

CITY COUNCIL MEETING

**September 27, 2011
7:00 P.M.**

AGENDA

City of



“Where Dreams Can Soar”

The City of Bonney Lake’s Mission is to protect the community’s livable identity and scenic beauty through responsible growth planning and by providing accountable, accessible and efficient local government services.

Website: www.ci.bonney-lake.wa.us

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: Mayor Neil Johnson, Jr., 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: None.
 - 2. Appointments: None.
 - 3. Presentations:
 - a. **Oath of Office:** Interim Police Chief Dana Powers.
 - b. **Presentation of Awards:** Merit Awards to Detective Ryan Boyle, Detective Todd Morrow, Detective Brian Byerley, Detective Sergeant Kelly Maras, Officer Chad Kiblinger, and Valor Award to Officer Eric Alfano.
- D. Agenda Modifications:

II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:

- A. Public Hearings:
 - 1. **Public Hearing for AB11-80 –Ordinance D11-77 – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renewing A Cable Television Franchise Agreement With Comcast Of California/ Colorado/Washington I, Inc, Thereby Surperseding All Previous Agreements; And Establishing A Franchise Fee Of Five Percent.**
- 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.

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- A. **Approval of Corrected Minutes:** September 6, 2011 Council Workshop and September 13, 2011 Council Meeting.
- B. **Approval of Accounts Payable and Utility Refund Checks/Vouchers:** Accounts Payable checks/vouchers #61976 thru 61999 (Including Wire Transfer #s 20110817, 20110906, 20110907) in the amount of \$160,856.67; Accounts Payable checks/vouchers #62000 thru 62066 (Including Wire Transfer # 9162011) in the amount of \$317,479.24, for a grand total of \$478,335.91.
- C. **Approval of Payroll:** Payroll for September 1-15 2011 for checks 29999-30027 including Direct Deposits and Electronic Transfers in the amount of \$ 429,662.92. Replacement check issued 29998 replaced check 29992 (damaged in folding) from previous pay period.

V. FINANCE COMMITTEE ISSUES:

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- A. **AB11-111 – Resolution 2152** – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A License Agreement With And Sidewalk Right-Of-Way Dedication Deed From The Cascade Water Alliance.

VI. COMMUNITY DEVELOPMENT COMMITTEE ISSUES: None.

VII. PUBLIC SAFETY COMMITTEE ISSUES: None.

VIII. FULL COUNCIL ISSUES:

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- A. **AB11-98 – Ordinance D11-98** – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Chapter 3.68 Of The Bonney Lake And Section One Of Ordinance No. 1325 Relating To Land Use Fees.

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- B. **AB11-116 – Ordinance D11-116** – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renaming That Portion Of Sumner-Buckley Highway East That Lies Within The City Limits.

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

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: Public Hearing	Ordinance/Resolution Number:	Councilmember Sponsor:

Agenda Subject: Public Hearing for CATV franchise agreement and franchise fee implementation.

Full Title/Motion: n/a A Public Hearing For Ordinance D11-77 - Renewing A Cable Television Franchise Agreement With Comcast Of California/Colorado/Washington I, Inc; And Establishing A Franchise Fee Of Five Percent.

Administrative Recommendation:

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: Proposed Ordinance D11-77 including Exhibit A--Draft Franchise Agreement

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
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	<i>Approvals:</i> Chair/Councilmember Deputy Mayor Swatman Councilmember Mark Hamilton Councilmember James Rackley	Yes No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Forward to: 9/13/11 Council Meeting		Consent	
		Agenda:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s): 9/27/2011
Meeting Date(s): 9/13/2011	Tabled to Date:

APPROVALS		
Director:	Mayor:	Date Reviewed by City Attorney: 7/29/11 (if applicable):

ORDINANCE D11-77

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE,
PIERCE COUNTY, WASHINGTON, RENEWING A CABLE TELEVISION
FRANCHISE AGREEMENT WITH COMCAST OF CALIFORNIA/
COLORADO/WASHINGTON I, INC, THEREBY SURPERSEDING 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 ___th day of _____, 2011.

Neil Johnson, Mayor

ATTEST:

Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney

DRAFT CABLE TV FRANCHISE AGREEMENT 8/17/2011
Between City of Bonney Lake & Comcast of California/Colorado/Washington I, Inc.

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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.

1 **"Bad Debt"**

2 means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee,
3 but not collected after reasonable efforts by Grantee.

4 **"Basic Service"**

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

7 **"Broadcast Signal"**

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

10 **"Cable Acts"**

11 means the Cable Communications Policy Act of 1984, and the Cable Television Consumer
12 Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996
13 and any amendments thereto.

14 **"Cable Operator"**

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

19 **"Cable Service"**

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

23 **"Channel"**

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

27 **"Connection"**

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

30 **"Designated Access Provider"**

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

34
35 **"Designated Distributor"**

36 means any entity authorized by Grantor to distribute Access Programming.

37 **"Downstream Channel"**

38 means a Channel capable of carrying a transmission from the Headend to remote points on the
39 System.

1 **"Dwelling Unit"**

2 means any residential building, or each portion thereof.

3 **"Expanded Basic Service"**

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

6 **"FCC"**

7 means the Federal Communications Commission or its lawful successor.

8 **"Fiber Optic"**

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

11 **"Franchise"**

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

15 **"Franchise Area"**

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

18

19 **"Franchise Fee"**

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

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

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

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

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

30

31 **"Grantee"**

32 Means Comcast of California/Colorado/Washington I, Inc. or its lawful successor, transferee or
33 assignee.

34

35 **"Grantor"**

36 Means the City of Bonney Lake.

37 **"Gross Revenues"**

38 means any and all revenue derived directly or indirectly by the Grantee, or by any other entity
39 that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation
40 of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues

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

22
23 The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent
24 with existing applicable law.

25 **"Headend" or "Hub"**

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

31 **"Leased Access Channel"**

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

34 **"Noncommercial"**

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

40 **"Normal Business Hours"**

41 means those hours during which most similar businesses in the community are open to serve
42 customers.

1 **“Normal Operating Conditions”**

2 means those service conditions which are within the control of the Grantee. Those conditions
3 which are not within the control of the Grantee include, but are not limited to, natural disasters,
4 civil disturbances, power outages, telephone network outages, and severe or unusual weather
5 conditions. Those conditions which are ordinarily within the control of the Grantee include, but
6 are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

7 **"Pay Service" or "Premium Service"**

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

10 **"Person"**

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

13 **“RCC”**

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

19 **“RMC”**

20 means the educational and governmental Access Center known as the Rainier Media Center
21 which is operated by the RCC or its lawful successor, or if none, that consortium formed by
22 Grantor and other political subdivisions and any other municipal corporations that is designed to
23 cooperate on Educational and Government Access services.
24

25 **“Rights-of-Way”**

26 means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys,
27 bridges, sidewalks, easements and similar public property located within the Franchise area.

28 **“Roads”**

29 means Rights-of-Way.

30 **"School"**

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

33 **“Service Interruption”**

34 means the loss of picture or sound on one or more cable channels.

35 **"State"**

36 means the State of Washington.

37 **"Subscriber"**

38 means any Person who lawfully receives Cable Services provided by Grantee by means of the
39 System with Grantee’s express permission.

1 **"System" or "Cable System"**

2 means a facility, consisting of a set of closed transmission paths and associated signal generation,
3 reception and control equipment that is designed to provide Cable Service which includes video
4 programming and which is provided to multiple Subscribers within a community, but such term
5 does not include (1) a facility that serves only to retransmit the television signals of one or more
6 television broadcast stations; (2) a facility that serves Subscribers without using any public right-
7 of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions
8 of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility
9 shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. §
10 541(c)) to the extent such facility is used in the transmission of video programming directly to
11 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4)
12 an open video system that complies with federal statutes; or (5) any facilities of any electric
13 utility used solely for operating its electric utility systems. When used herein, the term "Cable
14 System" or "System" shall mean Grantee's Cable System in the Franchise Area.

15 **"Tier"**

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

17 **"Upstream Channel"**

18 means a Channel capable of carrying a transmission to the Headend from remote points on the
19 System.

20 **"Video Programming"**

21 means programming provided by, or generally considered comparable to programming provided
22 by, a television broadcast station.
23

24 **SECTION 2. GRANT OF FRANCHISE**

25 **2.1 Grant**

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

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

1 any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with
2 its contractual right granted herein.

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

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

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

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

16 **2.2 Use of Rights-of-Way**

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

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

42

1 **2.3 Duration**

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

6 **2.4 Effective Date**

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

10 **2.5 Franchise Nonexclusive**

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

18 **2.6 Grant of Other Franchises**

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

32
33 (B) In the event an application for a new cable television franchise is filed with the
34 Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide
35 notice of such application.

36
37 (C) In the event that a wireline multichannel video programming distributor provides
38 video service to the residents of the Grantor under the authority granted by federal or State
39 legislation or other regulatory entity, the Grantee shall have a right to request Franchise
40 amendments that relieve the Grantee of regulatory burdens that create a competitive
41 disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking
42 to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline
43 competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise
44 place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be

1 amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not
2 unreasonably withhold consent to the Grantee's petition.
3

4 **2.7 Familiarity with Franchise**

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

12 **2.8 Effect of Acceptance**

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

19 **2.9 Police Powers**

20 Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce
21 ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to
22 comply with all applicable laws, ordinances and regulations enacted pursuant to the police
23 powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-
24 constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any
25 conflict between the provisions of this Franchise and any other present or future lawful exercise
26 of Grantor's police powers shall be resolved in favor of the latter.
27

28 **2.10 Franchise Area**

29 Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise
30 Area.
31

32 **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

33 **3.1 Franchise Fee**

34 As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a
35 Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five
36 (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in
37 the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of
38 this Franchise.

1 **3.2 Payments**

2 Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding
3 calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly
4 payment shall be due and payable no later than forty-five (45) days after said dates.

5 **3.3 Acceptance of Payment**

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

10 **3.4 Quarterly Franchise Fee Reports**

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

16 **3.5 Audits**

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

28 **3.6 Financial Records**

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

33 **3.7 Interest on Late Payments**

34 In the event any payment is not received within forty-five (45) days from the end of the calendar
35 quarter, Grantee shall pay, in addition to the payment or sum due, interest from the due date at an
36 interest rate of 1%, beginning on the forty-sixth (46th) day after the end of the calendar quarter
37 and continuing every day thereafter until the seventy-sixth (76th) day after the end of the calendar
38 quarter, or until payment is made, whichever is earlier. If any payment is not received within
39 seventy-six (76) days after the end of the calendar quarter, Grantee shall be assessed a late fee in
40 the additional amount of two hundred dollars (\$200.00) per day, beginning on the seventy-sixth
41 (76th) day after the end of the calendar quarter and continuing every day thereafter until paid.

1 **3.8 Maximum Franchise Fee**

2 The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a
3 Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the
4 duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent
5 (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide
6 that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor
7 hereunder, provided that all providers of Cable Service in the Franchise Area over which the
8 Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60)
9 days prior written notice from Grantor of such amendment.

10 **3.9 Additional Commitments Not Franchise Fees**

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

19 **3.10 Payment on Termination**

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

28 **SECTION 4. ADMINISTRATION AND REGULATION**

29 **4.1 General Provisions**

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

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

39 (C) The Grantee and Grantor shall be entitled to all rights and be bound by all
40 changes in local, State and federal law that occur subsequent to the effective date of this
41 Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this
42 Franchise are explicitly subject to all such changes. However, should such changes in law

1 substantially reduce Grantee's obligation to pay or provide Franchise Fees, or any other support
2 required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for
3 a six (6) month period, at the request of either party, to resolve the issues. If resolution is not
4 reached within the six (6) month period, and the period has not been extended by mutual
5 agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall
6 commence the renewal process in accordance with the Cable Act.

