contract Award Date: 9/8/2009
Contract Completion Date: 8/1/2011
Closeout Date: 9/13/2011

Scope of Work Changes:
1

Change Order Summary:
1 R-10 slab insulation, restroom floor drains, IT conduit 2/1/2010 $28,411.44
2 Additional excavation and concrete 2/10/2010 $6,048.66
3 Storefront change 2/10/2010 $16,457.91
4 Hollow metal door jambs, ice/water shield-roofing, privacy locks 4/13/2010 $6,002.75
5 Hardie Wrap, Flashing, Siding alternate 4/27/2010 $1,078.79
6 Modifications to the custom gutter 6/14/2011 $3,388.30
7 Additional paving 6/16/2011 $16,120.00
8 Additional off-site (90th) work- added 33 working days 7/10/2010 $155,435.00
9 Motorized damper- electrical/& louver covering 7/10/2010 $13,325.85
10 Stair correction 8/2/2010 $7,970.15
11 Additional Beam/Column Fireproofing 8/2/2010 $90,366.60
12 Canopy roofing, delete ceiling tiles & build soffit 9/7/2010 $23,953.09
13 Additional parking lot paving & irrigation, added 90th Street work 10/10/2010 $77,226.43
14 Global Settlement on outstanding COP's 4/12/2011 $55,362.63
15 Tree grate deduct- COBL purchased items separately 4/20/2011 $19,634.54

Total Change Orders $473,178.78
Other Construction
- Advertisement $206
- Permit fees $227
- Material testing and special inspections $26,338

Construction Actual Total = $4,418,051
Total Project Cost = $5,190,787
NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Contractor's UBI Number: 601 029 413

Date: 8/19/2011

Name & Address of Public Agency
City of Bonney Lake
8720 Main Street East
Bonney Lake, WA 98391
UBI Number: 277000893

Department Use Only
Assigned to:
Date Assigned:

Notice is hereby given relative to the completion of contract or project described below

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Contract Number</th>
<th>Job Order Contracting</th>
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</thead>
<tbody>
<tr>
<td>Interim Justice Center</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Description of Work Done/Include Jobsite Address(es)
Construct new Interim Justice Center, site improvements- building shell and core, parking lot and 90th Street Improvements to include street reconstruction, curb, gutter, sidewalks and storm water drainage.

Contractor's Name
M.J. Takisaki, Inc.

Contractor Address
1312 S. Weller Street Seattle, WA 98144

Telephone Number
206-324-4448

Date Contract Awarded 9/8/2009
Date Work Commenced 10/8/2009
Date Work Completed 8/1/2011
Date Work Accepted Council action schedule 9/13/11

Contract Amount $3,606,624.00
Additions (+) $452,547.10
Sub-Total $4,059,171.10

LIQUIDATED DAMAGES

Amount of Sales Tax Paid at 9.300%
$332,108.72

TOTAL $4,391,279.82

Please List all Subcontractors Below:

<table>
<thead>
<tr>
<th>Subcontractor's Name</th>
<th>UBI Number</th>
<th>Affidavit ID (if known)</th>
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<tr>
<td>Badabing Badaboom Base LLC</td>
<td>602 893 852</td>
<td>294486</td>
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<tr>
<td>Big Mountain Enterprises LLC</td>
<td>602 306 230</td>
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<td>Coverall Construction LLC</td>
<td>602 486 527</td>
<td>339325</td>
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<tr>
<td>Fairweather Masonry Co Inc</td>
<td>600 107 328</td>
<td>303111</td>
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<tr>
<td>Final Concrete Inc</td>
<td>602 999 695</td>
<td>327578</td>
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<tr>
<td>G B Systems Inc</td>
<td>601 353 544</td>
<td>310293</td>
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<tr>
<td>Henrikerson Services Inc</td>
<td>601 928 999</td>
<td>296497</td>
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<tr>
<td>Inland Waterproofing Services LLC</td>
<td>602 585 946</td>
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<tr>
<td>Insufire Inc</td>
<td>602 981 067</td>
<td>297191</td>
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NOTE: These two totals must be equal

Agenda Packet p. 59 of 140
Please List all Subcontractors Below:

<table>
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<tr>
<th>Subcontractor's Name</th>
<th>UBI Number:</th>
<th>Affidavit ID (if known)</th>
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<tbody>
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<td>Jenco Building Services Inc</td>
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<td>Joel Strep Floors</td>
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<td>Larson Glass Co Inc</td>
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<td>Metier Construction Inc</td>
<td>601 603 755</td>
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<td>Naknek Tile &amp; Marble</td>
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<td>Northwest Asphalt Inc</td>
<td>601 556 048</td>
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<td>Northwest Fire Systems LLC</td>
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<td>Pacific Concrete Construction Inc</td>
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<td>Parthenon Builders Inc</td>
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<td>Pederson Painting LLC</td>
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<td>Stanley Patrick Striping Co</td>
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<td>Steelwood Construction Inc</td>
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<td>Superior Electric</td>
<td>601 590 639</td>
<td>336353</td>
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<td>S Q I Inc</td>
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<td>Teufel Nursery Inc</td>
<td>601 508 922</td>
<td>336843</td>
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<tr>
<td>Commercial Interiors Inc</td>
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<td>317336</td>
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<td>Powercom Inc</td>
<td>602 030 026</td>
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Comments:

1. Note: $488,085.00 the contract paid is not subject to Taxes (RCW 82.04.050 (10)) - a portion of the contract was for improvements to 90th Street & Right-of-Way, not subject to sales tax for the labor & services rendered.
2. Note: After payment for services the contractor demonstrated $163,434.37 in itemized invoices that were street related work of material in which sales tax should have been paid by the City (Public Agency). The tax amount on this, $15,199.40 was paid in the City's "Combined Excise Tax Return" for the month ending March 31, 2011 remittance to correct the tax error.

Contact Name: Marlyn Campbell  
Email Address: campbellm@ci.bonney-lake.wa.us  
Phone Number: 253-447-4348

NO PAYMENT SHALL BE MADE FROM RETAINED FUNDS until receipt of all release certificates.

Submitting Form: Please submit the completed form to all three agencies below. For a faster response, please submit by e-mail.
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

<table>
<thead>
<tr>
<th>Department/Staff Contact:</th>
<th>Meeting/Workshop Date:</th>
<th>Agenda Bill Number:</th>
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<tr>
<td>Public Works / Marlyn Campbell</td>
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<tbody>
<tr>
<td>Motion</td>
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**Agenda Subject:** Angeline Force Main project with Archer Construction Inc. as complete.

**Full Title/Motion:** A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Accept As Complete The Angeline Force Main Project With Archer Construction Inc.

**Administrative Recommendation:**

**Background Summary:** Resolution 2079, dated October 26, 2010 awarded the construction contract to Archer Construction Inc for the Angeline Force Main project. This project is part of PWTF Loan Sewer Replacement. See attached Project Completion Report for detail information on this project. As a matter of housekeeping, this project has been reconciled, accepted by the City Engineer and project close out documents are complete. DOR, Employment Security and L & I have been notified and we are awaiting confirmation from these three organizations that there are no unpaid taxes and wages.

**Attachments:** Project Completion Report, Bill of Sale, Notice of Completion of Public Works Contract and 4 photos of project, before, during and after.

**BUDGET INFORMATION**

<table>
<thead>
<tr>
<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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</tr>
</tbody>
</table>

**Budget Explanation:** Retainage release of $64,356.07

**COMMITTEE, BOARD & COMMISSION REVIEW**

- **Council Committee Review:** Community Development
  - Date: 6 September 2011
  - Approvals:
    - Chair/Councilmember: James Rackley
    - Councilmember: Donn Lewis
    - Councilmember: Randy McKibbin

- **Forward to:**
  - Consent Agenda: Yes No
  - Forward to: [ ]

- **Commission/Board Review:**

- **Hearing Examiner Review:**

**COUNCIL ACTION**

- **Workshop Date(s):**
  - Meeting Date(s): 13 September 2011

- **Public Hearing Date(s):**
  - Tabled to Date:

**APPROVALS**

- **Director:** D. Grigsby
- **Mayor:**
- **Date Reviewed by City Attorney:** (if applicable):
# PUBLIC WORKS - PROJECT COMPLETION REPORT

**Project Title:** Angeline Force Main

## Project Financing Summary:

**Project Revenue Sources:**
- City Fund Source(s):

  | Sewer PWTF Loan = | $1,593,580 |
  | (Phase 4 & 5)     |           |

**Total Project Budget =** $1,593,580

## Project Expenditures:

### Study = N/A

### Design = $192,066

### Total Construction

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<thead>
<tr>
<th>Engineer's Estimate = 1,652,990.03</th>
<th>Contract Award Amount</th>
<th>Actual</th>
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<tbody>
<tr>
<td>Low Bid/Contract=</td>
<td>$1,132,145</td>
<td>1,149,150.77</td>
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<tr>
<td>Contingency- 10% =</td>
<td>$113,215</td>
<td>216,459.00</td>
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<tr>
<td>Field Engineering Services- 5% =</td>
<td>$56,607</td>
<td>35,904.46</td>
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</tbody>
</table>

| $1,301,967                      | 1,401,514.23 |

**Total Project Cost =** $1,593,580

| Total Budget for construction=  | $1,301,967 |
| Actual Over Budget=             | $99,547    |

Page 1 of 3

*Agenda Packet p. 66 of 140*
Planninq
Comprehensive Facilities Plan Approved by City Council:
Study Required: N/A
FY Funding in Budget: N/A
Study Contract NTP Date: N/A
Study Contract Completion Date: N/A
Change Order Summary:

Planning Actual Total = $0

Design
Date RFP Issued: N/A
Design Contract Award Date: 8/14/2008
Design Contract Completion Date: 11/15/2010
Design Consultant(s): Parametrix
$192,066
Scope of Work Changes:
1
2
Change Order Summary:

Construction
Date of Advertisement: 9/29/2010
Bid Opening Date: 10/13/2010
Engineer’s Estimate: 1,652,990.03
Low Responsive/Responsible Bid: $1,132,145.06
$1,149,151
Contract Award Date: 10/26/2010
Contract Completion Date: 5/31/2011
Closeout Date: 9/13/2011
Date
Scope of Work Changes:
1
Change Order Summary:
1 Extra 1 ft Pipe Bedding 3/7/2011 $10,495.07
2 Rolled Curb 184th Ave. Place 3/7/2011 $17,511.95
3 Side Sewer added in the vicinity of STA 85+13 (left) 4/18/2011 $3,747.80
4 Lower existing 12 inch diameter ductile iron culvert, STA 30+73 4/18/2011 $1,340.44
5 Move Air Vac Vaults STA 63+63 & 72+50 to paved road surface 4/18/2011 $6,214.90
6 Remove & replace fence at Lift Station 19 4/18/2011 $837.60
7 Standby for Water Line Location 4/18/2011 $885.52
8 Relocate 8 inch Dia. Water line STA 29+90 4/18/2011 $18,093.18
9 Add Culvert and Catch Basin STA 32+00 5/18/2011 $6,412.15
10 Relocate Water line 107th, 103rd & STA 46+70 5/18/2011 $42,285.97
11 Pulverize & Grade STA 31+00 - 42+00 5/18/2011 $18,698.37
12 Pave water line crossing 5/18/2011 $5,243.86
13 Hot Mix Asphalt Paper Joints 5/18/2011 $5,664.06
14 Grass seeding instead of Sod 5/18/2011 $1,122.85
15 Exposed Aggregate driveway 5/18/2011 $1,329.75

