RESOLUTION NO. 2352

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN INTERLOCAL AGREEMENT WITH PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT FOR AN OPPORTUNITY FUND FOR FLOOD CONTROL IMPROVEMENTS.

WHEREAS, the Pierce County Flood Control District (District) has designated a percentage of the Flood District’s Levy proceeds for an Opportunity Fund for flood control improvements; and

WHEREAS, the City of Bonney Lake is inside the District and a jurisdiction eligible to receive the Opportunity Fund; and

WHEREAS, the City of Bonney Lake must sign an Interlocal Agreement (ILA) with the District to receive the Opportunity Fund; and

WHEREAS, the District has submitted an ILA to the City of Bonney Lake for signature;

NOW THEREFORE, BE IT RESOLVED that the City of Bonney Lake Council does hereby authorize the Mayor to sign Interlocal Agreement with Pierce County Flood Control Zone District for an Opportunity Fund for flood control improvements.

PASSED BY THE CITY COUNCIL this 11th day of February, 2014.

[Signature]
Neil Johnson, Jr., Mayor

ATTEST:

[Signature]
Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

[Signature]
Kathleen Haggard, City Attorney
INTERLOCAL AGREEMENT BETWEEN
THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND
THE CITY OF BONNEY LAKE FOR OPPORTUNITY FUND PROJECTS

THIS AGREEMENT is made and entered into by and between the CITY OF BONNEY LAKE, a municipal corporation of the State of Washington ("Municipality") and the PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington ("District") ("Parties" or when singular "Party"), and shall be effective upon execution by the Municipality and the District.

RECITALS

A. In Ordinance 2011-95s, passed on April 3, 2012, the Pierce County Council formed the District, as authorized by Chapter 86.15 RCW.

B. In Resolution No. 2013-2 ("Resolution"), the District Board of Supervisors:

1. Allocated and set aside ten percent (10%) of the District's annual regular property tax revenues as an "Opportunity Fund" for use by Pierce County (on behalf of unincorporated Pierce County), cities and towns on Opportunity Fund projects;

2. Established methods for allocation of Opportunity Fund revenues and declared the purposes and uses of the Opportunity Fund;

3. Provided for accrual and roll over of a Municipality's Opportunity Fund allocation;

4. Authorized the District Administrator to develop rules and procedures for administering and carrying out the Opportunity Fund, which includes review of proposed Opportunity Fund projects by the District Administrator or designee, and review and approval of such projects by the Board; and

5. Approved this form of Agreement between the Parties.

C. Pursuant to Chapter 39.34 RCW and RCW 86.15.080(11), the Parties desire to enter into this Agreement to provide for Opportunity Fund projects as authorized by the Board.
AGREEMENT

In furtherance of the foregoing and in consideration of the following terms and conditions, the Parties agree as follows:

1. Definitions. In this Agreement, the following terms shall have the following meanings.

1.1 “Board” means the Board of Supervisors of the District.

1.2 “District Administrator” means the Director of the Pierce County Public Works and Utilities Department, or designee.

1.3 “Municipality” means cities and towns in Pierce County and Pierce County.

1.4 “Opportunity Fund” means the portion of the District’s annual regular property tax revenues that has been allocated and set aside by the District for use by the Municipalities on Projects, as authorized by Resolution No. 2013-2, including amendments thereto.

1.5 “Project” means a specific improvement, study, plan or activity that meets the purposes and uses of Resolution No. 2013-2, including amendments thereto, and that has been approved by the Board.

1.6 “Project Rules” means the rules and regulations established by the District Administrator for the Opportunity Fund program, including amendments thereto.

2. Term of Agreement—Termination of Agreement—Survival of Agreement.

This Agreement shall be effective upon execution by both Parties, and shall remain in effect until terminated by one or both of the Parties. Either Party may terminate this Agreement by providing written notice of termination to the other Party no less than sixty (60) days prior to the effective date of termination. This Agreement also may be terminated upon mutual agreement of the Parties expressed in writing. Sections 12 and 13 of this Agreement shall survive any termination of this Agreement.

3. Rules and Regulations; District Administrator. The Municipality acknowledges receipt of and agrees to satisfy and follow the Project Rules.

4. Project Eligibility. The Municipality may apply for and seek approval of proposed Projects. The proposed Projects may be a future Project or a pending Project, as defined by the Project Rules.