7 **4.2 Rates and Charges**

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

10 **4.3 Rate Discrimination**

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

20
21 (A) The temporary reduction or waiving of rates or charges in conjunction with valid
22 promotional campaigns;

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

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

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

27 **4.4 Filing of Rates and Charges**

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

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

39 **4.5 Late Fees**

40 If the Grantee assesses any kind of penalty fee for late payment, such fee shall comply with
41 applicable law.

1 **4.6 Time Limits Strictly Construed**

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

9 **4.7 Performance Evaluation**

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

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

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

21 (D) During evaluations under this Section, Grantee shall fully cooperate with Grantor
22 and shall provide such information and documents as Grantor may require to perform the
23 evaluation.
24

25 **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

26 **5.1 Indemnification**

27 (A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its
28 officers, officials, boards, commissions, authorized agents and employees, harmless from any
29 action or claim for injury including death, damage, loss, liability, cost or expense, including
30 court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to
31 Person or property, including, without limitation, copyright infringement, defamation, and all
32 other damages in any way arising out of, or by reason of, any construction, excavation,
33 operation, maintenance, reconstruction, or any other act done under this Franchise, by or for
34 Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its
35 agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting
36 its defense of the Grantor.
37

38 (B) Indemnification for Relocation. Grantee shall indemnify Grantor for any
39 damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to,
40 arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or
41 relocate any of its facilities in the Streets in a timely manner in accordance with any relocation
42 required by Grantor.
43

1 (C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor
2 harmless for any claim for injury, damage, loss, liability, cost or expense, including court and
3 appeal costs and attorneys' fees or expenses in any way arising out of:

4
5 (1) The grant of this Franchise;

6
7 (2) Any failure by Grantee to secure consents from the owners, authorized
8 distributors or licensees/licensors of programs to be delivered by the System.

9
10 (D) Procedures and Defense. If a claim or action arises, Grantor or any other
11 indemnified party shall tender the defense of the claim to Grantee, which defense shall be at
12 Grantee's expense. Grantor may participate in the defense of a claim and, in any event, Grantee
13 may not agree to any settlement of claims affecting Grantor without Grantor's written approval.

14
15 (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise
16 through independent contractors shall not constitute an avoidance of or defense to Grantee's duty
17 of defense and indemnification under this Section.

18
19 (F) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee
20 timely written notice of any claim or of the commencement of any action, suit or other
21 proceeding covered by the indemnity in this Section. In the event any such claim arises, the
22 Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the
23 Grantee shall have the obligation and duty to defend any claims arising thereunder, and the
24 Grantor shall cooperate fully therein.

25
26 (G) If separate representation to fully protect the interests of both parties is necessary,
27 such as a conflict of interest between the Grantor and the counsel selected by Grantee to
28 represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself
29 with regard to any action, suit or proceeding indemnified by Grantee. The Grantor's expenses
30 shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the
31 reasonable value of any services rendered by the Grantor attorney or his/her assistants or any
32 employees of the Grantor or its agents but shall not include outside attorneys' fees for services
33 that are unnecessarily duplicative of services provided the Grantor by Grantee.

34 35 **5.2 Insurance Requirements**

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

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

43 (1) Commercial General Liability: Five million dollars (\$5,000,000)
44 aggregate limit per occurrence for bodily injury, personal injury and property damage;

45 (2) Automobile Liability: Three million dollars (\$3,000,000) combined single
46 limit per accident for bodily injury and property damage; and

1 (3) Employer's Liability: One million dollars (\$1,000,000).

2 (C) Endorsements.

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

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

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

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

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

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

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

29 **5.3 Security**

30 Upon the effective date of this Franchise, Grantee shall provide a performance bond in the
31 amount of \$25,000.00 to ensure the faithful performance of its responsibilities under this
32 Franchise and applicable law, including, by way of example and not limitation, its obligations to
33 relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.
34

35 **SECTION 6. CUSTOMER SERVICE**

36 **6.1 Subscriber Contracts**

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

39 **6.2 Subscriber Privacy**

40 Grantee will comply with privacy rights of Subscribers in accordance with applicable federal,
41 State and local laws.

1 **6.3 Customer Service Center**

2 Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer
3 service center located within Pierce County that will be open during Normal Business Hours, to
4 provide Subscribers the opportunity to receive and pick up Subscriber equipment and to make
5 bill payments and complaints.

6 **6.4 Customer Service Agreement and Manual**

7 (A) Grantee shall provide to Subscribers an accurate, comprehensive service
8 agreement and customer installation packet for use in establishing Subscriber service. This
9 material shall, at a minimum, contain the following:

- 10 (1) Grantee's procedure for investigation and resolution of Subscriber service
11 complaints.
- 12 (2) Services to be provided and rates for such services.
- 13 (3) Billing procedures.
- 14 (4) Service termination procedure.
- 15 (5) A description of the manner that will be used to provide notice of changes
16 in rates, service or service terms and conditions.
- 17 (6) A complete statement of the Subscriber's right to privacy.
- 18 (7) Converter and cable modem equipment policy.
- 19 (8) The name, address and phone number of the Person identified by the
20 Grantor as responsible for handling cable questions and complaints for the Grantor. This
21 information shall be prominently displayed in the installation packet.

22 (B) A copy of the installation packet shall be provided to each Subscriber at the time
23 of initial installation and any reconnection (excluding reconnections to the same Subscriber
24 within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee
25 shall make reasonable efforts to advise customers of any material changes in cable operation
26 policies.
27

28 **SECTION 7. REPORTS AND RECORDS**

29 **7.1 Open Records**

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

1 enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in
2 making such examination shall be paid by Grantee.

3 **7.2 Confidentiality**

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

17 **7.3 Records Required**

18 Grantee shall at all times maintain:

- 19 (A) A full and complete set of plans, records and "as built" maps showing the
20 exact location of all System equipment installed or in use in the Franchise Area, which is
21 generated in Grantee's normal course of business;
- 22 (B) A copy of all FCC filings on behalf of Grantee, its parent corporations or
23 Affiliates which relate to the operation of the System in the Franchise Area;
- 24 (C) A list of Grantee's Cable Services, rates and Channel line-ups;
- 25 (D) A statistical compilation of Subscriber complaints, actions taken and
26 resolution, and a log of service calls.

27 **7.4 Copies of Federal and State Reports**

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

39 **7.5 Complaint File and Reports**

40 Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the
41 System, and Grantee's actions in response to those complaints, in a manner consistent with the

1 privacy rights of Subscribers. Those files shall remain open to Grantor during normal business
2 hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report
3 to the Grantor which can, at Grantor's option, include the following information:

4 (A) Nature and type of customer complaints;

5 (B) Number, duration, general location and customer impact of unplanned service
6 interruptions;

7 (C) Any significant construction activities which affect the quality or otherwise
8 enhance the service of the System;

9 (D) Average response time for service calls;

10 (E) New areas constructed and available for Cable Service;

11 (F) Video programming changes (additions/deletions); and

12 (G) Such other information as reasonably requested by Grantor.

13 **7.6 Inspection of Facilities**

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

17 **7.7 False Statements**

18 Any intentional false or misleading statement or representation in any report required by this
19 Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,
20 legal or equitable, which are available to Grantor under this Franchise or otherwise.
21

22 **SECTION 8. PROGRAMMING AND CHANNEL CAPACITY**

23 **8.1 Grantee Compliance**

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

26 **8.2 Broad Programming Categories**

27 Grantee shall provide or enable the provision of at least the following initial broad categories of
28 programming to the extent such categories are reasonably available:

29 (A) Educational programming;

30 (B) Sports programming;

31 (C) General entertainment programming;

32 (D) Children's programming;

33 (E) Information/news programming;

34 (F) National and local government programming.

1 **8.3 Obscenity**

2 Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its
3 editorial control any programming which is obscene.

4 **8.4 Parental Control Device**

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

9 **8.5 Complimentary Cable Service**

10 Grantee, upon written request, shall provide without charge, a Standard Installation and one
11 outlet of Basic and Expanded Basic Service to those administrative buildings owned and
12 occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-
13 12 public school(s) that are within 125 feet aerial or 60 feet underground of its Cable System. In
14 the case of leased facilities, recipient of service is responsible for securing approval for
15 appropriate right of entry suitable to the Grantee at its sole discretion. The Cable Service
16 provided shall not be distributed beyond the originally installed outlet without authorization from
17 Grantee. The Cable Service provided shall not be used for commercial purposes, and such
18 outlets shall not be located in areas open to the public. The Grantor shall take reasonable
19 precautions to prevent any use of the Grantee's Cable System in any manner that results in the
20 inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the
21 Grantee harmless from any and all liability or claims arising out of the provision and use of
22 Cable Service required by this Section. The Grantee shall not be required to provide an outlet to
23 such buildings where a non-Standard Installation is required, unless the Grantor or building
24 owner/occupant agrees to pay the incremental cost of any necessary Cable System extension
25 and/or non-Standard Installation. If additional outlets of Cable Service are provided to such
26 buildings, the building owner/occupant shall pay the usual installation and service fees
27 associated therewith.

28 **8.6 New Developments**

29 If there is a new technology which in Grantor's opinion would enhance substantially the quality
30 or quantity of programming available to Subscribers on the System, Grantee shall, at the request
31 of the Grantor, investigate the feasibility of implementing said technology and report to Grantor
32 the results of such investigation.
33

34 **SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS**

35 **9.1 Capital Fee**

36 Effective Within sixty (60) days after the acceptance of this Franchise of written request from
37 Grantor, and continuing during the remaining term of this Franchise, Grantee shall pay to
38 Grantor a Capital Fee for educational and government access capital expenditures in the amount
39 up to thirty-five cents (\$.35) per Subscriber per month. Grantee shall make such payments
40 quarterly, no later than thirty (30) days following the end of the quarter. The Grantor agrees that
41 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Fee to the price of Cable
42 Services and to collect the Capital Fee from Subscribers. In addition, as permitted in 47 C.F.R.

1 §76.985, all amounts paid as the Capital Fee may be separately stated on Subscriber's bills as a
2 government access capital equipment fee.

3 **9.2 Access Reporting**

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

8 **9.3 Management and Control of Access Channels**

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

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

17 **9.4 Access Channels**

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

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

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

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

36 **9.5 Change in Technology**

37 In the event Grantee makes any change in the System and related equipment and facilities or in
38 Grantee's signal delivery technology, which directly or indirectly affects the signal quality or
39 transmission of Access programming, Grantee shall at its own expense take necessary technical
40 steps or provide necessary technical assistance, including the acquisition of all necessary
41 equipment, and full training of Access personnel to ensure that the capabilities of Access

1 channels are not diminished or adversely affected by such change. For example, this provision
2 shall apply if Basic Service on the Cable System is converted from an analog to a digital format,
3 such that the Access Channels must also be converted to digital in order to be received by
4 Subscribers.