Actual Costs
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<tr>
<th></th>
<th>Description</th>
<th>Date</th>
<th>Amount</th>
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<tbody>
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<td>16</td>
<td>Reset additional Survey Monuments</td>
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<tr>
<td>17</td>
<td>HMA Patch Angeline Rd. &amp; 184th Ave Place, E</td>
<td>6/16/2011</td>
<td>$27,791.24</td>
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<tr>
<td>18</td>
<td>HMA Prelevel paving</td>
<td>6/16/2011</td>
<td>$38,514.46</td>
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<tr>
<td>19</td>
<td>Remove HMA Paper Joints</td>
<td>6/16/2011</td>
<td>$1,366.29</td>
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<tr>
<td>20</td>
<td>Substitute Ductile Iron Pipe &amp; Hand Seeding</td>
<td>6/16/2011</td>
<td>$813.37</td>
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<tr>
<td>21</td>
<td>Exposed Aggregate Driveway &amp; Rolled Curb</td>
<td>6/16/2011</td>
<td>$1,379.79</td>
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</tbody>
</table>

**Total Change Orders** $214,647.83

**Other Construction**
- Advertisement: $678
- Signage rental fee: $438
- Hydrant meter: $694
- Field Engineering Services: 35,904

**Construction**

Actual Total = $1,401,514

**Total Project Cost** $1,593,580

**PW Infrastructure Addition(s):** See attached Bill of Sale form
CITY OF BONNEY LAKE, PIERCE COUNTY

BILL OF SALE

ANGELINE ROAD FORCE MAIN REPLACEMENT

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of One Dollar ($1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned grantor(s) City of Bonney Lake, Public Works do(es) by these presents hereby convey, set over, assign, transfer and sell to the City of Bonney Lake, Pierce County, Washington, a municipal corporation, the following described Storm Drainage, Sanitary Sewer System, Water System and Street Improvements and all appurtenances thereto, situated in Pierce County, Washington:

SANITARY SYSTEM IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Unit</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manhole 48 In. Diam. Type 1</td>
<td>2</td>
<td>EA</td>
<td>$4,200.00</td>
</tr>
<tr>
<td>4 Inch Blowoff Valve Assembly</td>
<td>3</td>
<td>EA</td>
<td>$8,400.00</td>
</tr>
<tr>
<td>4 Inch Vacuum Relief Valve &amp; Chamber</td>
<td>3</td>
<td>EA</td>
<td>$24,750.00</td>
</tr>
<tr>
<td>2 Inch Air Release Valve &amp; Chamber</td>
<td>2</td>
<td>EA</td>
<td>$18,200.00</td>
</tr>
<tr>
<td>2 Inch Air Release &amp; 4 Inch Vac. Valve Chamber</td>
<td>1</td>
<td>EA</td>
<td>$14,535.00</td>
</tr>
<tr>
<td>PVC Sanitary Sewer Force Main 10 In. Diam.</td>
<td>7,461</td>
<td>LF</td>
<td>$164,888.10</td>
</tr>
<tr>
<td>PVC Sanitary Sewer Pipe 12 In. Diam.</td>
<td>115</td>
<td>LF</td>
<td>$4,362.12</td>
</tr>
<tr>
<td>Pipe Pig Launch Assembly</td>
<td>3</td>
<td>EA</td>
<td>$20,400.00</td>
</tr>
</tbody>
</table>

STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Unit</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cement Concrete Curb &amp; Gutter</td>
<td>1,724</td>
<td>LF</td>
<td>$20,860.40</td>
</tr>
<tr>
<td>Cement Concrete Sidewalk</td>
<td>627</td>
<td>SY</td>
<td>$14,271.08</td>
</tr>
<tr>
<td>Cement Concrete Driveway</td>
<td>114</td>
<td>SY</td>
<td>$4,560.00</td>
</tr>
<tr>
<td>Cement Concrete Curb Ramp Type 2</td>
<td>8</td>
<td>EA</td>
<td>$8,000.00</td>
</tr>
</tbody>
</table>

STORM SYSTEM IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Unit</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catch Basin Type 1</td>
<td>11</td>
<td>11</td>
<td>$9,350.00</td>
</tr>
<tr>
<td>Solid Wall PVC Storm Pipe 12 In. Diam.</td>
<td>1,138</td>
<td>LF</td>
<td>$17,070.00</td>
</tr>
</tbody>
</table>

WATER SYSTEM IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Unit</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relocate Water Lines (4) Locations on Angeline Rd.</td>
<td>1</td>
<td>LS</td>
<td>$55,241.68</td>
</tr>
</tbody>
</table>
CITY OF BONNEY LAKE, PIERCE COUNTY
BILL OF SALE (page 2)
ANGELINE ROAD FORCE MAIN IMPROVEMENTS

Cost Analysis

Provision of detailed costs (including labor and materials) are broken down into the facilities that were installed in each category of work listed below:

Sanitary Sewer System Improvements: $ 901,164.23
Street Improvements: $ 380,972.69
Storm System Improvements: $ 26,420.00
Water System Improvements: $ 55,241.68

Total Improvements $1,363,798.60

The said grantor(s) hereby warrants that he, they, it, is/are the sole owner(s) of all the property above described; that they have full power to convey all rights herein conveyed and agree to hold the City of Bonney Lake harmless from any and all claims which might result from execution of this document. IN WITNESS WHEREOF the grantor(s) has/have executed these present this

31st day of May, 2011. City of Bonney Lake Partner

(Individual Acknowledgement)

STATE OF WASHINGTON )
COUNTY OF PIERCE )ss.

On this _______day of ____________, 2011, before me known to be the individual(s) who executed the within and foregoing instrument and acknowledged that he/she signed and sealed the same as _________ free and voluntary act and deed, for the uses and purposes therein mentioned.
GIVEN under my hand and official seal the day and year in this certificate above written.

Notary Public in and for the State of Washington
residing at:
NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Contractor's UBI Number: 600 214 020
Date: 8/19/2011

Name & Address of Public Agency
City of Bonney Lake
8720 Main Street East
Bonney Lake, WA 98391
UBI Number: 277000893

Notice is hereby given relative to the completion of contract or project described below

**Project Name**
Angeline Sewer Force Main

**Description of Work Done/Include Jobsite Address(es)**
Construction of 7,355 fee of 10-inch diameter sanitary sewer force main, 200 fee of 12-inch diameter gravity sewer main on Angeline Road.

**Contractor's Name**
Archer Construction, Inc.

**Contractor Address**
7855 So. 206th St Kent, WA 98032

**Telephone Number**
253-872-7222

**Date Contract Awarded**
10/26/2010

**Date Work Commenced**
12/6/2011

**Date Work Completed**
5/31/2011

**Date Work Accepted**
Council action schedule-9/13/11

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Amount</td>
<td>$1,069,564.05</td>
</tr>
<tr>
<td>Additions (+)</td>
<td>$217,557.26</td>
</tr>
<tr>
<td>Reductions (-)</td>
<td>$</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td><strong>$1,287,121.31</strong></td>
</tr>
</tbody>
</table>

Amount of Sales Tax Paid at 9.300%

$76,677.29

**SUBTOTAL**

$1,363,798.60

Liquidated Damages $1,299,442.53
Amount Disbursed $64,356.07
Amount Retained $129,944.25

NOTE: These two totals must be equal

Please List all Subcontractors Below:

<table>
<thead>
<tr>
<th>Subcontractor's Name</th>
<th>UBI Number</th>
<th>Affidavit ID (if known)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sea-Tac Sweeping Service</td>
<td>601 735 583</td>
<td></td>
</tr>
<tr>
<td>Tyee Concrete Construction, Inc.</td>
<td>602 123 519</td>
<td></td>
</tr>
<tr>
<td>A &amp; R Sawing &amp; Drilling Co</td>
<td>601 514 268</td>
<td>346890</td>
</tr>
<tr>
<td>Apex Engineering PLLC</td>
<td>601 710 145</td>
<td></td>
</tr>
<tr>
<td>Owl Fencing Inc</td>
<td>601 630 103</td>
<td>330535</td>
</tr>
<tr>
<td>Ground Up Road Const Inc</td>
<td>602 790 246</td>
<td></td>
</tr>
<tr>
<td>Stripe Rite Inc</td>
<td>601 048 084</td>
<td></td>
</tr>
<tr>
<td>Pacific Concrete Services LLC</td>
<td>602 126 314</td>
<td></td>
</tr>
<tr>
<td>Corliss Resources, Inc.</td>
<td>602 237 779</td>
<td></td>
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</table>

REV 31 0020e (11/9/10)
Agenda Packet p. 71 of 140
Continued on page 2
Please List all Subcontractors Below:

<table>
<thead>
<tr>
<th>Subcontractor's Name</th>
<th>UBI Number</th>
<th>Affidavit ID (if known)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woodworth &amp; Company</td>
<td>302 870 349</td>
<td>340896</td>
</tr>
<tr>
<td>Brundage Bone Concrete Pumping, Inc.</td>
<td>600 630 026</td>
<td></td>
</tr>
<tr>
<td>Harlow Construction Co Inc.</td>
<td>601 762 618</td>
<td>340776</td>
</tr>
<tr>
<td>Moby's Water Truck Services</td>
<td>601 042 515</td>
<td></td>
</tr>
<tr>
<td>Grade-It Inc.</td>
<td>601 858 871</td>
<td></td>
</tr>
</tbody>
</table>

Comments:

$462,634.37 of the contract paid is not subject to Taxes.

Contact Name: Marilyn Campbell
Email Address: campbellm@ci.bonney-lake.wa.us
Title: PW Support Services Coordinator
Phone Number: 253-447-4348

Note: The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract.

NO PAYMENT SHALL BE MADE FROM RETAINED FUNDS until receipt of all release certificates.

Submitting Form: Please submit the completed form to all three agencies below. For a faster response, please submit by e-mail.
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

<table>
<thead>
<tr>
<th>Department/Staff Contact:</th>
<th>Meeting/Workshop Date:</th>
<th>Agenda Bill Number:</th>
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</thead>
<tbody>
<tr>
<td>Public Works / Marlyn Campbell</td>
<td>13 September 2011</td>
<td>AB11-107</td>
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</table>

<table>
<thead>
<tr>
<th>Agenda Item Type:</th>
<th>Ordinance/Resolution Number:</th>
<th>Councilmember Sponsor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Agenda Subject:** North Debra Jane Lake Watermain project with Jennings NW LLC as complete.

**Full Title/Motion:** A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, To Accept As Complete The North Debra Jane Lake Watermain Replacement Project With Jennings N Llc.

**Administrative Recommendation:**

**Background Summary:** Resolution 2081, dated November 9, 2010 awarded the construction contract to Jennings NW LLC for the North Debra Jane Watermain Replacement project. This project replaced 8,298 linear feet of water main along the North side of Lake Debra Jane as part of the Leaky Main projects. The water mains replaced on 187th Ave, 188th Ave, 190th Ave, 193rd Ave, and 68th Street. See attached Project Completion Report for detail information on this project.