5. Project Applications. The Municipality must submit an application for each proposed Project to the District Administrator, on a form approved by the District Administrator. The application must be accompanied by plans, drawings,
descriptions, studies, reports, schedules, costs, budgets and/or other data and information required by the Project Rules or requested by the District Administrator.

6. **Multi-Year Projects.** A Project may be implemented over multiple years and may be financed by the Municipality’s allocation of the Opportunity Fund in the year of Project approval and by the Municipality’s anticipated allocation of the Opportunity Fund in future years. However, District approval of a Project shall not be construed as nor constitute a District obligation or commitment to authorize a property tax levy or set aside a portion of a property tax levy for the Opportunity Fund in calendar years beyond the year in which a Project is approved.

7. **Use and Vesting of Opportunity Fund Allocation.** The Municipality shall use Opportunity Fund allocations only for expenses related to the Projects. The unexpended portion of the Municipality’s allocation of Opportunity Fund revenues in a calendar year shall be rolled over and reserved for use by the Municipality on Projects in subsequent calendar years. The District shall have no obligation to set aside or allocate Opportunity Funds in calendar years after the calendar year in which the Project is approved. The Municipality understands and acknowledges that the Board has the right and discretion to modify or terminate the Opportunity Fund and its program, and will consider this possibility in providing for and implementing any Project.

8. **Project Approval—Implementation of Projects.** After approval of a Project, the District Administrator shall prepare a written description of the Project, which shall be deemed to be an amendment to this Agreement. The District Administrator shall provide a copy of the Project description to the Municipality. The Municipality shall implement the Project only as authorized by the Board and described in the amendment. In implementing the Project, the Municipality shall comply with all applicable laws, rules and regulations, and shall be responsible for obtaining all approvals and permits for the Project.

9. **Distribution of Opportunity Fund Allocations.** After an actual expenditure is incurred for a Project, the Municipality shall request distribution of Opportunity Fund allocations in a manner and pursuant to a process required by the Project Rules. However, after Board approval of a Project, the Municipality may request advance distribution of all or a part of the Opportunity Fund allocation for the Project, prior to expenditure of funds on the Project, in accordance with terms and conditions in the Project Rules.

10. **Reports—Audits—Records Retention—Inspections.** The Municipality shall prepare and file written reports describing the progress on and the status of the Project, as required by the Project Rules. The Municipality shall prepare and file such other written reports, including but not limited to a final report after Project completion, as required by the Project Rules. The Municipality shall retain all records and documents relating to a Project for a minimum of seven (7) years.
after substantial completion of the Project, unless required by law to be retained for a longer period, in which case the longer period shall apply. Upon reasonable notice, the Municipality shall make available to the District Administrator for inspection, review and audit all records and documents relating to the Project and the expenditure of the Opportunity Fund allocations, as required by Project Rules.

11. Project Ownership and Maintenance. If the Project involves the acquisition, extension, enlargement, or construction of an improvement, the Municipality shall take ownership of, and shall be obligated to operate, maintain, repair and replace such improvement. The District shall have no obligation or responsibility for the operation, maintenance, repair and replacement of such improvement.

12. Audit Exception Repayments. The Municipality agrees that it is financially responsible for and will repay to the District all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts by the Municipality, its officers, officials, employees, agents, contractors or volunteers.

13. Hold Harmless and Indemnification.

13.1 To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officers, officials, employees, agents, contractors and volunteers, from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from any negligent acts, errors, omissions of the indemnifying Party and its officers, officials, employees, agents, contractors and volunteers in performing obligations under this Agreement or in implementing a Project. However, if any such injuries and damages to persons or property are caused by or result from the concurrent negligence of the District or its officers, officials, employees, agents, contractors and volunteers, and the Municipality or its officers, officials, employees, agents, contractors and volunteers, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, agents, contractors or volunteers.

13.2 The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated by the Parties.

14. Amendment. This Agreement may be modified by written instrument approved by the Municipality's governing body and the District Board of Supervisors and signed by the authorized representatives of the Parties.
15. **Waiver.** No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

16. **No Third Party Rights.** Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

17. **Entirety.** This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the projects and constitutes the entire agreement between the Parties.