5 **9.6 Access Channels on Lowest Level of Service**

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

8 **9.7 Access Channel Location/Relocation**

9 Grantee will carry Designated Access channels as follows: the C-RCC channel shall be on 22,
10 the educational and other Grantor channels shall be together on adjacent channels, if technically
11 feasible; provided that if Grantee places similar access channels in other jurisdictions on these
12 numbered channels, then feasibility shall be presumed. Grantee will carry Grantor's
13 programming on the channel designated for local government programming on its regional
14 channel line-up, currently channel 21, so that the Grantor will receive the same benefits from
15 such carriage as other jurisdictions in western Washington Furthermore, Grantee will use
16 reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall
17 provide three (3) months notice to the Grantor prior to any relocation and shall reimburse
18 Grantor for its costs incurred for any promoting, marketing, advertising and notice of the
19 Channel change up to three thousand dollars (\$3,000).
20

21 **9.8 Return Line**

22
23 Within sixty (60) days of written request, Grantee shall, meet with Grantor to discuss the
24 feasibility of constructing within twelve (12) months of written request by the Grantor one (1)
25 fiber optic Return Line, to enable the distribution of Access programming to Subscribers on the
26 Access Channels. ~~The Return Line shall run between the demarcation points identified in~~
27 Exhibit I, Access Origination Points. ~~Grantor and Grantee shall split the total cost of~~
28 constructing the return line at fifty percent (50%) each.
29

30 **9.9 Technical Quality**

31
32 The Grantee shall maintain Access channels at the same or better level of technical quality and
33 reliability required by this Franchise and all other applicable laws, rules and regulations for other
34 Channels. The Grantee shall provide routine maintenance and shall repair and replace, if
35 necessary, all Grantee's transmission equipment, including fiber transmitters and receivers,
36 channel modulators, associated cable and equipment, required to carry a quality signal to and
37 from the Grantor's Designated Distributor's facilities (and Designated Access Providers') and the
38 Grantee's facilities for the Access channels provided under this Franchise.
39

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

41 **10.1 Construction**

42 (A) Subject to applicable laws, regulations and ordinances of Grantor and the
43 provisions of this Franchise, Grantee may perform all construction necessary for the operation of

1 its System. All construction and maintenance of any and all Grantee's facilities within Rights-
2 of-Way shall, regardless of who performs the construction, be and remain Grantee's
3 responsibility.

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

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

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

22 (E) Repair and Restoration of Property.

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

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

38 (F) Movement for Other Permittees.

39
40 At the request of any Person holding a valid permit and upon reasonable advance notice,
41 Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a
42 building, vehicle, equipment or other item. The expense of such temporary changes must be paid
43 by the permit holder, and Grantee may require the estimated payment in advance.

44 **10.2 Relocation**

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

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

23 **10.3 Location of Facilities**

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

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

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

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

33 **10.4 Restoration of Rights-of-Way / Grantor Owned Property**

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

40 (B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned
41 property, Grantee shall be responsible for restoration in accordance with applicable regulations
42 of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may,
43 after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-

1 Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor
2 may, after providing notice to Grantee, remove and repair any work done by Grantee which, in
3 the determination of Grantor, does not conform to applicable code. The cost thereof, including
4 the costs of inspection and supervision shall be paid by Grantee. All excavations made by
5 Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the
6 prevention of accidents. All of Grantee's work under this Franchise, and this Section in
7 particular, shall be done in strict compliance with all rules, regulations and ordinances of
8 Grantor.

9 **10.5 Maintenance and Workmanship**

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

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

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

22 **10.6 Acquisition of Facilities**

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

30 **10.7 Discontinuing Use of Facilities**

31 Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee
32 shall submit for Grantor's approval a complete description of the facility and the date on which
33 Grantee intends to discontinue using the facility. Grantee may remove the facility or request that
34 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility
35 remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or
36 modify the facility to protect the public health, welfare, safety and convenience, or otherwise
37 serve the public interest. Grantor may require Grantee to perform a combination of modification
38 and removal of the facility. Grantee shall complete such removal or modification in accordance
39 with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as
40 directed by Grantor, or until the rights to and responsibility for the facility are accepted by
41 another Person having authority to construct and maintain such facility, Grantee shall be
42 responsible for all necessary repairs and relocations of the facility, as well as maintenance of the
43 Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee

1 shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to
2 use such facilities for any purpose whatsoever including, but not limited to, Access Channel
3 purposes.

4 **10.8 Hazardous Substances**

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

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

13 **10.9 Undergrounding of Cable**

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

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

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

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

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

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

1 **10.10 Construction Codes**

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

8 **10.11 Construction and Use of Poles**

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

20 **10.12 Tree Trimming**

21 Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or
22 cause to be pruned, using proper pruning practices in accordance with such permit, any tree in
23 the Rights-of-Way which interferes with the System.
24

25 **10.13 Standards**

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

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

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

41 (D) In the maintenance and operation of its System in Rights-of-Way, alleys and other
42 public places, and in the course of any new construction or addition to its facilities, the Grantee
43 shall proceed so as to cause the least possible inconvenience to the general public; any opening

1 or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of
2 its operations shall be guarded and protected at all times by the placement of adequate barriers,
3 fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly
4 designated by warning lights.

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

8 **10.14 Stop Work**

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

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

18 **10.15 Work of Contractors and Subcontractors**

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

30 **SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY**

31 **11.1 Equal and Uniform Service**

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

36 **11.2 Cable System Upgrade**

37 Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its
38 Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from
39 the Headend to the node and tying into a hybrid fiber-coaxial system already serving
40 Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the

1 Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical
2 quality standards regardless of a particular manner in which signal is transmitted. During the
3 term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent
4 with, or in excess of these specifications.
5

6 **11.3 Technical Performance**

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

12 **11.4 Cable System Performance Testing**

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

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

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

- 20 (1) Cumulative leakage index testing of any new construction;
- 21 (2) Semi-annual compliance and proof of performance tests in conformance
22 with generally accepted industry guidelines;
- 23 (3) Tests in response to Subscriber complaints;

24
25 (4) Cumulative leakage index tests, at least annually, designed to ensure that
26 one hundred percent (100%) of Grantee's Cable System has been ground or air tested for
27 signal leakage in accordance with FCC standards.

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

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

39 (E) Grantee shall be required to promptly take such corrective measures as are
40 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as
41 possible. Grantee's failure to correct deficiencies identified through this testing process shall be
42 a material violation of this Franchise. Sites shall be re-tested following correction.

1 **11.5 Additional Tests**

2 Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability
3 or technical quality of Cable Service, the Grantor shall have the right and authority to require
4 Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully
5 cooperate with the Grantor in performing such testing and shall prepare the results and a report,
6 if requested, within thirty (30) days after testing. Such report shall include the following
7 information:

- 8 (A) the nature of the complaint or problem which precipitated the special tests;
 - 9 (B) the Cable System component tested;
 - 10 (C) the equipment used and procedures employed in testing;
 - 11 (D) the method, if any, in which such complaint or problem was resolved; and
 - 12 (E) any other information pertinent to said tests and analysis which may be required.
- 13

14 **SECTION 12. SERVICE EXTENSION**

15 **12.1 Service Availability**

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

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

26 (2) At non-discriminatory monthly rates for all Subscribers, excepting
27 commercial customers, MDU Bulk customers and other lawful exceptions to uniform
28 pricing.
29

30 **SECTION 13. STANDBY POWER AND EAS**

31 **13.1 Standby Power**

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

1 **13.2 Emergency Alert Capability**

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

7 (B) Grantee shall ensure that the EAS system is functioning properly at all times. It
8 will test the EAS system periodically, in accordance with FCC regulations.
9

10 **SECTION 14. FRANCHISE BREACHES; TERMINATION OF**
11 **FRANCHISE**

12 **14.1 Informal Dispute Resolution**

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

24 **14.2 Procedure for Remediating Franchise Violations**

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

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

31 (2) Cure the default; or

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

41 (B) If Grantee does not cure the alleged default within the cure period stated above, or
42 by the projected completion date under subsection (A) (3), or denies the default and requests a

1 hearing in accordance with subsection (A) (1), or Grantor orders a hearing in accordance with
2 subsection (A) (3), Grantor shall set a public hearing to investigate said issues or the existence of
3 the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall
4 take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the
5 hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses,
6 and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit
7 Grantee's opportunity to make a record which may be reviewed should any final decision of
8 Grantor be appealed to a court of competent jurisdiction. The determination as to whether a
9 default or a material breach of this Franchise has occurred shall be within Grantor's sole
10 discretion, but any such determination shall be subject to appeal to a court of competent
11 jurisdiction.

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

- 16 (1) Assess and collect monetary damages in accordance with this Franchise;
17 (2) Commence procedures to terminate this Franchise; or,
18 (3) Pursue any other legal or equitable remedy available under this Franchise
19 or applicable law.

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

25 **14.3 Alternative Remedies**

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

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

40 **14.4 Assessment of Monetary Damages**

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

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

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

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

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

20 **14.5 Revocation**

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

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

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

1 (1) The receivership or trusteeship is vacated within one hundred twenty (120)
2 days of appointment; or

3 (2) The receivers or trustees have, within one hundred twenty (120) days after
4 their election or appointment, fully complied with all the material terms and provisions of
5 this Franchise, and has remedied all material defaults under the Franchise. Additionally,
6 the receivers or trustees shall have executed an agreement duly approved by the court
7 having jurisdiction, by which the receivers or trustees assume and agree to be bound by
8 each and every term and provision of this Franchise.

9 (C) If there is a foreclosure or other involuntary sale of the whole or any part of the
10 plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee
11 and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise
12 shall be revoked thirty (30) days after service of such notice, unless:

13 (1) Grantor has approved the transfer of the Franchise, in accordance with the
14 procedures set forth in this Franchise and as provided by law; and

15 (2) The purchaser has covenanted and agreed with Grantor to assume and be
16 bound by all of the terms and provisions of this Franchise.

17 (D) Grantor shall provide Grantee written notice of its intent to consider revocation
18 and hold a hearing in accordance with the provisions of this Franchise. Grantee shall submit any
19 objection to revocation in writing to Grantor, stating with specificity its objections. Grantor shall
20 hear any Persons interested in the revocation, and shall allow Grantee an opportunity to be heard,
21 to cross-examine witnesses, to present evidence, and to make all reasonable additions to the
22 hearing record.

23 (E) Grantor shall determine whether the Franchise shall be revoked. The Grantee
24 may appeal such determination to a court of competent jurisdiction. Such appeal to the
25 appropriate court shall be taken within thirty (30) days of the issuance of the determination of the
26 Grantor. Grantor shall receive notice of any appeal concurrent with any filing to a court of
27 competent jurisdiction.

28 **14.6 Removal**

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

36 (B) If Grantee fails to complete any required removal to the satisfaction of Grantor,
37 Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable
38 costs incurred within thirty (30) days after receipt of an itemized list of Grantor's expenses and
39 costs, or Grantor may recover its expenses and costs from the Security, or pursue any other
40 judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor
41 of such obligation shall be included in the monies due Grantor from Grantee, including
42 reasonable attorney fees, court expenses and attributed expenses for work conducted by
43 Grantor's staff or agents.
44

1 **SECTION 15. ABANDONMENT**

2 **15.1 Effect of Abandonment**

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

11 **SECTION 16. FRANCHISE TRANSFER**

12 **16.1 Transfer of Ownership or Control**

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

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

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

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

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

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

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

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

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

41 (E) The Grantor shall act by ordinance or resolution on the request within one
42 hundred twenty (120) days of the request, provided it has received all requested information.

1 Subject to the foregoing, if the Grantor fails to render a final decision on the request within one
2 hundred twenty (120) days, such request shall be deemed granted unless the requesting party and
3 the Grantor agree to an extension of time.