As a matter of housekeeping, this project has been reconciled, accepted by the City Engineer and project close out documents are complete. DOR, Employment Security and L & I have been notified and we are awaiting confirmation from these three organizations that there are no unpaid taxes and wages.

**Attachments:** Project Completion Report, Bill of Sale, Notice of Completion of Public Works Contract and 3 photos of project, before, during and after.

**BUDGET INFORMATION**

<table>
<thead>
<tr>
<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Budget Explanation:** Retainage release of $45,174.50

**COMMITTEE, BOARD & COMMISSION REVIEW**

**Council Committee Review:** Community Development

*Approval:* Yes No

Chair/Councilmember: James Rackley
Councilmember: Donn Lewis
Councilmember: Randy McKibbin

**Forward to:**

Consent Agenda: Yes No

**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

**Workshop Date(s):**

**Meeting Date(s):** 13 September 2011

**Public Hearing Date(s):**

**Tabled to Date:**

**APPROVALS**

**Director:**
D. Grigsby

**Mayor:**

**Date Reviewed by City Attorney:**
(if applicable):

*Agenda Packet p. 77 of 140*
**PUBLIC WORKS - PROJECT COMPLETION REPORT**

**Project Title:** North Debra Jane Lake Watermain Replacement

**Project Financing Summary:**

**Project Revenue Sources:**
City Fund Source(s):

| Sewer PWTF Loan, PC08-951-004 | $1,097,654 |

**Total Project Budget =**

| $1,097,654 |

**Project Expenditures:**

<table>
<thead>
<tr>
<th>Study</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design</td>
<td>$138,506</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineer's Estimate</td>
</tr>
<tr>
<td>Low Bid/Contract</td>
</tr>
<tr>
<td>Contingency- 10%</td>
</tr>
<tr>
<td>Field Engineering Services- 5%</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Contract Award Amount</td>
</tr>
<tr>
<td>Actual</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Actual</td>
</tr>
</tbody>
</table>

**Total Project Cost =**

| $1,097,654 |

**Total Budget for construction =**

| $1,074,037 |

**Actual | Under Budget =**

| $933,945 |

| $93,394 |

| $46,697 |

| $1,074,037 |

| 823,582 |

| 130,984 |

| 4,581 |

| 959,147 |

| -$114,890 |

---

*Page 1 of 2*
### Planning

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Actual Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive Facilities Plan Approved by City Council:</td>
<td>12/22/2009</td>
<td>$0</td>
</tr>
<tr>
<td>Study Required:</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>FY Funding in Budget:</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Study Contract NTP Date:</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Study Contract Completion Date:</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Change Order Summary:</td>
<td></td>
<td></td>
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</table>

### Design

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Actual Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date RFP Issued</td>
<td>N/A</td>
<td>$138,506</td>
</tr>
<tr>
<td>Design Contract Award Date:</td>
<td>11/12/2010</td>
<td></td>
</tr>
<tr>
<td>Design Contract Completion Date:</td>
<td>11/1/2010</td>
<td></td>
</tr>
<tr>
<td>Design Consultant(s):</td>
<td>RH2</td>
<td></td>
</tr>
<tr>
<td>Scope of Work Changes:</td>
<td>Date</td>
<td>Design Actual Total = $138,506</td>
</tr>
<tr>
<td>Change Order Summary:</td>
<td>Date</td>
<td></td>
</tr>
</tbody>
</table>

### Construction

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Actual Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Advertisement:</td>
<td>10/13/2010</td>
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</tr>
<tr>
<td>Bid Opening Date:</td>
<td>10/27/2010</td>
<td></td>
</tr>
<tr>
<td>Engineer's Estimate:</td>
<td>1,252,658.13</td>
<td></td>
</tr>
<tr>
<td>Low Responsive/Responsible Bid:</td>
<td>$933,945</td>
<td>$823,582</td>
</tr>
<tr>
<td>Contract Award Date:</td>
<td>11/9/2010</td>
<td></td>
</tr>
<tr>
<td>Contract Completion Date:</td>
<td>8/4/2011</td>
<td></td>
</tr>
<tr>
<td>Closeout Date:</td>
<td>9/13/2011</td>
<td></td>
</tr>
<tr>
<td>Scope of Work Changes:</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Change Order Summary:</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Other Construction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertisement</td>
<td></td>
<td>$540</td>
</tr>
<tr>
<td>hydrant meter</td>
<td></td>
<td>$736</td>
</tr>
<tr>
<td>Field Engineering Services</td>
<td></td>
<td>4,581</td>
</tr>
<tr>
<td>Total Change Orders</td>
<td>Date</td>
<td>$129,708.57</td>
</tr>
<tr>
<td>Total Project Cost</td>
<td>$1,097,654</td>
<td></td>
</tr>
</tbody>
</table>

### PW Infrastructure Addition(s):

See attached Bill of Sale form
RETURN TO:
City of Bonney Lake
Public Works Department
8720 184th Avenue East
P.O. Box 7380
Boney Lake, Washington 98390-0944

Phone: 253-447-4336
Fax: 253-826-1921

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of One Dollar ($1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned grantor(s) do(es) by these presents hereby convey, set over, assign, transfer and sell to the City of Bonney Lake, Pierce County, Washington, a municipal corporation, the following described utility or other improvements and all appurtenances thereto, situated in Pierce County, Washington:

TYPE OF DOCUMENT: Bill of Sale
GRANTOR(S):
GRANTEE:
ABBREVIATED LEGAL DESCRIPTION: See Exhibit A
ASSESSOR TAX PARCEL I.D. NUMBERS: North Debra Jane Water Main Project
NAME OF PROJECT:
ADDRESS OF PROJECT:
PROJECT NUMBER:
LEGAL DESCRIPTION: Located here or on Exhibit A of this document
PERSONAL PROPERTY DESCRIPTION: Located here or on Exhibit B of this document

the said grantor(s) hereby warrants that he, they, it, is/are the sole owner(s) of all the property above described; that they have full power to convey all rights herein conveyed and agree to hold the City of Bonney Lake harmless from any and all claims which might result from execution of this document. IN WITNESS WHEREOF the grantor(s) has/have executed these presents this ___ day of ____________, 20__.
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

Grantor (DEVELOPER) SIGNATURE:

By: ________________________________  By: ________________________________

Its: ________________________________  Its: ________________________________

STATE OF WASHINGTON  )
  )SS
COUNTY OF PIERCE  )

On this ___ day of __________, 20___, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ______________, to me proven to be the individual described in and who executed the foregoing instrument for himself and acknowledged that he signed the same as his free and voluntary act and deed for himself and also as his free and voluntary act and deed on behalf of said ______________, for uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Printed Name: ________________________________
NOTARY PUBLIC in and for the State of Washington, residing at: ________________________________
My Commission Expires: ________________________________
Permit No.

Name of Project

Per the request of the City of Bonney Lake the following information is furnished concerning final costs for improvements installed and turned over to the City for the above referenced project.

**WATER SYSTEM CONSTRUCTION/CONSTRUCTION COSTS**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Unit</th>
<th>Size</th>
<th>Type</th>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>8298</td>
<td>L.F. of</td>
<td>8</td>
<td>D</td>
<td>Water Main</td>
<td>$182,556.00</td>
</tr>
<tr>
<td>302</td>
<td>L.F. of</td>
<td>4</td>
<td>D</td>
<td>Water Main</td>
<td>$6,644.00</td>
</tr>
<tr>
<td></td>
<td>L.F. of</td>
<td></td>
<td></td>
<td>Water Main</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>L.F. of</td>
<td></td>
<td></td>
<td>Water Main</td>
<td>$</td>
</tr>
<tr>
<td>24</td>
<td>EACH of</td>
<td>8</td>
<td></td>
<td>Gate Valves</td>
<td>$26,400.00</td>
</tr>
<tr>
<td></td>
<td>EACH of</td>
<td></td>
<td></td>
<td>Gate Valves</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>EACH of</td>
<td></td>
<td></td>
<td>Gate Valves</td>
<td>$</td>
</tr>
<tr>
<td>13</td>
<td>EACH of</td>
<td></td>
<td></td>
<td>Fire Hydrant Assemblies</td>
<td>$45,000.00</td>
</tr>
</tbody>
</table>

Cost of Fire Hydrants must be listed separately

Includes Engineering and Sales Tax if applicable

TOTAL COST FOR WATER SYSTEM $260,600.00

**SANITARY SEWER SYSTEM**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Unit</th>
<th>Size</th>
<th>Type</th>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>L.F. of</td>
<td></td>
<td></td>
<td>Sewer Main</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>L.F. of</td>
<td></td>
<td></td>
<td>Sewer Main</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>L.F. of</td>
<td></td>
<td></td>
<td>Sewer Main</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>EACH of</td>
<td></td>
<td></td>
<td>Diameter Manholes</td>
<td>$</td>
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<tr>
<td></td>
<td>EACH of</td>
<td></td>
<td></td>
<td>Diameter Manholes</td>
<td>$</td>
</tr>
</tbody>
</table>

Includes Engineering and Sales Tax if applicable

TOTAL COST FOR SANITARY SEWER SYSTEM $
EXHIBIT B – FINAL COST DATA AND INVENTORY

Page 2 of 2

STORM DRAINAGE SYSTEM

<table>
<thead>
<tr>
<th>Amount</th>
<th>Unit</th>
<th>Size</th>
<th>Type</th>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Storm Lines</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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<td>Storm Lines</td>
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Includes Engineering and Sales Tax if applicable

TOTAL COST FOR STORM DRAINAGE SYSTEM

STREET IMPROVEMENT

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SIGNALIZATION

(Including Engineering Design Costs, City Permit Fees, WA State Sales Tax)

STREET LIGHTING

(Including Engineering Design Costs, City Permit Fees, WA State Sales Tax)

Number of Poles

Phone
E-mail
FAX

Print Signatory Name

Signature by authorized agent or owner of subject development
NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Contractor's UBI Number: 602 672 901
Date: 8/22/2011

<table>
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<tr>
<th>Project Name</th>
<th>Contract Number</th>
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<tr>
<td>N. Lake Debra Jane Watermain Replacement</td>
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Notice is hereby given relative to the completion of contract or project described below

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Description of Work Done/Include Jobsite Address(es)</th>
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<tr>
<td>N. Lake Debra Jane Watermain Replacement</td>
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Contractor's Name
Jennings Northwest LLC

Contractor Address
PO Box 37238 Honolulu, HI 96337

If Retainage is Bonded, List Surety's Name (or attach a copy)

Surety Agent's Address

Date Contract Awarded: 11/9/2010
Date Work Commenced: 1/3/2011
Date Work Completed: 8/4/2011
Date Work Accepted: Council Action Schedule-9/13/11

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<th>Contract Amount</th>
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<td>Reductions (-)</td>
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Amount of Sales Tax Paid at 9.300% $49,800.73

TOTAL Amount $953,290.81

Please List all Subcontractors Below:

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<tr>
<td>Advanced Government Services</td>
<td>602 304 323</td>
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<tr>
<td>Lakside Industries, Inc</td>
<td>601 106 847</td>
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<td>Ground Up Road Construction, Inc</td>
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<td>Northwest Traffic, Inc.</td>
<td>602 140 049</td>
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Please List all Subcontractors Below:

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</table>

Comments:

Contact Name: Marilyn Campbell  
Email Address: campbellm@ci.bonney-lake.wa.us
Phone Number: 253-447-4348

Note: The throughouting officer must submit this completed notice immediately after acceptance of the work done under this contract. NO PAYMENT SHALL BE MADE FROM RETAINED FUNDS until receipt of all release certificates. Submitting Form: Please submit the completed form to all three agencies below. For a faster response, please submit by e-mail.