18. **Counterparts.** This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated document.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces below:

**CITY OF BONNEY LAKE**

Neil Johnson, Jr.
Mayor
Date: 2/11/2014

Attested to:

Woody Edvalson
City Clerk

**PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT**

Brian Ziegler
District Administrator
Date: 2/20/14

Attested to:

Cathy Sala
Clerk of Board of Supervisors
The Pierce County Flood Control District (District) has designated 10 percent of the Flood District's levy proceeds for an Opportunity Fund. This fund is made available to jurisdictions throughout the District on a proportional basis, based on assessed valuation. Eligible projects are described in Section III.

INTERLOCAL AGREEMENT
RCW 39.34 permits a local government to enter into interlocal agreements (ILAs) with other public agencies in the interest of cooperatively sharing resources for their mutual benefit. For jurisdictions to receive their allocation of the Opportunity Fund, they must sign an ILA with the District before the District Board of Supervisors approves the very first project. The ILA outlines the responsibilities of the jurisdiction and the District. These include how jurisdictions request, report, and use their Opportunity Fund and how the District will review and disperse a jurisdiction’s allocation. The ILA describes that the District will grant funds for projects in consideration of each jurisdiction’s agreement to construct the project and take over operation, ownership, and maintenance and repair obligations for the projects.

Once an ILA is established between a jurisdiction and the District, jurisdictions will annually submit a Notice of Intent to Request Funds that describes the project(s) they will fund with their Opportunity Fund allocation. Approval of the described project(s) will be considered an amendment to the ILA each jurisdiction has with the District.

OPPORTUNITY FUND ALLOCATION
The Opportunity Fund for 2013 is estimated to be $689,670. However, the final amount of funding will be determined by the District’s Board of Supervisors when 2013 receipts are finalized. Appendix A shows the allocation of these funds among the 24 jurisdictions in Pierce County, based on assessed values and annexations as of January 1, 2013.

Annually, jurisdictions need to submit a Notice of Intent to Request Funds to indicate how they intend to use their Opportunity Fund allocation. Jurisdictions can choose to:

- Bank their allocation for use in future years. There are no time or amount limitations on banking imposed by the District on jurisdictions. However, the District holds the right to review this policy in the future and modify if necessary.
- Request reimbursement in the amount of up to its allocation, including any unused balance from prior years, for one or more projects.
- Request reimbursement of up to its allocation, including any unused balance from prior years, for multi-jurisdictional projects.
PROJECT ELIGIBILITY
The Opportunity Fund can be used for the following purposes and uses:

- Flood control or storm water control improvements (whether extended, enlarged, acquired or constructed).
- Maintenance and operation of flood control and storm water control improvements that were constructed or acquired by the jurisdiction.
- Studies and plans for flood control or stormwater control improvements that will be constructed or acquired by the jurisdiction.
- Watershed management projects, studies, plans and activities that are for water supply, water quality and water resource and habitat protection and management.
- Major equipment used for stormwater control or water quality protection.

These purposes and uses are called "projects" in these Guidelines.

For improvements, the jurisdiction must prepare and submit to the District Administrator (also the Director of Pierce County Public Works and Utilities Department) preliminary engineering studies and their State Environmental Policy Act determinations and plans. For any project, the jurisdiction must submit to the District Administrator cost estimates and underlying data and a description of the benefit to be provided by the project. Jurisdictions may pool their Opportunity Fund allocations for use on multi-jurisdictional projects.

Potential eligible projects might include:

- Developing green infrastructure such as rain gardens and stream flow controls
- Building compensatory storage for flood relief
- Maintenance and operations projects
- Acquisition of Vactor equipment

PROJECT NOTICE OF INTENT TO REQUEST FUNDS & SCHEDULE
The District will announce the availability of the Opportunity Fund each April (starting in 2014) for the subsequent fiscal year. Jurisdictions will submit a Notice of Intent to Request Funds that indicates if they will expend or bank their allocation. If a jurisdiction chooses to expend their allocation, they will submit details of the specific project(s) that will
be funded by attaching Project Scope of Work form(s).

Upon timely submittal of a Notice of Intent to Request Funds, it will be reviewed for completeness and for meeting the eligibility criteria by the District Administrator. Eligible projects will be presented to the Board of Supervisors for approval at a public meeting.