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

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

21 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of
22 the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable
23 System to an entity controlling, controlled by or under the same common control as Grantee,
24 provided that the proposed assignee or transferee must show financial responsibility as may be
25 determined necessary by the Grantor and must agree in writing to comply with all of the
26 provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the
27 purpose of financing without the consent of the Grantor; provided that such pledge of assets shall
28 not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations
29 under the provisions of this Franchise.
30

31 **SECTION 17. MISCELLANEOUS PROVISIONS**

32 **17.1 Preferential or Discriminatory Practices Prohibited**

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

38 **17.2 Notices**

39 Throughout the term of this Franchise, each party shall maintain and file with the other a local
40 address for the service of notices by mail. All notices shall be sent to such respective address,
41 and such notices shall be effective upon the date of mailing. At the effective date of this
42 Franchise:
43

1 Grantee's address shall be:

2 Comcast Cable
3 410 Valley Ave. NW, Suite 9
4 Puyallup, WA 98371
5 Attention: General Manager
6
7

8 With a copy to:

9 Comcast Cable
10 15815 25th Avenue West
11 Lynnwood, WA 98087
12 Attention: Franchise Department
13

14 Grantor's address shall be:

15 City of Bonney Lake
16 [PO Box 7380](#)
17 [9002 Main Street East](#)
18 Bonney Lake, WA 98391
19
20

21 **17.3 Costs to be Borne by Grantee**

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

24 **17.4 Binding Effect**

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

26 **17.5 Authority to Amend**

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

31 **17.6 Venue**

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

35 **17.7 Governing Law**

36 This Franchise shall be governed in all respects by the laws of the State of Washington.

37 **17.8 Captions**

38 The captions and headings of this Franchise are for convenience and reference purposes only and
39 shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

1 **17.9 Construction of Franchise**

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

3 **17.10 No Joint Venture**

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

7 **17.11 Waiver**

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

13 **17.12 Severability**

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

19 **17.13 Entire Agreement**

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

23 **17.14 Compliance with Federal, State, and Local Laws**

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

25 **17.15 Customer Service Standards**

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

28 **17.16 Force Majeure**

29 The Grantee shall not be held in default under, or in noncompliance with, the provisions of this
30 Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where
31 such noncompliance or alleged defaults occurred or were caused by circumstances reasonably
32 beyond the ability of the Grantee to anticipate and control, including war or riots, civil
33 disturbances, floods or other natural catastrophes, labor stoppages, slow downs, or power outages
34 exceeding back-up power supplies, work delays caused by waiting for utility providers to service
35 or monitor their utility poles to which the Grantee's Cable System is attached as well as
36 unavailability of materials irrespective of cost.

37
38

1 **IN WITNESS WHEREOF**, and pursuant to the vote of approval of the qualified
2 electors (if required) of the City of Bonney Lake, Washington this Franchise is signed in the
3 name of the City of Bonney Lake, Washington, this _____ day of _____,
4 2011.

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6
7 **CITY OF BONNEY LAKE**

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10 _____
11 By: Neil Johnson
12 Mayor, City of Bonney Lake
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15 ATTEST:
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21 **ACCEPTED** this _____ day of _____, 2011, subject to applicable
22 federal, state and local law.

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24 **Comcast of California/Colorado/Washington I, Inc.**

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26 _____
27 By: (Authorized Representative Signature)

COUNCIL WORKSHOP

**September 6, 2011
5:30 p.m.**

MINUTES



"Where Dreams Can Soar"

The City of Bonney Lake's Mission is to protect the community's livable identity and scenic beauty through responsible growth planning and by providing accountable, accessible and efficient local government services.

Website: www.ci.bonney-lake.wa.us

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

I. Call to Order: Mayor Johnson called the Workshop to order at 5:32 p.m.

II. Roll Call:

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

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

III. Agenda Items:

A. Council Open Discussion:

Southern Sewer Service Area: Councilmember Hamilton gave a brief history of the southern sewer service area in the City of Bonney Lake. He asked if the City is in discussions with Pierce County or Cascadia to create a master plan for sewer service to the area. He added if a joint agreement cannot be reached, the City must move forward with alternate plans to provide sewer service to the southern service area. City Administrator Morrison said the City has sent many letters but no agreement has been reached. He said Pierce County said they will follow the wishes of Cascadia. He said the City has spoken with the Pierce County Executive's top aides, but have not yet spoken to Pat McCarthy herself. Director Grigsby said he does not believe the County has resumed planning for the membrane plant that was shelved when Cascadia filed bankruptcy. He said the area is currently served with an onsite sewer system that only has one elementary school using it at this time. He said if the County is planning on including areas outside the Cascadia planned community a bigger plant would be needed. He added the City met with the Pierce County Executive in 2007, and developed a plan that has since been put on hold.

Councilmember Hamilton asked for the administration to contact the current Pierce County Executive Pat McCarthy and start a dialogue regarding the sewer plant for the area. Councilmember Decker said he does not believe the Cascadia project will be operational for some time, and the Sumner plant will take a very long time to upgrade. He added the City of Buckley is very interested in partnering with the City of Bonney Lake for sewer service. He said he understands it would be expensive but it may be worth exploring. Councilmember Rackley said the City does not know what, if anything, the City of Sumner is willing to do and the City of Bonney Lake needs to start planning now. Mayor Johnson asked if the City heard

back from the new owners of Cascadia. Director Vodopich said they have not, but the City would be notified if anything were to move forward with the County.

Indefinite Delivery Contract: Deputy Mayor Swatman said his understanding of the budget process is that the City Council approves funds for an item in the budget, then the individual departments return to Council with a proposed agreement to spend those funds. He said with an “indefinite delivery” contract, the entire budget is allocated and the City Council does not have any further discussions for individual projects. Director Grigsby said the City has a backlog of units in need of repair. He said the contract in question allows the City to receive pricing for a larger volume of items even though only a small amount will be completed at a time. He added with this tool the City will be able to fix several units a year and decrease the backlog. City Administrator Morrison said this contract will allow the City to receive better pricing, as if the City purchased a large quantity instead of a small amount.

Urban Growth Area Letter to Pierce County Council: Councilmember Hamilton said a letter has been drafted by the City Attorney for the Deputy Mayor to sign. Mayor Johnson stated he believed the entire Council should sign the letter. Director Vodopich said the Pierce County Community Development Committee will meet Monday, September 12th and again on September 19th. He said if Council would like the County to consider the letter it would need to be provided to them as soon as possible. Deputy Mayor Swatman stated he feels it will be difficult to have the letter succeed without the support of the administration. City Attorney Dionne said the administration has provided a great deal of effort in preparing the document to present to Pierce County Council as directed by Council. He said the administration is behind the letter. He suggested the Council review the letter as a whole and vote to sign the letter. Mayor Johnson stated he would sign the letter as the representative of the Council body if the letter has Council’s full support.

At 6:14 pm, Councilmember Rackley moved to have a 15-minute recess to review the letter. Councilmember Decker seconded the motion.

Motion approved 7 – 0.

The Workshop reconvened at 6:31pm.

Councilmember Rackley moved to amend the agenda to include an action item to authorize the Mayor to sign the letter representing the City of Bonney Lake. Councilmember Decker seconded the motion.

Motion Approved 7-0

Councilmember Hamilton moved to Authorize The Mayor To Sign A Letter To Send To Pierce County Council Regarding The City of Sumner’s Proposed Urban Growth Amendment Expansion. Councilmember Rackley seconded the motion.

Councilmember Lewis moved to amend the last sentence of the letter to: The Bonney Lake City Council is definitely opposed to this expansion and would ask that you not move this proposal forward for full council consideration. Councilmember Rackley Seconded the motion.

Motion Approved 7-0

Councilmember Decker questioned the reasons for sending the letter. He stated it is not the place of the City to oppose another jurisdiction's expansion. He stated the City of Bonney Lake recently added a similar space in Bonney Lake. He said if the City is concerned about development cost being less expensive in the valley, the City should match the development cost of the City of Sumner. Councilmember Hamilton stated the letter spells out that the City of Bonney Lake does not feel the proposed UGA amendment is in accordance with the Washington State Growth Management Act, due to the excessive amount of commercial property the City of Sumner already has. He said the letter also states the City agrees with Pierce County staff and the County Planning Commission. He added the proposed development would destroy 125 acres of agricultural land that could not be replaced. Councilmember Rackley said if this amendment is approved it would change the dynamics on the plateau. He said businesses would build in the valley instead of on the plateau because the development fees in the valley are lower. He added the reason for fees being higher in Bonney Lake is the Council has made a commitment to development paying for itself.

Deputy Mayor Swatman stated the rules for each jurisdiction are the same. He said the proposed amendment has errors and should to be fixed before it moves forward. Mayor Johnson stated the WSU property the City recently rezoned is part of the City's UGA. He added the area is being preserved for a park and some commercial that the City is in need of. He added the proposed Orton Junction development is not currently in any jurisdiction's UGA. He said it is the responsibility of the Council to weigh in on issues that will affect Bonney Lake. Councilmember Hamilton said the Growth Management Act mandates jurisdictions to take the existing lands within their jurisdictions and utilize the lands the best they can. He added cities spend millions of dollars to prepare the lands within their jurisdiction for development. Councilmember Hamilton called for the vote.

Motion Approved 7-0.

Personnel Update to Budget: Councilmember Carter asked if the amendments to the budget regarding personnel would be part of the 2012 budget amendment. City Administrator Morrison said this issue will be added to the Finance Committee agenda during the September 13, 2011 meeting.

Summer Events: Councilmember Carter said the City has offered many successful events over the summer. She thanked the Relay for Life volunteers, including Debbie McDonald, David Wells, and Carol Paul.

Grand Opening of Highway 410: Mayor Johnson said the ribbon cutting ceremony for the SR 410 widening project will be Wednesday, September 7, 2011 at 10 am.

9/11/01 Remembrance: Mayor Johnson said it has been 10 years since 9/11. He encouraged everyone to remember the events of that day, those who lost their lives, and the sacrifices of their families.

- B. **Review of Council Minutes:** July 16, 2011 Special Council Meeting; July 19, 2011 Council Workshop; July 26, 2011 Council Meeting; and August 9, 2011 Council Meeting.

The minutes were forwarded to the September 13, 2011 Meeting for action with no corrections.

- C. **Discussion:** Metropolitan Park Districts (Tabled from 8/16/11).

Facilities & Special Projects Manager Gary Leaf gave Council a presentation on the creation of a Metropolitan Park District (MPD). He covered what a MPD is, how it is formed, if the Boundary Review Board would be involved, if annexations affect MPD's, how a board is established, MPD funding, how the tax levy is set, what the bonding limits are for non-voted and voted bonds, the effect of the levy lid, if the City can issue tax-exempt bonds for a YMCA facility, other tax issues related to bonds to consider, what happens to city-owned park land, a time line for election to form a MPD, election trends, examples of capital projects, and voted bond cost for a 20 year bond.

Councilmember Hamilton questioned the financing options for a MPD. He asked if the MPD board would have the authority to levy up to 75 cents per thousand dollars against property owners in Bonney Lake without a public vote. He asked about the indebtedness of the MPD. Mr. Leaf said 50 % of the board vote is needed to create the MPD itself but a 60% vote is needed to issue a voted bond. Deputy Mayor Swatman asked if the ballot measure to create a MPD could also include an amount for a tax levy in the same vote. Mr. Leaf said when the issue is on the ballot it is only to create a MPD. He added the board must decide the tax levy amount, and until the people vote to create a MPD, there is no board. Deputy Mayor Swatman said he would like to get the details confirmed before putting the issue to the people for the vote. Councilmember Decker said he would like to make sure citizens know the MPD could tax up to 75 cents per thousand dollars of property value. City Administrator Morrison said the MPD board has several options for funding: levy the maximum amount and use that to pay for all non-voted bonds, put a vote before the people and asked citizens if they would support a large park bond and keep the tax levy very low only to pay for operations and maintenance, or a combination of the two. City Attorney Dionne said the makeup of the MPD board would be part of what the citizens vote on. Councilmember Rackley said if the funding for parks came from a taxing district, the City could slowly reduce funding for parks from the general fund. Councilmember Carter said the MPD would pay the City to manage the MPD. Mr. Leaf said this is one option, or the MPD could have all their own staff. Councilmember Hamilton said the MPD could not be a department of the City. Mr. Leaf said they are separate legal entities but they can still be managed by the City staff. Mayor Johnson suggested having further discussion on this at a future workshop.

Councilmember Decker moved to table item F. Discussion: Model Lighting Ordinance to the September 20, 2011 Workshop. Councilmember Rackley seconded the motion.