Washington State Department of Revenue  
Public Works Section  
PO Box 47474  
Olympia WA 98504-7474  
(360) 725-7586  
FAX (360) 664-4159  
PWC@dor.wa.gov

Washington State Department of Labor and Industries  
Contract Release  
1 PO Box 44274  
Olympia, WA 98504-4272  
(360) 902-4754  
FAX (360) 902-6897  
ContractRelease@lni.wa.gov

Washington State Employment Security Department  
Specialized Collections Unit  
PO Box 9046  
Olympia, WA 98507-9046  
(360) 902-8780  
FAX (360) 902-9287  
publicworks@esd.wa.gov

For tax assistance or to request this document in an alternate format, visit http://dor.wa.gov or call 1-800-647-7706.  
Teletype (TTY) users may call (360) 705-6718.
City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Exec / Brian Hartsell
Meeting/Workshop Date: 27 September 2011
Agenda Bill Number: AB11-80

Agenda Item Type: Motion
Ordinance/Resolution Number: 
Councilmember Sponsor: 

Agenda Subject: A motion to set a public hearing for 27 Sep 2011 for CATV franchise agreement and franchise fee implementation.

Full Title/Motion: A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Setting A Public Hearing At 7:00 P.M., Or As Soon Thereafter As Possible, During The Regular Council Meeting Of September 27, 2011 For The Renewal Of A Cable Television Franchise Agreement With Comcast Of California/Colorado/Washington I, Inc; And For The Establishment Of A Franchise Fee Of Five Percent.

Administrative Recommendation: Approve a Motion of the City Council of the City of Bonney Lake Setting a Public Hearing at 7:00 P.M., September 27, 2011 for the Renewal of A Cable Television Franchise Agreement With Comcast Of California/Colorado/Washington I, Inc; And for the Establishment Of A Franchise Fee Of Five Percent

Background Summary: The City's 1990 Franchise Agreement, now with Comcast, expired in 2005. We have since been operating under a "expiration carryover" provision of this 1990 agreement. An updated cable franchise agreement was negotiated between Comcast and Rainier Communications Commission (RCC)--of which the City of Bonney Lake (CBL) is an RCC member. The agreement calls for a 5% franchise fee to be paid to CBL. Ordinance D11-77 is being proposed in tandem with Ordinance D11-78. Since Comcast would pass that 5% fee on to the customers, CBL will offset this fee, per Ord D11-78, by reducing its current cable TV utility tax rate from 6.5% to a lower amount. The franchise fee and cable TV utility tax are both calculated from total gross subscriber revenue. Federal law requires a public hearing for renewal of a cable franchise.

Attachments: Yes--1) Proposed Ordinance DD11-77 including Exhibit A--Draft Franchise Agreement

BUDGET INFORMATION

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<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
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Budget Explanation: The actions associated with this public hearing are revenue neutral. The current utility tax of 6.5% will be reduced to 1.5% upon implementation of a 5% franchise fee--both tax and fee calculated from the same total gross subscriber revenue.

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review: Finance Committee
Date: 23 August 2011
Chair/Councilmember: Deputy Mayor Swatman
Councilmember: Mark Hamilton
Councilmember: James Rackley

Forward to: 9/13/2011 Council Meeting

Consent Agenda: Yes No

Commission/Board Review:

Hearing Examiner Review:

COUNCIL ACTION
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<th>Director</th>
<th>Mayor</th>
<th>Date Reviewed by City Attorney</th>
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<tr>
<td></td>
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<td>7/29/11</td>
</tr>
</tbody>
</table>

Workshop Date(s):  
Meeting Date(s):  
Public Hearing Date(s):  
Tabled to Date:
City of Bonney Lake

To: Mayor Johnson and City Council
From: Brian Hartsell
CC: Don Morrison
Date: 9/7/2011
Re: Franchise Agreement Renewal & Televising City Council Meetings

Comments: Currently the City is pursuing a franchise agreement renewal and implementation of the associated 5% franchise fee along with a corresponding reduction of the utility tax from 6.5% to 1.5%. This memo is to point out that while these current actions are stated as revenue neutral, a future decision to broadcast City Council Meeting on television could affect whether this action remains revenue neutral.

If the City chooses in the near future to offset costs associated with such broadcasting by establishing a CATV utility tax greater than 1.5%, then an adjustment to the existing agenda bills would be necessary prior to passage to reflect an action that wasn’t revenue neutral. If this course is selected but pursued later, then a subsequent ordinance would be necessary to raise the utility tax from 1.5% to a new higher amount.

If the City is serious about broadcasting council meetings sooner rather than later, it may want to prevent a scenario where the utility tax is lowered, only to be raised a short time later. If this is the case, the City may want to consider delaying the franchise renewal ordinance and associated public hearing and utility tax reduction ordinance so that these actions can be timed to simultaneously support the City’s broadcasting objectives.

If the City’s plans to televise meetings are still down the road for some time, then the recommendation would be to proceed as currently planned with the franchise renewal ordinance and associated public hearing and utility tax reduction ordinance—which is stated as revenue neutral.
ORDINANCE D11-77

AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, RENEWING A CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC THEREBY SUPERSEDED ALL PREVIOUS AGREEMENTS; AND ESTABLISHING A FRANCHISE FEE OF FIVE PERCENT

WHEREAS, the previous franchise agreement established by Ordinance 619, and subsequently updated by Resolutions 745 and 999, has expired, and

WHEREAS, Rainier Communications Commission, of which the City is a member, negotiated an updated cable television franchise agreement on behalf of all member local governments, and

WHEREAS, the franchise agreement calls for a 5 percent franchise fee calculated from total gross subscriber revenue, and

WHEREAS, the City has complied with all federal and state procedural requirements for the renewal of cable franchises,

NOW, THEREFORE, the City Council of the City of Bonney Lake do hereby ordain as follows:

   Section 1. Ordinance 619 and corresponding Resolutions 745 and 999 are hereby superseded by this Ordinance, D11-77.

   Section 2. A Franchise Agreement between the City of Bonney Lake & Comcast of California/Colorado/Washington I, Inc. is hereby renewed and established as attached in Exhibit A, and incorporated herein by this reference as if set forth in full.

   Section 3. This Ordinance shall take effect and be in force 5 days after passage and publication, as required by law.

PASSED by the City Council and approved by the Mayor this _____ day of ______________________, 2011.

________________________
Neil Johnson, Mayor

ATTEST:
Ordinance D11-77

Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney
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7. **Familiarity with Franchise**
8. **Effect of Acceptance**
9. **Police Powers**
10. **Franchise Area**

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CABLE TV FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS

For the purposes of this Franchise and all exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

"Access"
means the availability for Noncommercial use by various governmental and educational agencies, including Grantor and its designees, of particular channels on the System to receive and distribute Video Programming to Subscribers, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

(C) "Access" means Educational Access and Governmental Access, collectively.

"Access Center"
means a facility or facilities where signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

"Access Channel"
means any Channel, or portion thereof, designated for Noncommercial Access purposes or otherwise made available to facilitate or transmit Access programming.

"Access Fees"
means the Capital Fee paid to the Grantor by the Grantee in accordance with section 9.1 below.

"Activation" or "Activated"
means the status of any capacity on or part of the System wherein the use of that capacity or part thereof may be made available without further installation of system equipment other than Subscriber premise equipment, whether hardware or software.

"Affiliated Entity" or "Affiliate"
means when used in connection with Grantee any corporation, Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successor corporations. Affiliated Entity or Affiliate also means any Person with whom Grantee contracts to provide Cable Services on the Cable System.
"Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

"Basic Service" means any Cable Service tier which includes, at a minimum, the retransmission of local television Broadcast Signals.

"Broadcast Signal" means a television signal transmitted over the air to a wide geographic audience, and received by a System off-the-air by antenna, microwave, satellite dishes or any other means.


"Cable Operator" means any Person or groups of Persons, including Grantee, who provides Cable Service over a System and directly or through one or more Affiliates owns a significant interest in such System or who otherwise control(s) or is(are) responsible for, through any arrangement, the management and operation of such a System.

"Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

"Channel" means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

"Connection" with regard to connections to public buildings, means installation of fiber optic or coaxial cable or other System related facilities through the outer wall of the building.

"Designated Access Provider" means the entity or entities designated by the Grantor to manage or co-manage Educational or Governmental Access Channels and facilities. The Grantor may be a Designated Access Provider.

“Designated Distributor” means any entity authorized by Grantor to distribute Access Programming.

"Downstream Channel" means a Channel capable of carrying a transmission from the Headend to remote points on the System.
"Dwelling Unit" means any residential building, or each portion thereof.

"Expanded Basic Service" means cable programming services not included in the Basic Service and excluding premium or pay-per-view services.

"FCC" means the Federal Communications Commission or its lawful successor.

"Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying Cable Service by means of electric lightwave pulses.

"Franchise" means the document in which this definition appears, which is executed between Grantor and Grantee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

"Franchise Area" means the area within the jurisdictional boundaries of the Grantor, including any areas annexed by Grantor during the term of this Franchise.

"Franchise Fee" includes any tax, fee or assessment of any kind imposed by the Grantor on the Grantee or Subscribers, or both solely because of their status as such. The term Franchise Fee does not include:

(A) Any tax, fee or assessment of general applicability, for example a utility tax.

(B) Capital costs which are required by the Franchise to be incurred by the Grantee for educational or governmental access facilities, including the support required in Section 9.1;

(C) Requirements or charges incidental to the awarding or enforcing of the franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

(D) Any fee imposed under Title 17, United States Code.

"Grantee" means Comcast of California/Colorado/Washington I, Inc. or its lawful successor, transferee or assignee.

"Grantor" means the City of Bonney Lake.

"Gross Revenues" means any and all revenue derived directly or indirectly by the Grantee, or by any other entity that is a Cable Operator of the Cable System including Grantee’s Affiliates, from the operation of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues
include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Service, any expanded tiers of Cable Service, optional Premium Services; installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System, late fees and administrative fees, revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues (including local, regional and a pro rata share of national advertising carried on the Cable System in the Franchise Area) net of commissions due to advertising agencies that arrange for the advertising buy; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees, revenue from interactive services to the extent they are considered Cable Services under federal law, revenue from the sale or carriage of other Cable Services, and revenues from home shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, Town or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fee is not such a tax.

The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing applicable law.

"Headend" or "Hub"
means any Facility for signal reception and dissemination on a System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, equipment for the interconnection of the System with adjacent Systems and interconnection of any networks which are part of the System, and all other related equipment and Facilities.

"Leased Access Channel"
means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

“Noncommercial”
means, in the context of Access Channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving financial support to produce and transmit video programming on an Access Channel, or from acknowledging a contribution, in the manner of the Corporation for Public Broadcasting.