**Opportunity Fund Annual Schedule (Beginning in 2014)**

**APRIL**  
The District provides notice to jurisdictions on their allocation and availability of the Opportunity Fund

**JULY**  
Jurisdictions submit a Notice of Intent to Request Funds form indicating how they plan to use their annual allocation

**OCTOBER**  
The District reviews Notice of Intent to Request Funds for completeness and compliance with project eligibility criteria

**NOVEMBER**  
Eligible projects are presented and adopted by the Board of Supervisors

**NOTICE OF INTENT PROCEDURES & INSTRUCTIONS**

Each applying jurisdiction must complete a Notice of Intent to Request Funds form and return it along with a fully executed Interlocal agreement (ILA).

Save the Notice of Intent to Request Funds form to your computer and fill out the form electronically, returning the electronic version of the completed application via e-mail to the address listed below. As text is entered into the response fields the form will expand beyond one page, but the fields do contain word limits.

You are encouraged to contact the District to discuss project ideas prior to submitting your application. If you have interest in discussing possible projects or if you have other questions or concerns, please contact Brian Ziegler, District Administrator, at 253-798-3154 or staff@piercefloodcontrol.org.

**ADVANCED FUNDING REQUESTS**

The majority of a jurisdiction’s Opportunity Fund allocation shall be issued on a reimbursement basis following a jurisdiction’s submittal of an invoice. The District can grant funds as a percentage of the jurisdictions total current allocation in advance within pre-defined constraints set by the District.
Administrator (see table below). If a jurisdiction would like advanced funding, they are required to submit a Request for Advanced Funds form that explicitly states the amount of funds being requested.

<table>
<thead>
<tr>
<th>Total Current Allocation</th>
<th>Maximum Amount of Advance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $50,000</td>
<td>Up to 80%</td>
</tr>
<tr>
<td>Between $50,000 and $100,000</td>
<td>Up to 50%</td>
</tr>
<tr>
<td>Over $100,000</td>
<td>Up to 30%</td>
</tr>
</tbody>
</table>

**REIMBURSEMENT & PROGRESS REPORTS**

Jurisdictions are required to provide the District with regular progress reports updating the status of projects, as well as a final report, due within 90 days of project completion. Annual progress reports are due by December 31 each year.

**LEVERAGING OPPORTUNITIES**

A jurisdiction has the option to use their Opportunity Fund allocation as a match for either multi-jurisdictional projects or grant opportunities.

*Multi-Jurisdictional Projects*

As many flooding and drainage problems cross jurisdictional boundaries, jurisdictions are encouraged to consider partnering with each other to address shared stormwater and drainage problems. Doing so offers the opportunity to accomplish a larger scale project than may be possible if operating independently.

*Grant Matching Opportunities*

The Opportunity Fund can also serve as a match for other grants compatible with the criteria for eligible projects. Below are some statewide and local funding sources. Note that some programs may not be available in a given year. The links will access current information concerning these grant opportunities.

- The Estuary and Salmon Restoration Program

- Salmon Recovery Funding Board
- The Washington Wildlife and Recreation Program
  www.rco.wa.gov/grants/wwrp.shtml

- Aquatic Lands Enhancement Account
  www.rco.wa.gov/grants/alea.shtml

- Ecology Water Quality Grants
  www.ecy.wa.gov/programs/wq/funding/funding.html
APPENDIX A
Preliminary 2013 Allocations for the Pierce County Flood Control Zone District Opportunity Fund