Motion Approved 7-0

D. Discussion: Broadcast of City Council Meetings.

City Administrator Morrison explained that the cable franchise agreement has expired and the City is currently working with Rainier Cable Vision to establish a new master agreement. He said the City is currently charging a 5% utility tax and the agreement gives the City the ability to charge a 6% franchise fee. He said the Council could adjust the franchise fee down if they wanted or they can use the money to purchase the infrastructure needed to broadcast City Council Meetings. Councilmember Rackley said this would be a perfect time if the Council would like to broadcast the meetings because the funds would be available. He said the City has a mechanism to pay for the infrastructure. He added Comcast is planning on broadcasting Council meetings and this would allow more citizens to be informed about what is going on in the City. Deputy Mayor Swatman said the cost to the citizens is important, he believes it is a good idea if it can be done cost effectively. Councilmember McKibbin said this is the next

step for a growing city. He said it would encourage better attendance at the meetings. Councilmember Lewis said it is a good idea, but is concerned about adding taxes during these difficult financial times. Councilmember Hamilton said it is appropriate to record and broadcast the meetings. He would prefer they be broadcasted on the web so citizens could watch at their leisure. Councilmember Decker asked for concrete numbers and information to be brought back to a future workshop. Councilmember Carter said she would like to have as much information as possible available to the citizens.

Councilmember Decker moved to add Broadcast of Council Meetings to the September 20, 2011 workshop for discussion. Councilmember Rackley seconded the motion.

Motion Approved 7-0

E. Discussion: Renaming of Sumner-Buckley Highway, East.

Councilmember Hamilton said the City should do something to honor the military and their families. He said this small piece of Sumner-Buckley Hwy inside City limits could be renamed to honor those veterans. He added the street should be renamed to something other than two neighboring cities. Mayor Johnson asked the City Attorney to look into if we can rename the road without support of the City of Buckley or Pierce County. Councilmember Hamilton said the road could be renamed Veterans Memorial Hwy E to honor both the veterans and the public servants who have died in the line of duty. Deputy Mayor Swatman added the road is not called Old Sumner Buckley Highway inside the city limits of Buckley. City Administrator Morrison said the City must rename streets by ordinance. By majority consensus, Council is in favor of changing the name of Old Sumner Buckley Highway.

IV. Executive Session: Pursuant to RCW 42.30.110(1)(i) the Council recessed to an executive session with the City Attorney at 7:59 p.m. for 20 minutes to discuss potential litigation, and pursuant to RCW 42.30.11091)(a) to discuss lease of real estate. The Council returned to chambers at 8:22 p.m.

V. Adjournment:

At 8:23 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 September 6, 2011 Council Workshop:

- City of Bonney Lake –*Letter to Pierce County Council* – Community Development Director Vodopich.
- City of Bonney Lake –*Power Point Presentation on MPD* – Facilities & Special Projects Manager Gary Leaf.

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CITY COUNCIL MEETING

**September 13, 2011
7:00 P.M.**

MINUTES

City of



"Where Dreams Can Soar"

The City of Bonney Lake's Mission is to protect the community's livable identity and scenic beauty through responsible growth planning and by providing accountable, accessible and efficient local government services.

Website: www.ci.bonney-lake.wa.us

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

I. CALL TO ORDER – Mayor Neil Johnson, Jr. called the meeting to order at 7:00 p.m.

- A. Flag Salute: Mayor Johnson led the audience in the Pledge of Allegiance.
- B. Roll Call: Administrative Services Director/City Clerk Harwood Edvalson called the roll. In addition to Mayor Johnson, elected officials attending were Deputy Mayor Swatman, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, and Councilmember Randy McKibbin. Councilmember Lewis and Councilmember Jim Rackley were absent.

Councilmember McKibbin moved to excuse Councilmembers Lewis & Rackley. Councilmember Decker seconded the motion.

Motion approved 5 – 0.

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:
 - a. **Proclamation:** Proclaiming September 15, 2011 as Mike Mitchell Day in Bonney Lake.

Mayor Johnson read the proclamation aloud, and thanked Police Chief Mike Mitchell for his years of service to the City. He presented Chief Mitchell with a plaque and congratulated him on his upcoming retirement.

- 2. Appointments: None.
- 3. Presentations: None.

D. Agenda Modifications:

Councilmember Decker requested that Consent Agenda Items B. and C. be moved to Full Council issues for consideration.

II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:

A. Public Hearings:

1. **Public Hearing Pursuant to Declaration of a Moratorium:** AB11-102 – Ordinance 1396 – Declaring A Moratorium On Collective Medical Marijuana Gardens.

Mayor Johnson opened the hearing at 7:05 p.m. Seeing no one coming forward to speak, the public hearing was closed at 7:05 p.m.

B. Citizen Comments:

Quinn Dahlstrom, 6527 193rd Av E, Bonney Lake, thanked the City for awarding the Lake Debra Jane water main project contract to Jennings Northwest. She said they provided great customer service when working on the project in her neighborhood. She also thanked Chief Mike Mitchell for his service as Police Chief in Bonney Lake and wished him well. Ms. Dahlstrom also thanked Mayor Johnson for appointing Dana Powers as Interim Chief, who has served in the community for many years.

Fire Chief Jerry Thorsen, East Pierce Fire & Rescue, presented a Certificate of Appreciation to Chief Mitchell from the Fire Department. He said the department wishes him a happy and well-deserved retirement.

Katrina Minton-Davis, 19004 107th St E, spoke on behalf of Relay for Life. She thanked the Mayor and Council and staff for their support and said the group exceeded its fundraising goal by raising \$205,000 this year. She said the event will be held at Bonney Lake High School in 2012, as the Sumner track will be under construction. She said the organization is already planning for next year's event and looks forward to continued support.

Marilee Hill-Anderson, Sumner School District, spoke about issues regarding youth and marijuana use. She said she did not want to speak specifically for or against the proposed moratorium on collective gardens but wanted to share information so the Council can get a full picture of what they see as the full impact of marijuana use amongst youth. She provided the Council and staff with a graph showing the change in perception of harm trends for graduating high school students. Councilmember Hamilton welcomed staff to share information with the Public Safety Committee.

Monica Gaub, 20720 127th St E, Bonney Lake, is the Prairie Ridge Community Coalition coordinator and spoke about how ongoing drug use impacts local communities. She thanked the Council for their thoughtfulness and strategic actions moving forward, and said her group is available to help provide information.

HaeMan Song, Pierce County Community Connections, is a Chemical Dependency Prevention Specialist, and shared information with the Council on the number of youth in treatment for drug use in recent years. He said in 2007, 57% of youth in drug treatment programs said marijuana was their 'drug of choice'; that number has increased to 75% in 2010 (over 7,000 youth). He said marijuana use has increased amongst youth for the first time in 10 years. He responded to questions regarding these statistics and forms of treatment. He said in Pierce County, 11% of 10th graders and 23% of 12th graders report current marijuana use, based on a recent survey. Councilmember Hamilton asked if research shows a correlation between decriminalization of marijuana by the State with increased drug use in youth. Mr. Song said that more data needs to be

gathered, but there has been an increase in the number of youth using marijuana recently. He said that based on anecdotal information, it seems very easy to obtain a medical marijuana prescription, and school nurses and others are not sure how to deal with these issues. Councilmember Carter suggested Councilmembers read the recent article in the MRSC newsletter that discusses issues related to marijuana.

- 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 personnel updates and forwarded the following items to upcoming meetings and workshops: a proposed ordinance for land use fees, a resolution for property acquisition at Dike 13, and an ordinance updating BLMC Chapter 2.08. He said the committee also reviewed meeting minutes and discussed options to broadcast council meetings.

- B. Community Development Committee: Councilmember McKibbin said the committee met on September 6th and forwarded Resolutions 2149 and 2150 and motions to approve projects as complete to the current Consent Agenda for consideration.

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

- D. Other Reports:

Business Opening: Mayor Johnson said he attended the grand opening of the new BECU Bank earlier in the day, and the bank is excited to move in a larger new building. He said BECU also presented a donation check to Beautify Bonney Lake.

Police Chief's Retirement: Mayor Johnson said he and a large number of staff members attended the Chief's going-away luncheon earlier in the day.

SR410 Road Widening Ribbon Cutting Ceremony: Mayor Johnson said he, Councilmembers Lewis, Swatman and Rackley, and members of the City staff attended the ribbon-cutting ceremony for the SR410 road-widening project last week.

Local Sports: Councilmember Decker noted that the Bonney Lake High School Panthers beat the Sumner High School football team last weekend.

IV. CONSENT AGENDA:

- 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. *Moved to Full Council Issues, Item B.*

- 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. *Moved to Full Council Issues, Item B.*
- D. ~~**AB11-99 – Resolution 2146**~~ – A Resolution Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A Contract Amendment With Dionne And Roriek For Legal Services. *Moved to Finance Committee Issues, Item B.*
- 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. *Moved to Finance Committee Issues, Item C.*
- F. **AB11-108 – Resolution 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.
- G. **AB11-109 – Resolution 2150** – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Awarding The Prairie Ridge Booster Pump Station and Wholesale Intertie Project To Waunch Construction And Trucking, Inc.
- 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.

Deputy Mayor Swatman requested that Items D. and E. be moved to Finance Committee Issues for consideration. Items B. and C. were moved to Full Council Issues during Agenda Modifications (above).

**Councilmember Decker moved to approve the Consent Agenda as amended.
Councilmember Carter seconded the motion.**

Consent Agenda approved as amended 5 – 0.

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.

Councilmember Decker moved to approve AB11-80. Councilmember Hamilton seconded the motion.

Councilmember Decker asked if the proposed ordinance will change the franchise fee. Deputy Mayor Swatman said the combined franchise and utility tax would be the same amount for customers. He said the Council has not yet decided whether to broadcast Council meetings, and that issue is separate from the franchise agreement. Councilmember Carter said per the staff memo, only Comcast customers would have access to a public access channel for Council meetings, but it would require an additional cost to residents. Deputy Mayor Swatman confirmed that broadcasting is not part of the proposed franchise agreement, and this motion is simply to set the public hearing to move forward through that process.

Motion AB11-80 approved 5 – 0.

- B. **AB11-99 – Resolution 2146** – A Resolution Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A Contract Amendment With Dionne And Rorick For Legal Services.

Councilmember Decker moved to approve Resolution 2146. Deputy Mayor Swatman seconded the motion.

Deputy Mayor Swatman said the Finance Committee reviewed this item previously. He said the firm of Dionne & Rorick currently provides the City's prosecuting services, and the City has recently hired an internal Prosecuting Attorney. He said staff at Dionne & Rorick have made a case for keeping this position as a non-City employee. He said it's the Council's authority to approve or deny this proposed amendment.

Councilmember Decker moved to table Resolution 2146 to the September 20th Workshop. Councilmember Carter seconded the motion.

Councilmember Decker noted that two councilmembers were not in attendance and should have the chance to discuss this item.

Motion to table approved 5 – 0.

- C. **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.

Councilmember Decker moved to approve Resolution 2148. Deputy Mayor Swatman seconded the motion.

Deputy Mayor Swatman said the City runs background checks on all city employees, including temporary summer hires. He said the proposed contract is a renewal for services only. City Administrator Morrison said the City does not do background checks on elected or appointed officials such as Councilmembers. Administrative Services Director/City Clerk Edvalson said the City can select different levels of background check services, and normally uses the 'Bronze Star' report level, with an expanded reporting time frame. City Administrator Morrison said the City can request a higher level background check for specific positions.

Resolution 2148 approved 5 – 0.

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.

Councilmember Decker moved to approve Resolution 2151. Councilmember Carter seconded the motion.

City Administrator Morrison said per this agreement, the Swiss Sportsman's Park will exchange a number of connections for a hydrant installation. He said it seems to be a mutually acceptable and practical resolution to the issues between the City and Swiss Park. He said if the property is later sold and developed, the City would recoup its costs for the hydrant installation. Deputy Mayor Swatman thanked the administration and Swiss Sportsman's Club for working through this issue to find a solution. Councilmember Decker thanked the Club for working with the City.

Resolution 2151 approved 5 – 0.