“Normal Business Hours”
means those hours during which most similar businesses in the community are open to serve customers.
“Normal Operating Conditions”
means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

"Pay Service" or "Premium Service"
means Video Programming or other programming service choices (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program or per-event basis.

"Person"
means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

“RCC”
Rainier Communications Commission, established as an interlocal governmental cooperative, pursuant to the Interlocal Cooperation Act, RCW 39.34, et. seq., and the general laws of the State of Washington, its lawful successor, or, if none, that other consortium or interlocal agreement formed by Grantor and any other municipal corporations that is designed to cooperate on telecommunications and cable television services.

“RMC”
means the educational and governmental Access Center known as the Rainier Media Center which is operated by the RCC or its lawful successor, or if none, that consortium formed by Grantor and other political subdivisions and any other municipal corporations that is designed to cooperate on Educational and Government Access services.

“Rights-of-Way”
means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Franchise area.

“Roads”
means Rights-of-Way.

"School"
means any accredited educational institution including, for example, primary and secondary schools (K-12), colleges and universities and excluding home schools and residential facilities.

“Service Interruption”
means the loss of picture or sound on one or more cable channels.

"State"
means the State of Washington.

"Subscriber"
means any Person who lawfully receives Cable Services provided by Grantee by means of the System with Grantee’s express permission.
"System" or “Cable System”
means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable System” or “System” shall mean Grantee’s Cable System in the Franchise Area.

"Tier"
means a category of Cable Services provided by the Grantee for which a separate rate is charged.

“Upstream Channel”
means a Channel capable of carrying a transmission to the Headend from remote points on the System.

“Video Programming”
means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant
(A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, and upgrade a System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) The Grantee, through this Franchise, is granted the right to operate its System using the Grantor's Rights-of-Way within the Franchise Area in compliance with all lawfully enacted applicable Grantor construction codes and regulations. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability lawfully enacted, or hereafter lawfully enacted, by the Grantor to the extent that the provisions of the codes and ordinances do not have the effect of materially limiting the benefits or materially expanding the obligations of the Grantee that are granted by this Franchise. The Grantee specifically agrees to comply with the provisions of Grantor ordinances provided that in the event of a conflict between the provisions of ordinances and the Franchise, the express provisions of the Franchise shall govern. Grantee reserves the right to challenge provisions of
any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with
its contractual right granted herein.

(C) This Franchise shall not be interpreted to prevent the Grantor from imposing
additional conditions, including additional compensation conditions for use of the Rights-of-
Way, should Grantee provide service other than Cable Service, to the extent permitted by law.

(D) Grantee promises and guarantees, as a condition of exercising the privileges
granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of
Cable Service in the Franchise Area, or directly involved in the management or operation of the
System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

(E) No rights shall pass to Grantee by implication.

(F) This Franchise is intended to convey limited rights and interests only as to those
Rights-of-Ways in which the Grantor has an actual interest. It is not a warranty of title or
interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular
location within the Rights-of-Way; and it does not confer rights other than as expressly provided
in the grant hereof.

2.2 Use of Rights-of-Way

(A) Subject to Grantor's supervision and control, Grantee may erect, install, construct,
repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-
Way within the Franchise Area, such wires, cables (both coaxial and fiber optic), conductors,
ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other
property and equipment as are necessary and appurtenant to the operation of a System for the
provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable
construction codes, laws, ordinances, and regulations, now in effect or enacted hereafter. This
grant does not include the installation, maintenance or construction, repair or replacement of any
wireless telecommunications facilities or equipment within Rights-of-Way or otherwise on
Grantor owned property or on property held in trust or used by the Grantor.

(B) Grantee must follow Grantor-established written requirements including all
Grantor codes, ordinances and other regulations regarding placement of System facilities in
Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any
event install System facilities in a manner that minimizes interference with the use of the Rights-of-
Way by others, including others that may be installing communications facilities. The
Grantor may require that System facilities be installed at a particular time, at a specific place or
in a particular manner as a condition of access to a particular Right-of-way; may deny access if
Grantee is not willing to comply with Grantor's requirements; and may remove, or require
removal of, any facility that is not installed in compliance with the requirements established by
Grantor, or which is installed without prior Grantor approval of the time, place or manner of
installation and charge Grantee for all the costs associated with removal; and may require
Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through
joint trenching and other arrangements. Grantee shall assume all Grantee’s costs associated with
any requirement of Grantor in the exercise of its police powers or in furtherance of any public
improvement to move its System located in the Right-of-way.
2.3 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be five (5) years from the effective date of this Franchise, unless terminated sooner as hereinafter provided. This Franchise may be extended by mutual agreement of the parties for five (5) additional years.

2.4 Effective Date

The provisions of this Franchise shall be effective upon the written acceptance of this Franchise by the Grantee, signed by its proper officers, filed with the Clerk of the Grantor within sixty days from ________________________, 2011.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Systems as Grantor deems appropriate.

2.6 Grant of Other Franchises

(A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee’s request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. “Material terms and conditions” include but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the Grantor which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the Grantor agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by Grantor and Grantee.

(B) In the event an application for a new cable television franchise is filed with the Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide notice of such application.

(C) In the event that a wireline multichannel video programming distributor provides video service to the residents of the Grantor under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee’s belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be
amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not unreasonably withhold consent to the Grantee’s petition.

2.7 Familiarity with Franchise
The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time and consistent with all local, state and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance
By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the Grantor's intervening in any legal or regulatory proceeding affecting the System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.9 Police Powers
Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all applicable laws, ordinances and regulations enacted pursuant to the police powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of Grantor's police powers shall be resolved in favor of the latter.

2.10 Franchise Area
Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise Area.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee
As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues associated with Grantee’s operation of its System in the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.
3.2 Payments
Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment
No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports
Each payment shall be accompanied by a written report to Grantor, verified by an officer of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the System and shall be drafted in accordance with generally accepted accounting principles.

3.5 Audits
On an annual basis, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records related to this Franchise and to re-compute any amounts determined to be payable under this Franchise. Provided Grantee cooperates in making all relevant records available upon request, Grantor will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous three (3) years, unless Grantor has information relating to previous years beyond the three (3) which raises doubt as to the accuracy of payments made under this or previous Franchises. Any additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid, by three percent (3%) in a calendar year or more, Grantee shall pay the total cost of the audit.

3.6 Financial Records
Grantee agrees to meet with a representative of the Grantor upon written request to review Grantee's method of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Grantor deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

3.7 Interest on Late Payments
In the event any payment is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay, in addition to the payment or sum due, interest from the due date at an interest rate of 1%, beginning on the forty-sixth (46th) day after the end of the calendar quarter and continuing every day thereafter until the seventy-sixth (76th) day after the end of the calendar quarter, or until payment is made, whichever is earlier. If any payment is not received within seventy-six (76) days after the end of the calendar quarter, Grantee shall be assessed a late fee in the additional amount of two hundred dollars ($200.00) per day, beginning on the seventy-sixth (76th) day after the end of the calendar quarter and continuing every day thereafter until paid.
3.8 Maximum Franchise Fee
The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor hereunder, provided that all providers of Cable Service in the Franchise Area over which the Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60) days prior written notice from Grantor of such amendment.

3.9 Additional Commitments Not Franchise Fees
No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset against and are not Franchise Fees.

3.10 Payment on Termination
If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Within sixty (60) days of the filing of the certified statement with the Grantor, Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the Grantor may do so by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 General Provisions
(A) Grantor shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted under State and local law.

(B) Grantee shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the term of the Franchise. Nothing in this Franchise shall limit or expand the Grantor's right of eminent domain under State law.

(C) The Grantee and Grantor shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes. However, should such changes in law...
substantially reduce Grantee’s obligation to pay or provide Franchise Fees, or any other support
required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for
a six (6) month period, at the request of either party, to resolve the issues. If resolution is not
reached within the six (6) month period, and the period has not been extended by mutual
agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall
commence the renewal process in accordance with the Cable Act.

4.2 Rates and Charges
All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation
by Grantor to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination
All Grantee rates and charges shall be published (in the form of a publicly-available rate card),
made available to the public, and shall be non-discriminatory as to all Persons of similar classes,
under similar circumstances and conditions. Grantee shall apply its rates in accordance with
governing law. Grantee shall permit Subscribers to make any in-residence connections the
Subscriber chooses without additional charge and without penalizing the Subscriber therefore.
However, if any in-home connection requires service from Grantee due to signal quality, signal
leakage or other factors, caused by improper installation of such in-home wiring or faulty
materials of such in-home wiring, the Subscriber may be charged appropriate service charges by
Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid
promotional campaigns;

(B) The offering of reasonable discounts to similarly situated Persons.

(C) The offering of rate discounts for either Cable Service generally, or data
transmission to governmental agencies or educational institutions; or

(D) The offering of bulk discounts for Multiple Dwelling Units.

4.4 Filing of Rates and Charges
Throughout the term of this Franchise, Grantee shall maintain on file with Grantor
a complete schedule of applicable rates and charges for Cable Services provided under this
Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and
charges under temporary reductions or waivers of rates and charges in conjunction with
promotional campaigns. As used in this subsection, no rate or charge shall be considered
temporary if Subscribers have the ability over a period greater than twelve (12) consecutive
months (or such other period as may be approved by Grantor) to purchase Cable Services at such
rate or charge.

(B) On an annual basis, Grantee shall provide a complete schedule of current rates
and charges for any and all Leased Access Channels, or portions of such Channels, provided by
Grantee.

4.5 Late Fees
If the Grantee assesses any kind of penalty fee for late payment, such fee shall comply with
applicable law.
4.6  Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall
be deemed to be of the essence, and any failure of Grantee to perform within the allotted time
may be considered a material breach of this Franchise. However, in the event that Grantee is
prevented or delayed in the performance of any of its obligations under this Franchise by reason
beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the
circumstances, to perform the affected obligation under this Franchise or to procure a substitute
for such obligation which is satisfactory to Grantor.

4.7  Performance Evaluation

(A) Special evaluation sessions may be held at any time upon request by Grantor
during the term of this Franchise.

(B) All evaluation sessions shall be open to the public and announced at least one
week in advance in a newspaper of general circulation in the Franchise Area. Grantor may
notify its Subscribers of evaluation sessions by announcement on its Access Channel.

(C) Topics which may be discussed at any evaluation session may include, but are not
limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted
Cable Services; application of new technologies; system performance; Cable Services provided;
programming offered; customer complaints; privacy; amendments to this Franchise; judicial and
FCC rulings; line extension policies; and Grantor's or Grantee's rules; provided that nothing in
this subsection shall be construed as requiring the renegotiation of this Franchise.

(D) During evaluations under this Section, Grantee shall fully cooperate with Grantor
and shall provide such information and documents as Grantor may require to perform the
evaluation.

SECTION 5.  FINANCIAL AND INSURANCE REQUIREMENTS

5.1  Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its
officers, officials, boards, commissions, authorized agents and employees, harmless from any
action or claim for injury including death, damage, loss, liability, cost or expense, including
court and appeal costs and attorneys’ fees and 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, reconstruction, or any other act done under this Franchise, by or for
Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its
agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting
its defense of the Grantor.