<table>
<thead>
<tr>
<th>Municipality</th>
<th>2013 Allocation Percentage</th>
<th>2013 Opportunity Fund Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auburn</td>
<td>1.03%</td>
<td>$7,104</td>
</tr>
<tr>
<td>Bonney Lake</td>
<td>2.44%</td>
<td>$16,828</td>
</tr>
<tr>
<td>Buckley</td>
<td>0.46%</td>
<td>$3,172</td>
</tr>
<tr>
<td>Carbonado</td>
<td>0.04%</td>
<td>$276</td>
</tr>
<tr>
<td>Dupont</td>
<td>1.70%</td>
<td>$11,724</td>
</tr>
<tr>
<td>Eatonville</td>
<td>0.23%</td>
<td>$1,586</td>
</tr>
<tr>
<td>Edgewood</td>
<td>1.37%</td>
<td>$9,448</td>
</tr>
<tr>
<td>Fife</td>
<td>2.57%</td>
<td>$17,725</td>
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<tr>
<td>Fircrest</td>
<td>0.80%</td>
<td>$5,517</td>
</tr>
<tr>
<td>Gig Harbor</td>
<td>2.39%</td>
<td>$16,483</td>
</tr>
<tr>
<td>Lakewood</td>
<td>6.40%</td>
<td>$44,139</td>
</tr>
<tr>
<td>Milton</td>
<td>0.74%</td>
<td>$5,104</td>
</tr>
<tr>
<td>Orting</td>
<td>0.55%</td>
<td>$3,793</td>
</tr>
<tr>
<td>Pacific</td>
<td>0.23%</td>
<td>$1,586</td>
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<tr>
<td>Puyallup</td>
<td>5.82%</td>
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<td>Roy</td>
<td>0.06%</td>
<td>$414</td>
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<tr>
<td>Ruston</td>
<td>0.15%</td>
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<tr>
<td>Steilacoom</td>
<td>0.86%</td>
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<td>South Prairie</td>
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<tr>
<td>Sumner</td>
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<td>$16,483</td>
</tr>
<tr>
<td>Tacoma</td>
<td>23.17%</td>
<td>$159,797</td>
</tr>
<tr>
<td>Municipality</td>
<td>2013 Allocation Percentage</td>
<td>2013 Opportunity Fund Allocation</td>
</tr>
<tr>
<td>------------------------------</td>
<td>----------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>University Place</td>
<td>3.84%</td>
<td>$26,483</td>
</tr>
<tr>
<td>Wilkeson</td>
<td>0.04%</td>
<td>$276</td>
</tr>
<tr>
<td>Unincorporated Pierce County</td>
<td>42.69%</td>
<td>$294,420</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.00%</strong></td>
<td><strong>$689,670</strong></td>
</tr>
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**Note 1:** 2013 Allocation Percentage is the ratio of each jurisdiction's total assessed valuation divided by Pierce County total assessed valuation, expressed as a percentage. The percentage shown is rounded to two decimal places.

**Note 2:** 2013 Opportunity Fund Allocation is calculated by multiplying the 2013 Allocation Percentage by the total of Flood Control Zone District property tax revenues for 2013.

**Note 3:** These numbers are illustrative of each jurisdiction's Opportunity Fund allocation. The actual allocation will vary based on the District's annual assessment which could change in future years.
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

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<th>Meeting/Workshop Date:</th>
<th>Agenda Bill Number:</th>
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<td>11 February 2014</td>
<td>AB14-03</td>
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<th>Ordinance/Resolution Number:</th>
<th>Councilmember Sponsor:</th>
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<tbody>
<tr>
<td>Resolution</td>
<td>2352</td>
<td>Donn Lewis</td>
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**Agenda Subject:** Approve Pierce County Flood Control Zone District Interlocal Agreement (ILA) to bank an Opportunity Fund.

**Full Title/Motion:** A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign an ILA with the Pierce County Flood Control Zone District to bank an Opportunity Fund for flood control or stormwater control improvements for use in future years.

**Administrative Recommendation:** Approve the Motion

**Background Summary:** The Pierce County Flood Control Zone District (District) has designated a percentage of the Flood District's levy proceeds for an Opportunity Fund for jurisdictions throughout the District including the City of Bonney Lake. To receive the Opportunity Fund, each jurisdiction must sign an ILA with the District. The ILA describes that the District will grant funds for stormwater projects in consideration of each jurisdiction's agreement to construct the project and take over operation, ownership, and maintenance and repair obligations for the projects. Once an ILA is established, jurisdictions will annually submit a Notice of Intent to bank or request funds that describes the flood control project(s) they will fund with their Opportunity Fund allocation. Approval of the described project(s) will be considered an amendment to the ILA each jurisdiction has with the District. This motion authorizes the Mayor to sign an ILA with the District.

**Attachments:** Resolution 2352, Interlocal Agreement, and Guidelines

**BUDGET INFORMATION**

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

**Budget Explanation:**

**COMMITTEE, BOARD & COMMISSION REVIEW**

**Council Committee Review:** Community Development Committee

- Chair/Councilmember: Donn Lewis
- Councilmember: Tom Watson
- Councilmember: James Rackley

Date: February 4, 2014

Consent Agenda: Yes [ ] No [ ]

Forward to: [ ]

**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

Workshop Date(s): [ ]

Public Hearing Date(s): [ ]

Meeting Date(s): [ ]

Tabled to Date: [ ]

**APPROVALS**

**Director:** Dan Grigsby

**Mayor:** Neil Johnson Jr.

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