- 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. *Moved from Consent Agenda Issues, Item C.*

Councilmember Decker moved to approve Accounts Payable and Utility Refund Checks/Vouchers. Deputy Mayor Swatman seconded the motion.

Councilmember Decker said he plans to approve the item but would like to receive more information on the items included in voucher review, in particular a brief description for larger expenditures. Chief Finance Officer Al Juarez said additional information is available and could be distributed prior to meetings if the Council desires. Deputy Mayor Swatman said the current amount of information shared with the full Council was determined for specific reasons in the past. Mayor Johnson suggested the Council discuss this item at a future Workshop if there is interest. He said he wants to ensure staff are meeting Councilmembers' expectations.

Accounts Payable and Utility Refund Checks/Vouchers approved 5 – 0.

- 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. *Moved from Consent Agenda Issues, Item B.*

Councilmember Hamilton moved to approve Payroll. Councilmember Carter seconded the motion.

Councilmember Decker said he felt the information provided on the agenda may seem vague, as it lists a small number of checks for the entire payroll, but many employees are paid by direct deposit or electronic transfer. Mayor Johnson suggested the presentation of payroll be discussed at Workshop along with checks and vouchers.

Payroll approved 5 – 0.

IX. EXECUTIVE SESSION: None.

X. ADJOURNMENT:

At 7:52 p.m., Councilmember Hamilton moved to adjourn the meeting. Councilmember Carter seconded the motion.

Motion to adjourn approved 5 – 0.

Harwood Edvalson, CMC
City Clerk

Neil Johnson
Mayor

Items presented to Council at the September 13, 2011 Meeting:

- Quinn Dahlstrom – *Letter to Council* – Bonney Lake Resident.
- Merrily Hill-Anderson – “Graduating Class of 2010-11 Perception of Harm Trends” – Sumner School District.

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

Department/Staff Contact: Executive / Gary Leaf	Meeting/Workshop Date: 27 September 2011	Agenda Bill Number: AB11-111
Agenda Item Type: Resolution	Ordinance/Resolution Number: 2152	Councilmember Sponsor:

Agenda Subject: Property Acquisition from and License Agreement with Cascade Water Alliance

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A License Agreement With And Sidewalk Right-Of-Way Dedication Deed From The Cascade Water Alliance.

Administrative Recommendation: Approve

Background Summary: In July 2011, after consulting with the City Council, the Mayor signed a Memorandum of Understanding (MOU) with the Cascade Water Alliance (CWA) that anticipated execution of an agreement whereby the City could use for park purposes a 0.55 acre parcel owned by CWA (Dike 13). The MOU also expected CWA would dedicate additional right-of-way for a sidewalk on the east side of West Tapps Highway. The renewable License Agreement lasts for twenty years and requires the City to maintain liability insurance, security, and vegetation control acceptable to CWA, and provide advance construction plans to CWA and pay for CWA's engineers to review them and also pay for installing capping on the existing bulkhead. The two documents are attached.

Attachments: Yes

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
N/A	N/A	N/A	N/A
Budget Explanation: N/A			

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	Finance Committee	<i>Approvals:</i>	Yes No
	Date: 13 September 2011	Chair/Councilmember Dan Swatman	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember James Rackley	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Mark Hamilton	<input checked="" type="checkbox"/> <input type="checkbox"/>
	Forward to: 27 September 2011	Consent	
	Council Meeting	Agenda: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Commission/Board Review:			
Hearing Examiner Review:			

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

APPROVALS		
Director:	Mayor:	Date Reviewed by City Attorney: 30 August 2011 (if applicable):

RESOLUTION NO. 2152

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A LICENSE AGREEMENT WITH AND SIDEWALK RIGHT-OF-WAY DEDICATION DEED FROM THE CASCADE WATER ALLIANCE.

WHEREAS, on July 25, 2011 the Mayor signed a Memorandum of Understanding (MOU) with the Cascade Water Alliance that anticipated consummation of an agreement for City use of Dike 13 for park-related purposes; and

WHEREAS, the MOU also anticipated dedication of a right-of-way deed to the City for a sidewalk on the eastern side of West Tapps Highway;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Bonney Lake, Washington, does authorize the Mayor to sign the License Agreement with and the Right-of-Way Dedication Deed from the Cascade Water Alliance, attached hereto and incorporated herein by this reference.

PASSED by the City Council this 27th day of September, 2011.

Neil Johnson, Mayor

ATTEST:

Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

James Dionne, City Attorney

PARK LICENSE AGREEMENT

This **PARK LICENSE AGREEMENT** (“**License**”), effective as of the last date written below (the “**Effective Date**”), is by and between CASCADE WATER ALLIANCE, a Washington nonprofit corporation (“**Cascade**”), and the CITY OF BONNEY LAKE, a Washington municipal corporation (“**City**”).

WHEREAS, Cascade is the owner of the Lake Tapps Reservoir (“**Lake Tapps**”), as well as certain property commonly referred to as Dike 13 (the “**Cascade Property**”), such property being further described on Exhibit A attached hereto and made a part hereof;

WHEREAS, the City owns the water front property adjacent to the Cascade Property and operates the Allan Yorke Park (“**the Park**”), such property being more particularly described on Exhibit B attached hereto and made a part hereof;

WHEREAS, pursuant to that certain Deed, dated June 22, 1954, and recorded in Vol. 1063, Page 485 of Pierce County records (the “**1958 Deed**”), Cascade’s predecessor in interested granted to the City’s predecessor in interest, as the owner of water front property, the right to access and use the waters of Lake Tapps for recreational purposes;

WHEREAS, pursuant to that certain Quit Claim Deed, dated December 13, 1958, and recorded as AFN 1837750, Pierce County records, the City’s predecessor in interest reserved the easement right to cross and re-cross Cascade Property in order to access the waters of Lake Tapps for recreational purposes, but not to remain on Cascade Property;

WHEREAS, the City now desires to gain certain rights from Cascade for the public to remain on Cascade Property for recreational purposes in association with the public’s use of the Park, in exchange for the provision of certain improvements and public services, and subject to the terms and conditions as further provided for herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the performance by the parties of the covenants contained herein, Cascade hereby grants to the City the following:

1. **Grant of License; Term; Right to Terminate; Restoration; Reservation of Rights.**
 - a. Cascade hereby grants to the City a nonexclusive license for the access and use of Cascade Property for the operation of a public amenity that is similar to and in conjunction with the City’s current use of the Park. Except as otherwise expressly set forth herein, no other uses, purposes, rights or conveyances are implied or granted hereunder to the City.

- b. The License shall become effective as of the Effective Date, and shall continue for a period of twenty (20) years from the Effective Date, unless terminated sooner (i) pursuant to Section 1(d), (ii) for failure of the City to provide evidence of its insurance coverage as required under Section 7, or (iii) for any other breach of this License.
- c. At least thirty (30) days prior to the expiration of the License, the parties shall meet to discuss whether a renewal of the License is needed for the continuation of the City's activities, including whether insurance coverages and amounts are still reasonable. If the parties desire to renew the License, the parties will endeavor to enter into a renewal License with similar terms and conditions as contained herein, subject to modifications as agreed to by the parties.
- d. Notwithstanding the term of this License, this License may be terminated (i) for any reason by either party with 90 days prior written notice to the other party; or (ii) without prior notice by Cascade if Cascade determines, in its sole discretion, that the integrity of the Cascade Property is at risk.
- e. Upon termination and if requested by Cascade, the City shall remove any improvements constructed or installed by it on the Cascade Property pursuant to this License. The City shall conduct its removal of such improvements in compliance with all applicable statutes, orders, rules and regulations, including all applicable environmental laws, permit and approval requirements, and commercially reasonable construction and operation practices. If by the termination date, the City shall not have removed the improvements pursuant to this Section, then the City shall be deemed to have abandoned any and all improvements made to the Cascade Property. Cascade shall thereafter have the right to keep, remove or otherwise dispose of such improvements as Cascade shall determine, in its sole judgment, and the City shall reimburse Cascade for any expenses it incurs relating to such removal or disposal. All of the City's obligations arising under this License which may reasonably be deemed to survive the termination of this License shall survive the termination of this License.
- f. Cascade reserves the right to use the Cascade Property for any purpose not inconsistent with the rights herein granted to the City.

2. Dike Integrity; Work on Cascade Property by Cascade.

- a. Notwithstanding any other provisions herein, the integrity of the Cascade Property will be paramount to any other interest granted to the City. The integrity of the Cascade Property must be maintained at all times and any actions taken by the City pursuant to the rights granted hereunder shall be subject to

Cascade's ability to maintain, repair and/or replace the Cascade Property, including, without limitation, the right to redesign the configuration and elevation of Cascade Property, all in its sole and absolute discretion.

- b. At any time during the term of this License, Cascade may access Cascade Property to conduct any maintenance, monitoring, repair or replacement activities, and may limit access by the City and the public during such process. Cascade will coordinate with the City to the extent possible to reasonably minimize any such impacts on public access. Such work shall be done at Cascade's expense, however, Cascade will not be responsible for any damage or alteration to any of the City's improvements or vegetation to Cascade Property disturbed during such activities, or for the replacement of any of the City's improvements or vegetation if removed during such activities. Notwithstanding the foregoing, the City will install or pay for the installation of capping on the existing ecology-block bulkhead. Such capping shall be subject to Cascade's prior review and approval.

3. **City's Improvements.**

- a. During the term of this License, the City will make certain capital improvements to Cascade Property, including depositing of fill material between the existing southern slope of Cascade Property and the adjacent public right of way, constructing a sidewalk along the right of way, and installing or constructing certain access control features onto Cascade Property (collectively, the "**Initial Capital Improvements**"). The City shall provide the design and engineering plans for the Initial Capital Improvements at least 4 weeks in advance of commencement of any work or submittal of any applications to Cascade for its review and approval, in its sole discretion. The City shall pay for Cascade's costs associated with its dam engineer's review of such plans. Any future improvements (together with the Initial Capital Improvements, the "**Capital Improvements**") by the City shall also be subject to Cascade's prior review and approval, in its sole discretion, and the City shall pay Cascade's dam engineer costs for review of same.
- b. The City will be the lead agency under the State Environmental Policy Act for any Capital Improvements. The City represents and warrants that it will obtain, prior to the commencement of any construction or installation activities of any Capital Improvements, all applicable Federal, State and local permits, licenses, or other authorizations required for the construction, installation, repair or replacement of any Capital Improvements on the Cascade Property (including, without limitation, such laws or permits as may pertain to building, zoning,

shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare).

- c. With respect to the fill material that is part of the Initial Capital Improvements, the City shall provide analysis of any proposed fill materials to Cascade for its review and approval, in its sole discretion, prior to placement on Cascade Property. The City shall pay Cascade's consultant costs to review same.

4. City's Obligations and Activities.

- a. The City will provide an adequate level of all public services, such as mowing and vegetation maintenance, event staff usage, restrooms, parking, and maintenance of swimming area with buoys and floats during the term of the License. The City will comply with any request by Cascade for vegetation control in order to ensure dike integrity. The types of vegetation that may be maintained on, near and around the Cascade Property shall be subject to Cascade's prior review and approval, in its sole discretion.
- b. The City will provide an adequate level of security, law enforcement and marine patrol during the term of the License.
- c. The City will be responsible for maintenance and compliance with all safety laws and regulations, during the term of the License.
- d. No motorized water craft will be allowed on the Cascade Property, or will be permitted to launch from the Cascade Property during the term of the License.

5. Additional Restrictions; Own Risk.

- a. The City agrees that it will not use, generate, store, or dispose of any hazardous substances (including, without limitation, fuel) on, under, about, or within the Cascade Property in violation of any law or regulation.
- b. The parties acknowledge that the long-term quality of the waters of Lake Tapps is paramount. The City warrants that the design of any Capital Improvements, and the City's activities on Cascade Property, will protect the water quality of Lake Tapps and the structural integrity of Cascade Property during the term of the License.
- c. The City will obtain and comply with all necessary water quality permits for any Capital Improvements and for the City's activities on Cascade Property. The City will engage in techniques to control the entry of fertilizers and pesticides into Lake Tapps during the term of the License.