(B) Indemnification for Relocation. Grantee shall indemnify Grantor for any
damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to,
arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or
relocate any of its facilities in the Streets in a timely manner in accordance with any relocation
required by Grantor.
(C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in any way arising out of:

1. The grant of this Franchise;
2. Any failure by Grantee to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the System.

(D) Procedures and Defense. If a claim or action arises, Grantor or any other indemnified party shall tender the defense of the claim to Grantee, which defense shall be at Grantee’s expense. Grantor may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims affecting Grantor without Grantor's written approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this Section.

(F) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend any claims arising thereunder, and the Grantor shall cooperate fully therein.

(G) If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Grantor and the counsel selected by Grantee to represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The Grantor’s expenses shall include all out-of-pocket expenses, such as consultants’ fees, and shall also include the reasonable value of any services rendered by the Grantor attorney or his/her assistants or any employees of the Grantor or its agents but shall not include outside attorneys’ fees for services that are unnecessarily duplicative of services provided the Grantor by Grantee.

5.2 Insurance Requirements

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect the Grantor against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Franchise, or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:

1. Commercial General Liability: Five million dollars ($5,000,000) aggregate limit per occurrence for bodily injury, personal injury and property damage;
2. Automobile Liability: Three million dollars ($3,000,000) combined single limit per accident for bodily injury and property damage; and
(3) Employer's Liability: One million dollars ($1,000,000).

(C) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

   (a) The Grantor shall be designated as additional insured.

   (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, boards, commissions, employees and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

   (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) The insurance shall provide that the insurance shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days' written notice first being given to Grantor. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(D) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A."

(E) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance or a copy of the page of the policy reflecting blanket additional insured status. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Security

Upon the effective date of this Franchise, Grantee shall provide a performance bond in the amount of $25,000.00 to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.

SECTION 6. CUSTOMER SERVICE

6.1 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise.

6.2 Subscriber Privacy

Grantee will comply with privacy rights of Subscribers in accordance with applicable federal, State and local laws.
6.3 Customer Service Center
Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer service center located within Pierce County that will be open during Normal Business Hours, to provide Subscribers the opportunity to receive and pick up Subscriber equipment and to make bill payments and complaints.

6.4 Customer Service Agreement and Manual
(A) Grantee shall provide to Subscribers an accurate, comprehensive service agreement and customer installation packet for use in establishing Subscriber service. This material shall, at a minimum, contain the following:
(1) Grantee's procedure for investigation and resolution of Subscriber service complaints.
(2) Services to be provided and rates for such services.
(3) Billing procedures.
(4) Service termination procedure.
(5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
(6) A complete statement of the Subscriber's right to privacy.
(7) Converter and cable modem equipment policy.
(8) The name, address and phone number of the Person identified by the Grantor as responsible for handling cable questions and complaints for the Grantor. This information shall be prominently displayed in the installation packet.

(B) A copy of the installation packet shall be provided to each Subscriber at the time of initial installation and any reconnection (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee shall make reasonable efforts to advise customers of any material changes in cable operation policies.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records
Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities, necessary for the enforcement of the terms of this Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliated entity or a third party. Grantor may, in writing, request copies of any such records or books, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary for the
enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in
making such examination shall be paid by Grantee.

7.2 Confidentiality
Grantor agrees to keep confidential any proprietary or confidential books or records to the extent
permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the
work confidential or proprietary, and shall provide a brief written explanation as to why such
information is confidential and how it may be treated as such under State or federal law. If
Grantor receives a demand from any Person for disclosure of any information designated by
Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee
and provide Grantee with a copy of any written request by the party demanding access to such
information within a reasonable time. If Grantor believes that the disclosure of such documents
by Grantor would interfere with Grantee’s rights under federal or state law, Grantee shall
institute an action in the Pierce County Superior Court to prevent the disclosure by Grantor of
such documents. Grantee shall join the Person requesting the documents to such an action.
Grantee shall defend, indemnify and hold Grantor harmless from any claim or judgment
including, but not limited to, any penalties or costs under RCW 42.56.

7.3 Records Required
Grantee shall at all times maintain:

(A) A full and complete set of plans, records and "as built" maps showing the
exact location of all System equipment installed or in use in the Franchise Area, which is
generated in Grantee’s normal course of business;

(B) A copy of all FCC filings on behalf of Grantee, its parent corporations or
Affiliates which relate to the operation of the System in the Franchise Area;

(C) A list of Grantee's Cable Services, rates and Channel line-ups;

(D) A statistical compilation of Subscriber complaints, actions taken and
resolution, and a log of service calls.

7.4 Copies of Federal and State Reports
Upon written request, Grantee shall submit to Grantor copies of any pleading, applications,
notifications, communications and documents of any kind, submitted by Grantee or its Affiliates
to any federal, State or local courts, regulatory agencies and other government bodies if such
documents directly relate to the operations of Grantee's System within the Franchise Area.
Grantee shall submit such documents to Grantor no later than thirty (30) days after receipt of
Grantor’s request. Grantee shall not claim confidential, privileged or proprietary rights to such
documents unless under federal, State, or local law such documents have been determined to be
confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all
other reports, documents and notifications provided to any federal, State or local regulatory
agency as a routine matter in the due course of operating Grantee's System within the Franchise
Area, Grantee shall make such documents available to Grantor upon Grantor's written request.

7.5 Complaint File and Reports
Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the
System, and Grantee's actions in response to those complaints, in a manner consistent with the
privacy rights of Subscribers. Those files shall remain open to Grantor during normal business
hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report
to the Grantor which can, at Grantor’s option, include the following information:

(A) Nature and type of customer complaints;
(B) Number, duration, general location and customer impact of unplanned service
interruptions;
(C) Any significant construction activities which affect the quality or otherwise
enhance the service of the System;
(D) Average response time for service calls;
(E) New areas constructed and available for Cable Service;
(F) Video programming changes (additions/deletions); and
(G) Such other information as reasonably requested by Grantor.

7.6 Inspection of Facilities
Grantor may inspect any of Grantee's cable system facilities and equipment in the Rights-of-Way
at any reasonable time during business hours upon at least forty-eight (48) hours notice, or, in
case of emergency, upon demand without prior notice.

7.7 False Statements
Any intentional false or misleading statement or representation in any report required by this
Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,
legal or equitable, which are available to Grantor under this Franchise or otherwise.

SECTION 8. PROGRAMMING AND CHANNEL CAPACITY

8.1 Grantee Compliance
Grantee will provide the broad categories of programming and Channel capacity required in this
Franchise, and in all applicable federal, State or local laws, statutes, regulations or standards.

8.2 Broad Programming Categories
Grantee shall provide or enable the provision of at least the following initial broad categories of
programming to the extent such categories are reasonably available:

(A) Educational programming;
(B) Sports programming;
(C) General entertainment programming;
(D) Children’s programming;
(E) Information/news programming;
(F) National and local government programming.
8.3 Obscenity
Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene.

8.4 Parental Control Device
Upon request by any Subscriber, Grantee shall make available a parental control or lockout device traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.5 Complimentary Cable Service
Grantee, upon written request, shall provide without charge, a Standard Installation and one outlet of Basic and Expanded Basic Service to those administrative buildings owned and occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-12 public school(s) that are within 125 feet aerial or 60 feet underground of its Cable System. In the case of leased facilities, recipient of service is responsible for securing approval for appropriate right of entry suitable to the Grantee at its sole discretion. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee’s Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

8.6 New Developments
If there is a new technology which in Grantor’s opinion would enhance substantially the quality or quantity of programming available to Subscribers on the System, Grantee shall, at the request of the Grantor, investigate the feasibility of implementing said technology and report to Grantor the results of such investigation.

SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Capital Fee
Effective Within sixty (60) days after the acceptance of this Franchise of written request from Grantor, and continuing during the remaining term of this Franchise, Grantee shall pay to Grantor a Capital Fee for educational and government access capital expenditures in the amount up to thirty-five cents ($0.35) per Subscriber per month. Grantee shall make such payments quarterly, no later than thirty (30) days following the end of the quarter. The Grantor agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Fee to the price of Cable Services and to collect the Capital Fee from Subscribers. In addition, as permitted in 47 C.F.R.
§76.985, all amounts paid as the Capital Fee may be separately stated on Subscriber’s bills as a government access capital equipment fee.

9.2 Access Reporting

Upon Grantee’s written request the Grantor shall submit a report annually on the use of Access Channels and Capital Fee. The Grantor shall submit a report to Grantee within one hundred twenty (120) days of a written request. Grantee may review the records of the Grantor regarding the use of the Capital Fee.

9.3 Management and Control of Access Channels

(A) Grantor may authorize Designated Access Providers to control, operate, and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The Grantor or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider.

(B) Grantee shall cooperate with Grantor and Designated Access Providers in the use of the System and Access facilities for the provision of Access Channels.

9.4 Access Channels

(A) Grantee shall provide at no charge commencing within one hundred eighty (180) days after acceptance of this Franchise, and continuing throughout the term of this Franchise, One (1) Channel for use by Grantor (said Channel to be capable of cable-casting both live and recorded programming only within the geographic territory of Grantor).

(B) Grantee shall provide immediately at no charge after acceptance of this Franchise, and continuing throughout the term of this Franchise the following:

1. One (1) Channel for use by the RCC; and
2. Three (3) Channels for Educational Access programming.

(C) All assigned Access Channels can be used to transmit programming in any format which is technically compatible with the Cable System, including, by way of example and not limitation, video, audio only, secondary audio and/or text (character generated) messages. Such uses must be in furtherance of Access purposes. Each of the above five (5) Channels may be digitized by the Grantee and must be capable of transmitting one standard analog or one digital video signal. Any Access Channels provided via digital or compressed video technology shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the System and shall be full motion video. The provision of Access Channels via digital or compressed video technology will not reduce the total Access Channel requirement herein.

9.5 Change in Technology

In the event Grantee makes any change in the System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Access personnel to ensure that the capabilities of Access
channels are not diminished or adversely affected by such change. For example, this provision shall apply if Basic Service on the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

9.6 Access Channels on Lowest Level of Service
All Access Channels provided to Subscribers under this Franchise shall be included by Grantee, without limitation, as a part of the lowest level of service, subject to applicable law.

9.7 Access Channel Location/Relocation
Grantee will carry Designated Access channels as follows: the C-RCC channel shall be on 22, the educational and other Grantor channels shall be together on adjacent channels, if technically feasible; provided that if Grantee places similar access channels in other jurisdictions on these numbered channels, then feasibility shall be presumed. Grantee will carry Grantor’s programming on the channel designated for local government programming on its regional channel line-up, currently channel 21, so that the Grantor will receive the same benefits from such carriage as other jurisdictions in western Washington Furthermore, Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall provide three (3) months notice to the Grantor prior to any relocation and shall reimburse Grantor for its costs incurred for any promoting, marketing, advertising and notice of the Channel change up to three thousand dollars ($3,000).

9.8 Return Line
Within sixty (60) days of written request, Grantee shall, meet with Grantor to discuss the feasibility of constructing within twelve (12) months of written request by the Grantor one (1) fiber optic Return Line, to enable the distribution of Access programming to Subscribers on the Access Channels. The Return Line shall run between the demarcation points identified in Exhibit I, Access Origination Points. Grantor and Grantee shall split the total cost of constructing the return line at fifty percent (50%) each.