- d. The City acknowledges that the Cascade Property is an operating utility property of Cascade and the use thereof includes, without limitation, the operation of a reservoir to serve Cascade's future municipal water supply. Notwithstanding the rights granted to the City hereunder, Cascade may use the Cascade Property for purposes of its utility operations as fully as if this License had not been given. The City shall not, at any time, undertake any activities which interfere with or otherwise impair the safe and reliable operation of the Cascade Property as an operating utility property, or for other uses incidental thereto.
- e. The City acknowledges that these rights are subject to the restrictions contained in the 1954 Deed, including, without limitation, Cascade's right to raise the waters of Lake Tapps up to the elevation of 545 feet above sea level (measurement of such elevation as further described in the 1954 Deed), and to draw it down to any level or abandon the storage reservoir completely.
- f. The City acknowledges that the use of the Cascade Property by the City and members of the general public will be at its and their, respectively, own risk, and Cascade shall not be responsible for any injuries or property damage resulting therefrom. Cascade and their insurers will bear no responsibility for any injuries that City employees, contractors, or volunteers, or members of the general public, may incur.

6. Cooperation; Compliance and Permits; Work.

- a. Each party hereby agrees to execute additional documents and to take such actions as are necessary and appropriate to effectuate the intent of this License.
- b. The City shall at all times exercise its rights herein in accordance with all applicable statutes, orders, rules and regulations, including all applicable environmental laws, permit and approval requirements, and commercially reasonable construction and operation practices.
- c. The City shall cause all construction and installation activities upon or within the Cascade Property to be done in a safe, careful and workmanlike manner so as to prevent bodily harm to persons and damage to property. The City shall ensure that all labor, services, materials, equipment, supplies or other items employed or provided in connection with the rights granted herein are of good quality and suitable for the intended purpose. The City shall promptly pay (and shall secure the discharge of any liens asserted by) all persons or entities furnishing any labor, services, materials, equipment, supplies or other items to or upon the Cascade Property for the benefit of the City.

7. **Insurance.** The City agrees to maintain reasonable and customary liability insurance for bodily injury, personal injury, death, contractual liability and property damage arising out of, or having to do with the City's and the general public's use, occupancy, and possession of, or acts or omission on or about the License Property, and shall provide Cascade with satisfactory evidence of such insurance on an annual basis. Such insurance shall name Cascade as an additional insured with respect to all coverages, with the exception of Worker's Compensation Insurance. The City's insurance shall be primary and Cascade's insurance shall be excess and non-contributory. The City shall obtain Cascade's approval as to types of coverages and amounts, or an alternative risk management tool, upon the Effective Date and each anniversary date thereafter.

8. **Indemnity.** The City hereby agrees to release, indemnify, defend and hold Cascade, its elected or appointed board members, officers, officials, employees and agents harmless from and against any and all demands, claims, suits, risks, liabilities and obligations of any nature and any and all costs or expenses of any nature including, but not limited to, all losses, damages, judgments and reasonable attorney's fees, arising from or relating to injury to or death of any and all persons and/or all property damage of any kind, whether tangible or intangible, including loss of use, in connection with or related to the rights granted hereunder, or the actions or inactions of the City, its agents, employees, contractors, guests, other invitees or the general public, upon the Cascade Property, and/or the presence of the City, its employees, agents, employees, contractors, guests, other invitees or the general public or their property upon or in proximity to the Cascade Property, except only those losses resulting solely from the negligence or willful misconduct of Cascade, its elected or appointed board members, officers, employees, volunteers, contractors or agents, or resulting from Cascade's breach of this License. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each party specifically and expressly waives any immunity it may have under Washington State Industrial Insurance Act, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein. In no event shall either party's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated party.

9. **Remedies.** In the event of any breach or threatened breach of this License by either party, the other party shall have all rights at law or in equity. In no event shall a waiver by either party of the right to seek relief under this Section constitute a waiver of any other or further violation. The prevailing party in any action brought to enforce or interpret the terms of this License pursuant to this Section shall be entitled to recover its costs and reasonable attorneys' fees incurred in said action, including on appeal, whether or not suit is commenced. It is expressly agreed that a breach of this License

shall entitle any party to cancel, rescind or otherwise terminate this License pursuant to Section 1(d).

10. **Limitations.** This License, and the benefits conferred hereby, are subject to any other easements or encumbrances of record as of the date hereof.
11. **Notices.** Any notice or election required herein or permitted to be given or served by either party hereto upon the other shall be deemed given or served in accordance with the provisions of this License, if personally served, delivered by national overnight courier (such as Fed Ex, UPS, DHL), if sent via facsimile or if mailed by United States Registered or Certified Mail, postage prepaid, properly addressed as follows:

If to City: City of Bonney Lake
 P.O. Box 7380
 Bonney Lake, WA
 98391-0944
 Attn: Gary Leaf
 Telephone: (253) 447-3282
 Facsimile: (253) 862-8538

If to Cascade: Cascade Water Alliance
 11400 SE 8th Street, Suite 440
 Bellevue, WA 98004
 Attn: CEO
 Telephone: (425) 453-0930
 Facsimile: (425) 453-0953

Each mailed notice or communication shall be deemed to have been given to, or served upon, the party to whom it is addressed on the date of delivery if served, or the next day after deposit with a national overnight courier, or on the third date after the same is deposited in the United States Registered or Certified Mail, if postage prepaid, properly addressed in the manner above provided. Each notice sent via facsimile shall be deemed to have been given to, or served upon, the party to whom it is addressed on the date such notice was faxed. The addresses to which notices are to be mailed to either party hereto may be changed by such party by giving written notice thereof to the other party in the manner above provided.

12. **Assignment.** The City shall have the right to assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this License to a public entity that owns the Park (a “**Permitted Assignment**”). Except for a Permitted Assignment, all other assignments, apportionments or transfers shall

require Cascade's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Subject to and without limiting the generality of the foregoing, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

13. **No Merger of Estates.** The rights granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existing or future common ownership of the real property described herein.
14. **Complete Agreement.** This License contains the entire agreement of the parties with respect to this subject matter and supersedes all prior or contemporaneous writings or discussions relating to the rights provided for herein. This License may not be amended except by a written document executed after the date hereof by the duly authorized representatives of City and Cascade.
15. **Choice of Law.** This License shall be governed by the laws of the State of Washington, exclusive of its choice of law rules.
16. **Time of the Essence.** Time is of the essence of this License and the performance of all obligations hereunder.
17. **Severability.** Invalidation of any of the provisions contained in this License, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.
18. **No Warranties.** Cascade makes no warranty, express or implied, as to the suitability of the Cascade Property for the City's intended use or purpose, or the correctness or accuracy of the City's plans that Cascade reviews, and expressly disclaims any such warranties. In addition, Cascade makes no representation or warranty as to any other permits, licenses or other authorizations that may be required for any Capital Improvements.
19. **Counterparts.** This License may be executed in one or more counterparts.

The parties execute this License to be effective as of the last date written below.

CASCADE:

CASCADE WATER ALLIANCE,
a Washington nonprofit corporation

By: _____

Chuck Clarke
Chief Executive Officer

Date: _____

CITY:

CITY OF BONNEY LAKE,
a Washington municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

Approved as to form:

City Attorney

Date

EXHIBIT A

DESCRIPTION OF CASCADE PROPERTY

That portion of the northwest quarter of the northwest quarter of the southwest quarter of Section 27, Township 20 North, Range 5 East, W.M., in Pierce County, Washington, lying between the centerline of the existing Pierce County road and the 545 foot contour line of Lake Tapps Reservoir as said line is described in that certain Deed dated 06-22-1954 and recorded under recording number 1686523, described as follows:

Commencing at a point on said existing centerline, which point lies south 53°17'05" east 69.11 feet from the west quarter section corner of said Section 27;

Thence south 1°50'10" east 228.00 feet to the point of beginning;

Thence continuing along said centerline south 1°50'10" east 71.96 feet and south 55°02'34" east 405.69 feet;

Thence north 7°23'24" west to said contour line of Lake Tapps Reservoir;

Thence northwesterly along said shoreline to a point on a line which bears north 74°06'10" east from the point of beginning;

Thence south 74°06'10" west to the point of beginning;

EXCEPT portion lying within county road right of way.

EXHIBIT B

DESCRIPTION OF PARK PROPERTY

Section 27 Township 20 Range 05 Quarter 32 CHURCH LAKE WATERFRONT TR DIV #
1: CHURCH LAKE WATERFRONT TR DIV # 1 PARK (ALLEN YORKE PARK-
WATERFRONT) ALSO POR L 2 SP 84-04-13-0220 (DCWJES8-2-83) DC031798MD

After recording return document to:
City of Bonney Lake
Attention: Don Morrison
P.O. Box 7380
Bonney Lake, WA 98391

Document Title: RIGHT-OF-WAY DEDICATION DEED

Grantor: Cascade Water Alliance

Grantee: City of Bonney Lake

Legal Description: A Portion of the NW ¼ of the SW ¼ Sec 27 Twp 20 N Rge 5 E WM

Assessor's Tax Parcel Number: 0520273019

RIGHT-OF-WAY DEDICATION DEED

The Grantor, **CASCADE WATER ALLIANCE**, a Washington nonprofit corporation, hereby conveys and quitclaims unto the **CITY OF BONNEY LAKE**, a municipal corporation, and its assigns, a public highway right-of-way easement, to be used for all lawful right of way purposes, surface and subsurface, including but not limited to right-of-way uses as well as sidewalks, plantings, right of way beautification improvements where deemed appropriate by the City, installation, operation and maintenance of utilities, stormwater and such other uses that municipalities may make of rights-of-way from time to time, now or in the future, for the use and benefit of the public, over, under, upon and across the hereinafter described lands. All such uses are unrestricted in location within the right-of-way and shall not be limited in any way whatsoever by the state of being, condition or location of the street.

Said lands being situated in the City of Bonney Lake, County of Pierce, State of Washington, legally described as follows:

See Exhibit "A" attached hereto and Exhibit "B" in support of.

The lands herein described contain an area of 0.095 acres / 4,134 square feet, more or less. This right-of-way shall be perpetual until termination by operation of law or vacation by the property legislative authority.

IN WITNESS WHEREOF, CASCADE WATER ALLIANCE has caused this instrument to be executed by its proper officers this _____ day of _____, 20_____.

(authorized signature)

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)
County of King)

I certify that I know or have satisfactory evidence that CHUCK CLARKE is/are the person(s) who appeared before me, and that said person(s) acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act on behalf of Cascade Water Alliance for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

(Print Name)

Notary Public in and for the State of Washington
Residing at _____

My Appointment Expires: _____

Approved as to form:

CITY OF BONNEY LAKE

City of Bonney Lake Attorney

By: _____
Mayor

Date: _____

EXHIBIT A

ADDITIONAL RIGHT-OF-WAY DESCRIPTION

THE WESTERLY 10.00 FEET OF PARCEL 26 AS DESCRIBED IN BARGAIN AND SALE DEED RECORDED UNDER RECORDING NUMBER 200912180783, RECORDS OF PIERCE COUNTY, WASHINGTON, SAID PARCEL 26 DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M. IN PIERCE COUNTY, WASHINGTON, LYING BETWEEN THE CENTERLINE OF THE EXISTING PIERCE COUNTY ROAD AND THE 545 FOOT CONTOUR LINE OF LAKE TAPPS RESERVOIR AS SAID LINE IS DESCRIBED IN THAT CERTAIN DEED DATED 06-22-1954 AND RECORDED UNDER RECORDING NUMBER 1686523, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON SAID EXISTING CENTERLINE, WHICH POINT LIES SOUTH 53°17'05" EAST, 69.11 FEET FROM THE WEST QUARTER SECTION CORNER OF SAID SECTION 27; THENCE SOUTH 01°50'10" EAST, 228.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 01°50'10" EAST, 71.96 FEET AND SOUTH 55°02'34" EAST [S/C] [SOUTH 55°07'17" EAST PER PLAT AFN 1931505], 405.69 FEET; THENCE NORTH 07°23'24" WEST TO SAID CONTOUR LINE OF LAKE TAPPS RESERVOIR; THENCE NORTHWESTERLY ALONG SAID SHORELINE [S/C] [CONTOUR LINE PER PLAT AFN 1931505] TO A POINT ON A LINE WHICH BEARS NORTH 74°06'10" EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 74°06'10" WEST TO THE POINT OF BEGINNING;

EXCEPT PORTION LYING WITHIN COUNTY ROAD RIGHT-OF-WAY.