9.9 Technical Quality
The Grantee shall maintain Access channels at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other Channels. The Grantee shall provide routine maintenance and shall repair and replace, if necessary, all Grantee’s transmission equipment, including fiber transmitters and receivers, channel modulators, associated cable and equipment, required to carry a quality signal to and from the Grantor's Designated Distributor’s facilities (and Designated Access Providers') and the Grantee's facilities for the Access channels provided under this Franchise.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Construction
(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of
its System. All construction and maintenance of any and all Grantee’s facilities within Rights-
of-Way shall, regardless of who performs the construction, be and remain Grantee's
responsibility.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a
construction schedule for work in the Rights-of-Ways.

(C) Grantee may make excavations in Rights-of-Way for any facility needed for the
maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply
for, and obtain, appropriate permits from Grantor, and give appropriate notices to Grantor. As a
condition of any permits so issued, Grantor officials may impose such conditions and regulations
as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper
restoration of such Rights-of-Way and structures, protection of the public and the continuity of
pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire in writing about
other construction currently in progress, planned or proposed, in order to investigate thoroughly
all opportunities for joint trenching or boring. Whenever it is possible and reasonably
practicable to joint trench or share bores or cuts, Grantee shall work with other providers,
licensees, permittees and franchisees so as to reduce so far as possible the number of Rights-of-
Way cuts within the Franchise Area.

(D) In the event that emergency repairs are necessary, Grantee shall immediately
notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and
shall apply for appropriate permits within forty-eight (48) hours after discovery of the
emergency.

(E) Repair and Restoration of Property.

(1) The Grantee shall protect public and private property within the Rights-of-
Way from damage.

(2) If public property is disturbed or damaged, the Grantee shall restore the
property to its former condition. Public right-of-way or other Grantor property shall be
restored in a manner and within a timeframe approved by the Grantor's Director of Public
Works. If restoration of public right-of-way or other property of the Grantor is not
satisfactorily performed within a reasonable time, the Director of Public Works may,
after prior notice to the Grantee, or without notice where the disturbance or damage may
create a risk to public health or safety, or cause delay or added expense to a public project
or activity, cause the repairs to be made at the Grantee's expense and recover the cost of
those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list
of those costs, including the costs of labor, materials and equipment, the Grantee shall
pay the Grantor. If suit is brought by Grantor upon Grantee's failure to pay for repair or
restoration, the reasonable costs and expenses of the prevailing party will be paid by the
non-prevailing party.

(F) Movement for Other Permittees.

At the request of any Person holding a valid permit and upon reasonable advance notice,
Grantee shall temporarily raise, lower or remove its wires 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 Grantee may require the estimated payment in advance.

10.2 Relocation
(A) Facilities Relocation – Upon the receipt of a demand by the Grantor, within thirty days, or in the event of an emergency, upon such shorter notice period as the Grantor deems reasonable under the circumstances, Grantee, at its sole cost and expense, shall remove or relocate any Facilities, if and when the removal or relocation of such Facilities is made necessary by the Grantor acting pursuant to any lawful governmental or proprietary purpose, including, without limitation, engaging in any lawful change of grade, alignment or width of any Rights-of-Way in the Franchise Area pursuant to any concern regarding health, safety and welfare, or in the installation or replacement of any street light pole. Whenever Grantee is required to remove Facilities or if Grantee desires to relocate Facilities, then the Grantor shall use its best efforts to accommodate Grantee by making another functionally equivalent property available for use in accordance with and subject to the terms and conditions of this Franchise. However, nothing in this Agreement shall be construed as creating an obligation of the Grantor to provide Grantee with such property.

(B) Relocation Costs – Whenever the removal or relocation of Facilities is required under this Franchise or otherwise by order of Grantor, and such removal or relocation shall cause the Rights-of-Way to be damaged, Grantee, at its sole cost and expense, shall promptly repair and return the Rights-of-Way, in which the Facilities are located, to the same condition as existed prior to such work in the sole determination of Grantor. If Grantee does not return the affected site to a safe and satisfactory condition, then Grantor shall have the option to perform or cause to be performed such reasonable and necessary work and charge Grantee for the proposed costs to be incurred or the actual cost incurred by Grantor. Upon the receipt of a demand for payment by the Grantor, Grantee shall reimburse Grantor for such costs within thirty days.

10.3 Location of Facilities

Within five (5) business days, unless otherwise specified in Grantee’s regulations, after the Grantor or any franchisee, licensee or permittee of the Grantor notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.4 Restoration of Rights-of-Way / Grantor Owned Property

(A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned property to a condition as good or better than its prior condition in Grantor’s sole determination. When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way or Grantor owned property, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to Grantor.

(B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned property, Grantee shall be responsible for restoration in accordance with applicable regulations of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-
Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and repair any work done by Grantee which, in the determination of Grantor, does not conform to applicable code. The cost thereof, including the costs of inspection and supervision shall be paid by Grantee. All excavations made by Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Franchise, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

10.5 Maintenance and Workmanship

(A) Grantee's System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way by, or under, Grantor's authority.

(B) Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe and presentable condition.

(C) The Grantee's transmission and distribution system, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public property.

10.6 Acquisition of Facilities

Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or annexation to the Grantor of any area in which Grantee owns or operates any facility, Grantee shall, at Grantor's request, submit to Grantor a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

10.7 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee
shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

10.8 Hazardous Substances

(A) Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's System in Rights-of-Way.

(B) Grantee shall maintain and inspect its System located in Rights-of-Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residues of hazardous substances related thereto.

10.9 Undergrounding of Cable

(A) Where electric and telephone utility wiring is installed underground at the time of System construction, or when such wiring is subsequently placed underground, all System lines, wiring and equipment shall also be placed underground with other wire line service at no expense to the Grantor. Related System equipment, such as pedestals, must be placed in accordance with applicable code requirements and rules as interpreted by the Grantor's Director of Public Works. In areas where either electric and telephone utility wiring are aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(B) The Grantee shall utilize existing poles and conduit wherever possible.

(C) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person.

(D) The Grantee and the Grantor recognize that situations may occur in the future where the Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or bores opened by the Grantee. If the Grantee upgrades in the future, the Grantee shall submit these plans to the Grantor in accordance with the Grantor’s permitting process so that such opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to slow the progress of the upgrade of the System to accommodate the Grantor. In addition, the Grantee agrees to cooperate with the Grantor in any other construction by the Grantee that involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow the Grantor to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores, provided the Grantor shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Grantor shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in the Grantee's trenches and bores under this paragraph.

E) The Grantor shall not be required to obtain easements for the Grantee.

F) The Grantee shall participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities.
10.10 Construction Codes

Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

10.11 Construction and Use of Poles

Whenever feasible, Grantee shall use existing poles when the installation of facilities above-ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line. Grantor shall have the right to require Grantee to change the location of any pole, conduit, structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public convenience requires such change, and the expense thereof shall be paid by Grantee.

10.12 Tree Trimming

Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way which interferes with the System.

10.13 Standards

(A) All work authorized and required hereunder shall be done in a safe, thorough and worker-like manner. The Grantee must comply with all federal, State and Grantor safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.

(C) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with the right of the public or individual property owner, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic.

(D) In the maintenance and operation of its System in Rights-of-Way, alleys and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening
or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of
its operations shall be guarded and protected at all times by the placement of adequate barriers,
fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly
designated by warning lights.

(E) In the event the Grantor shall relocate a Rights-of-Way, raise or lower a bridge, or
make any other changes requiring the removal of utility installations, the Grantee shall remove or
relocate its installations at said locations at no cost to the Grantor.

10.14 Stop Work
On notice from Grantor that any work is being conducted contrary to the provisions of this
Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the
terms of any applicable permit, laws, regulations, ordinances or standards, the work may
immediately be stopped by Grantor. The stop work order shall:

(A) Be in writing;
(B) Be given to the individual doing the work, or posted on the work site;
(C) Be sent to Grantee by mail at the address given herein;
(D) Indicate the nature of the alleged violation or unsafe condition; and
(E) Establish conditions under which work may be resumed.

10.15 Work of Contractors and Subcontractors
Grantee's contractors and subcontractors shall be licensed and bonded in accordance with
Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is
subject to the same restrictions, limitations and conditions as if the work were performed by
Grantee. Grantee shall be responsible for all work performed by its contractors and
subcontractors and others performing work on its behalf as if the work were performed by it, and
shall ensure that all such work is performed in compliance with this Franchise and other
applicable law, and shall be jointly and severally liable for all damages and correcting all damage
caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other
persons performing work on Grantee's behalf are familiar with the requirements of this Franchise
and other applicable laws governing the work performed by them.

SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY

11.1 Equal and Uniform Service
The Grantee shall provide access to equal and uniform Cable Service offerings throughout the
Franchise Area along public rights-of-way, provided that nothing shall prohibit the Grantee from
activating additional Cable Services to Subscribers on a node by node basis during an upgrade of
its Cable System.

11.2 Cable System Upgrade
Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its
Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from
the Headend to the node and tying into a hybrid fiber-coaxial system already serving
Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the
Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical quality standards regardless of a particular manner in which signal is transmitted. During the term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.

11.3 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. Grantor shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

11.4 Cable System Performance Testing

(A) Grantee shall, at Grantee’s expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;
(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee’s tests shall include:

(1) Cumulative leakage index testing of any new construction;
(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
(3) Tests in response to Subscriber complaints;
(4) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee’s Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to Grantor upon request.

(D) The FCC semi-annual testing is conducted in January/February and July/August of each year. If Grantor contacts Grantee prior to the next test period (i.e., before December 15 and June 15 respectively of each year), Grantee shall provide Grantor with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If Grantor notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the Grantor.

(E) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee’s failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.
11.5 Additional Tests
Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability or technical quality of Cable Service, the Grantor shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the Grantor in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem which precipitated the special tests;
(B) the Cable System component tested;
(C) the equipment used and procedures employed in testing;
(D) the method, if any, in which such complaint or problem was resolved; and
(E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE EXTENSION

12.1 Service Availability
(A) In general, except as otherwise provided herein, Grantee shall provide Service within seven (7) days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

(1) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall, with additional charges for non-standard installations computed according to a non-discriminatory method for such installations, adopted by Grantee and provided in writing to Grantor.

(2) At non-discriminatory monthly rates for all Subscribers, excepting commercial customers, MDU Bulk customers and other lawful exceptions to uniform pricing.

SECTION 13. STANDBY POWER AND EAS

13.1 Standby Power
Grantee shall provide standby power generating capacity at the System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Franchise Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.
13.2 Emergency Alert Capability

(A) In accordance with, and at the time required by, the provisions of FCC Regulations, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with the FCC approved Washington State EAS plan and the Local Area EAS plan that applies to City of Bonney Lake, which has already been submitted for approval to the Washington State Emergency Communications Committee (WSECC).

(B) Grantee shall ensure that the EAS system is functioning properly at all times. It will test the EAS system periodically, in accordance with FCC regulations.

SECTION 14. FRANCHISE BREACHES; TERMINATION OF FRANCHISE

14.1 Informal Dispute Resolution

Prior to proceeding with the formal Procedure for Remedying of Franchise Violations process as set forth below (in subsection 14.2), Grantor agrees to provide Grantee informal verbal or electronic mail notice of any alleged material violation of this Franchise and allow Grantee a reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of Grantee’s legal responsibilities, the Grantee promptly shall so advise Grantor. Grantee agrees to exert good faith efforts to expedite its investigation, determination and communications to Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor believes that Grantee is unreasonably delaying the informal resolution process, it may commence the formal dispute resolution process.

14.2 Procedure for Remedying Franchise Violations

(A) If Grantor believes that Grantee has failed to perform any material obligation under this Franchise, or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to Grantor, contesting Grantor's assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below;

(2) Cure the default; or

(3) Notify Grantor that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify Grantor in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, Grantor may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable. Upon five (5) business days' prior written notice, either Grantor or Grantee may call an informal meeting to discuss the alleged default.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A) (3), or denies the default and requests a
hearing in accordance with subsection (A) (1), or Grantor orders a hearing in accordance with subsection (A) (3), Grantor shall set a public hearing to investigate said issues or the existence of the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit Grantee’s opportunity to make a record which may be reviewed should any final decision of Grantor be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within Grantor's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.

(C) If, after the public hearing, Grantor determines that a default still exists; Grantor shall order Grantee to correct or remedy the default or breach within fourteen (14) days or within such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure within such time to Grantor's reasonable satisfaction, Grantor may:

1. Assess and collect monetary damages in accordance with this Franchise;
2. Commence procedures to terminate this Franchise; or,
3. Pursue any other legal or equitable remedy available under this Franchise

(D) The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the Grantor or its designee. Any such determination by Grantor shall be accompanied by a record, to which Grantee’s contribution shall not be unreasonably limited by Grantor. Any such final determination shall be subject to appeal to a court of competent jurisdiction.

14.3 Alternative Remedies

(A) No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated hereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

(B) The Grantor specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the Grantor, its officers, officials, Councils, boards, commissions, authorized agents, or employees under federal, state, or local law including by example Section 635A of the Cable Act. The Grantee shall not have any monetary recourse against the Grantor, or its officers, officials, Council, Boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof.

14.4 Assessment of Monetary Damages

(A) Upon completion of the procedures set forth above, and from the date of said violation pursuant to the procedures specified in this Franchise, Grantor may assess against and collect from Grantee monetary damages in amounts of up to two hundred fifty dollars ($250.00)
Exhibit A, Ordinance D11-77

per day for any material breaches. Grantor may collect the assessment as specified in this Franchise.

(B) Any assessment hereunder shall not constitute a waiver by Grantor of any other right or remedy it may have under this Franchise or applicable law, including its right to recover from Grantee any additional rights or claims Grantor might have to damages, losses, costs and expenses, after the period for collecting liquidated damages referenced in subsection (C) below has expired.

(C) The Grantor and the Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Grantor as a result of the Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Grantor and the Grantee agree that the Grantee shall pay to the Grantor the sums set forth above for each day that the Grantee shall be in breach of the specific provisions of this Franchise, for a maximum of ninety (90) days. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the Grantor would suffer in the event of the Grantee's breach of such provisions of this Franchise, and are not intended as a penalty.

(D) The Grantee's maintenance of the Security required herein or by applicable code shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit the liability of the Grantee to the amount of the Security; or to otherwise limit the Grantor's recourse to any other remedy available at law or equity.

14.5 Revocation

(A) This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 14.2, or in the event that:

(1) Grantee fails to perform any material obligation under this Franchise;
(2) Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or Subscribers;
(3) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;
(4) Grantee or an Affiliate challenges the legality or enforceability of this Franchise in a judicial or administrative (for example, FCC) proceeding;
(5) Grantee fails to maintain required business offices as provided above;
(6) Grantee abandons the System, or terminates the System's operations;
(7) Grantee fails to restore service to the System after three consecutive days of an outage or interruption in service; except when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the System; or
(8) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Grantee’s creditors, or all or part of the Grantee's System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale.

(B) Additionally, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at the option of the Grantor and subject to applicable law) whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:
1. Removal

(A) In the event of termination, expiration or revocation of this Franchise, and after all appeals from any judicial determination are exhausted and final, Grantor may order the removal of the System facilities from the Franchise Area at Grantee’s sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee’s removal of its equipment.

(B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of Grantor’s expenses and costs, or Grantor may recover its expenses and costs from the Security, or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor of such obligation shall be included in the monies due Grantor from Grantee, including reasonable attorney fees, court expenses and attributed expenses for work conducted by Grantor’s staff or agents.
SECTION 15. ABANDONMENT

15.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the System or; designate another entity to operate the System temporarily until the Grantee restores service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new franchisee is selected by the Grantor. If the Grantor designates another entity to operate the System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages incurred, including reasonable attorney fees, court expenses and attributed expenses for work conducted by Grantor’s staff or agents.

SECTION 16. FRANCHISE TRANSFER

16.1 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Grantor, which consent shall be by the Grantor’s Council, acting by ordinance or resolution.

(B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.

(D) In seeking the Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Grantor may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Grantor shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all requested information.
Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. By agreeing to any transfer of ownership, Grantor does not waive any rights in this Franchise.

(G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Grantor; provided that such pledge of assets shall not impair or mitigate Grantee’s responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Preferential or Discriminatory Practices Prohibited
Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

17.2 Notices
Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:
Grantee's address shall be:
Comcast Cable
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attention: General Manager

With a copy to:
Comcast Cable
15815 25th Avenue West
Lynnwood, WA 98087
Attention: Franchise Department

Grantor's address shall be:
City of Bonney Lake
PO Box 7380
9002 Main Street East
Bonney Lake, WA 98391

17.3 Costs to be Borne by Grantee
Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to
not more than two (2) public meetings provided for pursuant to this Franchise.

17.4 Binding Effect
This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

17.5 Authority to Amend
No provision of this Franchise Agreement Shall be amended or otherwise modified, in whole or
in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which
amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate
resolution or order by the Grantor, as required by applicable law.

17.6 Venue
The Venue for any dispute related to this Franchise shall be with the United States District Court
for the Western District of Washington or the Pierce County Superior Court, Tacoma,
Washington.

17.7 Governing Law
This Franchise shall be governed in all respects by the laws of the State of Washington.

17.8 Captions
The captions and headings of this Franchise are for convenience and reference purposes only and
shall not affect in any way the meaning or interpretation of any provisions of this Franchise.
17.9 **Construction of Franchise**

The provisions of this Franchise shall be liberally construed to promote the public interest.

17.10 **No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

17.11 **Waiver**

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

17.12 **Severability**

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

17.13 **Entire Agreement**

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations and written agreements between the parties.

17.14 **Compliance with Federal, State, and Local Laws**

The Grantee shall comply with applicable federal, state and local laws, rules and regulations.

17.15 **Customer Service Standards**

The Grantee shall comply with any applicable customer service standards that are lawfully adopted by Grantor and are consistent with applicable Federal law.

17.16 **Force Majeure**

The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, or power outages exceeding back-up power supplies, work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee’s Cable System is attached as well as unavailability of materials irrespective of cost.
IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified electors (if required) of the City of Bonney Lake, Washington this Franchise is signed in the name of the City of Bonney Lake, Washington, this _____ day of ______________________, 2011.

CITY OF BONNEY LAKE

By: Neil Johnson
   Mayor, City of Bonney Lake

ATTEST:

ACCEPTED this _____ day of ______________________, 2011, subject to applicable federal, state and local law.

Comcast of California/Colorado/Washington I, Inc.

By: (Authorized Representative Signature)
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City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact:
Community Development / John P. Vodopich, AICP

Meeting/Workshop Date:
13 September 2011

Agenda Bill Number:
AB11-110

Agenda Item Type:
Resolution

Ordinance/Resolution Number:
2151

Councilmember Sponsor:
Administration

Agenda Subject: An Agreement With Swiss Sportsman’s Club Of Tacoma Regarding Fire Hydrant Installation And Water Connections

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign An Agreement With Swiss Sportsman’s Club Of Tacoma Regarding Fire Hydrant Installation And Water Connections.

Administrative Recommendation: Approve

Background Summary: With this agreement, the City will install a fire hydrant on the Swiss Park property and the Club will relinquish six water connections. This will allow the Club's planned restroom/shower facility to move forward.

Attachments: Resolution 2151

BUDGET INFORMATION

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<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
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Budget Explanation:

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review:
Date:  
Chair/Councilmember NAME  
Councilmember NAME  
Councilmember NAME  

Consent Agenda: Yes No

Forward to:  
Commission/Board Review:
Hearing Examiner Review:

COUNCIL ACTION

Workshop Date(s):  
Meeting Date(s):  
Public Hearing Date(s):  
Tabled to Date:

APPROVALS

Director: John P. Vodopich, AICP
Mayor:  
Date Reviewed by City Attorney: June 2011
(if applicable):
RESOLUTION NO 2151.

A RESOLUTION OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH SWISS SPORTSMAN'S CLUB OF TACOMA REGARDING FIRE HYDRANT INSTALLATION AND WATER CONNECTIONS

WHEREAS, the City and Swiss Sportsman’s Club of Tacoma (“Swiss Park”) have agreed that Swiss Park shall relinquish six of twelve guaranteed water connections, secured under a 1949 agreement with the City, in exchange for the City installing a fire hydrant to serve the Swiss Park property.

NOW, THEREFORE, it is hereby resolved that the Mayor shall have authority to execute the attached Agreement Regarding Fire Hydrant Installation and Water Service Connections.

Passed this ___ day of ______, 2011.

__________________________
Neil Johnson, Mayor

ATTEST:

__________________________
Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:

__________________________
James J. Dionne, City Attorney

Passed: Valid: Published: Effective Date:
AGREEMENT REGARDING FIRE HYDRANT INSTALLATION
AND WATER SERVICE CONNECTIONS

The Parties, the City of Bonney Lake ("City") and the Swiss Sportsman's Club of Tacoma
("Swiss Park") hereby execute the following Agreement Regarding Fire Hydrant Installation and
Water Service Connections.

WHEREAS, Swiss Park, located at 9205 198th Avenue East, Bonney Lake, WA, is
currently planning to construct a 960 square foot restroom and shower facility; and

WHEREAS, this structure will require installation of a fire hydrant connected to the City
water main; and

WHEREAS, in 1949, Swiss Park and the City executed an agreement in which the City
guaranteed Swiss Park twelve water connections for an advance payment of $900.00; and

WHEREAS, Swiss Park has not utilized all twelve of these water connections.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The City will install, at its sole expense, a fire hydrant to serve the Swiss Park
   restroom/shower facility.

2. Swiss Park hereby relinquishes six of the twelve water connections guaranteed in the 1949
   agreement. Should Swiss Park, its heirs, successors, assignees, or subsequent property
   owners require connections in excess of the six remaining, fees and charges in effect at the
time of connection shall apply. This Agreement shall run with the land and bind successor
property owners.

Signed this 19th day of June, 2011.

[Signature]

Dave Henline, Treasurer
Swiss Sportsman's Club of Tacoma
Authorized Representative

Neil Johnson, Jr., Mayor
City of Bonney Lake
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