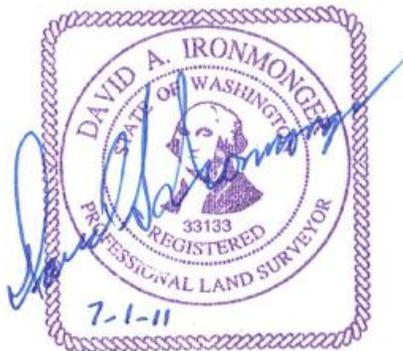
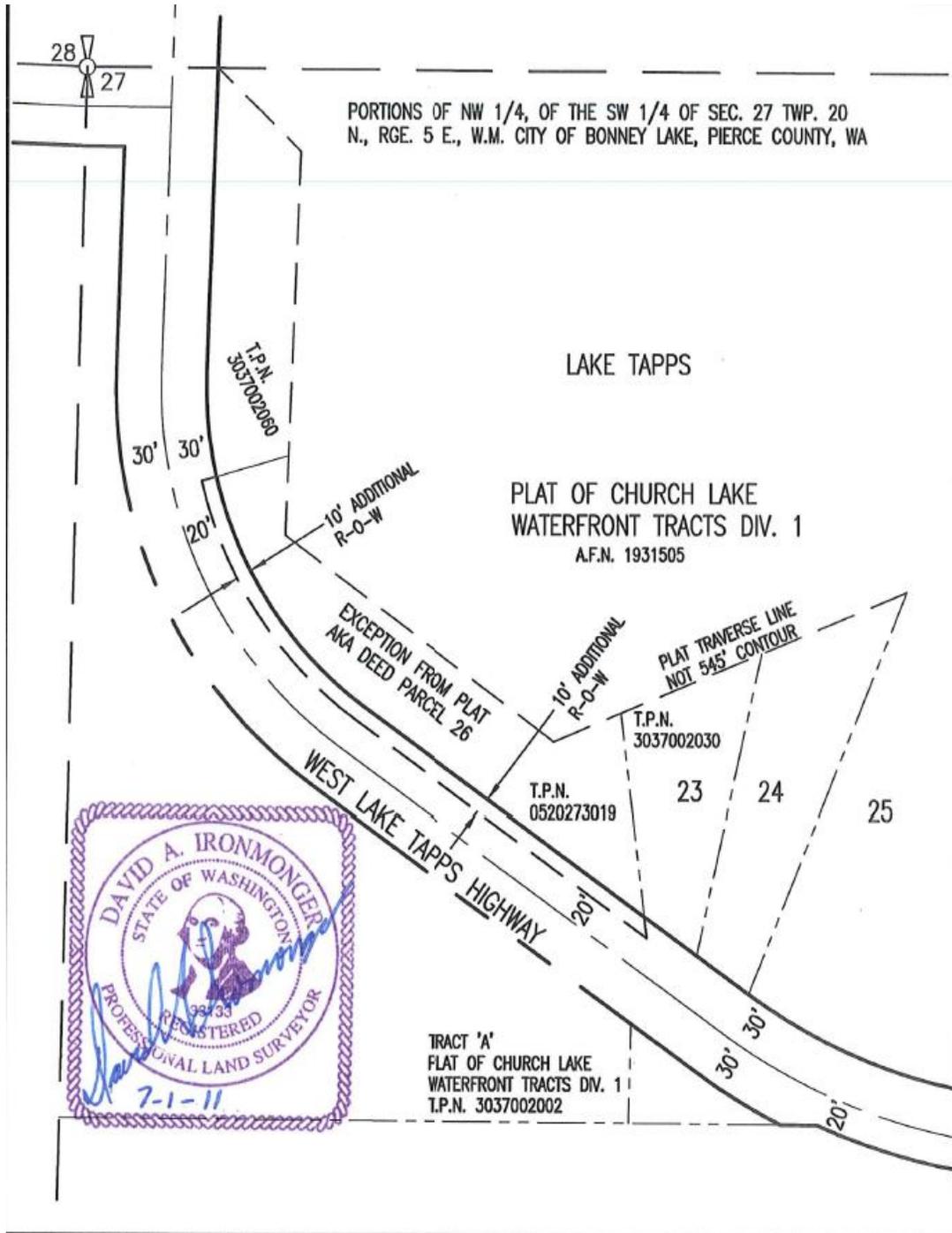


EXHIBIT B



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

Department/Staff Contact: Executive / Don Morrison	Meeting/Workshop Date: 27 September 2011	Agenda Bill Number: AB11-98
Agenda Item Type: Ordinance	Ordinance/Resolution Number: D11-98	Councilmember Sponsor:

Agenda Subject: Setting SEPA Appeal Fee

Full Title/Motion: A Motion of The City Council of The City Of Bonney Lake, Pierce County, Washington, Amending Chapter 3.68 of The Bonney Lake And Section One of Ordinance No. 1325 Relating to Land Use Fees.

Administrative Recommendation: Approve as written

Background Summary: The Bonney Lake Municipal Code does not specifically list a fee for appeals of State Environmental Policy Act (SEPA) threshold determinations, leading to confusion as to whether a SEPA appeal is an appeal of an administrative decision or not. While we received relatively few SEPA appeals, an appeal may require extensive staff, legal, and/or consulting work in the preparation of notices, staff reports, briefs, responses, hearings, legal review, etc. It is recommended that the City Council set a reasonable fee to cover the City costs of hearing a SEPA appeal. The suggested fee is \$3,000.

Attachments:

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
Budget Explanation: NA			

COMMITTEE, BOARD & COMMISSION REVIEW											
Council Committee Review:	Finance Committee Date: 13 September 2011	Approvals: Chair/Councilmember Dan Swatman Councilmember Jim Rackley Councilmember Mark Hamilton	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Yes</td> <td style="width: 50%;">No</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Yes	No	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Yes	No										
<input checked="" type="checkbox"/>	<input type="checkbox"/>										
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<input checked="" type="checkbox"/>	<input type="checkbox"/>										
Forward to: September 27 th Meeting		Consent	<input type="checkbox"/> Yes <input type="checkbox"/> No								
Agenda:											
Commission/Board Review:											
Hearing Examiner Review:											

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

APPROVALS		
Director: <i>Don Morrison</i>	Mayor:	Date Reviewed by City Attorney: (if applicable):

ORDINANCE NO. D11-98

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,
AMENDING CHAPTER 3.68 OF THE BONNEY LAKE
MUNICIPAL CODE AND SECTION ONE OF ORDINANCE NO.
1325 RELATING TO LAND USE FEES.**

WHEREAS, The Bonney Lake Municipal Code does not specifically list a fee for appeals of State Environmental Policy Act (SEPA) threshold determinations, leading to confusion as to whether a SEPA appeal is an appeal of an administrative decision or not; and

WHEREAS, SEPA appeals require extensive staff, legal, and/or consulting work in the preparation of notices, staff reports, briefs, responses, hearings, legal review, etc.; and

WHEREAS, the City Council finds it desirable to set a reasonable fee to cover the City costs of hearing a SEPA appeal;

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

Section 1. BLMC Section 3.68 and Section One of Ordinance 1325 is hereby amended to read as follows:

3.68.010 Land use fees.

D. APPEALS

1. Appeal of Administrative Decision - \$750.00
2. Appeal of Hearing Examiner's Decision - \$1,500
3. Appeal of SEPA Threshold Determination - \$3,000

Section 2. This Ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication, as required by law.

PASSED by the City Council and approved by the Mayor this 27th day of September, 2011.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, City Clerk, CMC

APPROVED AS TO FORM:

James Dionne, City Attorney

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

Department/Staff Contact: Exec / Don Morrison	Meeting/Workshop Date: 27 September 2011	Agenda Bill Number: AB11-116
Agenda Item Type: Ordinance	Ordinance/Resolution Number: D11-116	Councilmember Sponsor: Hamilton

Agenda Subject: Renaming of Sumner-Buckley Highway East

Full Title/Motion: An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renaming That Portion Of Sumner-Buckley Hgihway East That Lies Within The City Limits.

Administrative Recommendation: Approve

Background Summary: The City of Bonney Lake desires to honor veterans for their dedication and loyal services to our country by renaming Sumner-Buckley Highway East. SBH was chosen because it is no longer relevant as the roadway has been mostly replaced by SR 410 and neither the Cities of Sumner nor Buckley currently have a portion of Sumner-Buckley Highway East within their city limits. Bonney Lake is currently larger than both Sumner and Buckley combined, yet was excluded in the original name of the highway. The City Council desires to add to its local identity and build public support for a Veterans Memorial Park. Thus, Sumner-Buckley Highway East appears an ideal candidate for renaming.
Attachments: Ordinance D11-116

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
Budget Explanation: There will be some cost in replacing the street name signs.			

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	<i>Approvals:</i>		Yes No
Date:	Chair/Councilmember		<input type="checkbox"/> <input type="checkbox"/>
	Councilmember		<input type="checkbox"/> <input type="checkbox"/>
	Councilmember		<input type="checkbox"/> <input type="checkbox"/>
Forward to:	Consent		
	Agenda: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s): 9/20/2011	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director:	Mayor:	Date Reviewed by City Attorney: (if applicable):

ORDINANCE NO. D11-116

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,
RENAMING THAT PORTION OF SUMNER-BUCKLEY
HIGHWAY EAST THAT LIES WITHIN THE CITY LIMITS.**

WHEREAS, the City of Bonney Lake desires to honor Veterans for their dedication and loyal service to our country; and

WHEREAS, A street name will be a reminder to the public of the daily sacrifice of the men and women in military uniform and without that sacrifice we would not be free; and

WHEREAS, the present name of Sumner-Buckley Highway East is no longer relevant because the roadway has been mostly replaced by SR 410; and

WHEREAS, neither the Cities of Sumner nor Buckley currently have a portion of Sumner-Buckley Highway East within their City limits; and

WHEREAS, the City of Bonney Lake wishes to add to its local identity and build public support for a Veterans Memorial Park; and

WHEREAS, the City Council has determined that the public convenience and welfare will be served by a change in the name of Sumner-Buckley Highway East;

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

Section 1. That portion of the Sumner-Buckley Highway East within the city limits is hereby renamed _____ . All current street numbers shall remain as presently addressed.

Section 2. The Mayor is hereby authorized to cause each residence and business affected by the name change to be given notice of the change, to designate this change on the official maps of the City of Bonney Lake, to notify those affected agencies and utilities of the name change in order for them to effect the change in a timely manner, and to formally request Pierce County to likewise rename Sumner-Buckley Highway East to _____ from its westward county limits to 214th Avenue East.

Section 3. Effective Date. This Ordinance shall take effect thirty (30) days after its passage, approval, and publication as required by law.

PASSED by the City Council and approved by the Mayor this 27th day of September, 2011.

Neil Johnson, Jr., Mayor

ATTEST:

Woody Edvalson, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney

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