



BUCKLEY CITY COUNCIL MEETING AGENDA
March 8, 2016
Multi-Purpose Center, 811 Main Street
City Council Meeting
Opening 7:00 P.M.

Call to Order
Pledge of Allegiance
Roll Call of Council Members

Next Ordinance #06-16
Next Resolution #16-05
Next Agenda Bill #AB16-031

A. Citizen Participation

Time Limit of Three Minutes (Must sign up at City Hall by Wednesday prior to the Council Meeting)

B. Staff Reports

C. Main Agenda

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| 1. ORD No. ___-16: Astound Broadband, LLC Franchise Agreement – 1 st Reading | Pg. 1 |
| 2. ORD No. ___-16: Repeal & Amend Misc. Code Sections - HE & BOA Conversions | Pg. 42 |
| 3. ORD No. ___-16: Amending BMC 13.35.110 | Pg. 72 |
| 4. ORD No. ___-16: Vacating Portions of 112th St E ROW | Pg. 76 |
| 5. MOU - Mt Rainier Expansion Area Funding Request | Pg. 105 |
| 6. Agreement – Municipal Court Judicial Services | Pg. 111 |
| 7. Agreement - Joint EMS Operations Between AMR & Buckley | Pg. 116 |
| 8. Agreement – City & DSHS for Use of Training Facilities | Pg. 129 |
| 9. Agreement - ILA between City of Buckley & Multiple Agencies for EMS | Pg. 135 |

D. Consent Agenda

10. A. Approve Minutes of February 23, 2016 City Council Meeting
Approve Minutes of March 1, 2016 City Council Study Session
B. Claims
C. Transfer Voucher
D. Payroll

E. Committee Reports

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| 11. Mayor's Report | Johnson |
| 12. Administration, Finance & Public Safety | Boyle Barrett |
| 13. Transportation & Utilities | Tremblay |
| 14. Community Services | Rose |
| 15. Council Member Comments & Good of the Order | |

Council may add and take action on other items not listed on this agenda

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No. __-16: Granting non-exclusive telecommunications franchise to Astound Broadband, LLC. – 1st Reading	Agenda Date: March 8, 2016		AB16-031
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – W. Scott Snyder	X	X
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
Fund Source: N/A	Police Depart – Chief Arsanto		
Timeline: N/A	Other –		
Attachments: Ordinance with Franchise Agreement			
<p>SUMMARY STATEMENT: For City Council approval of a grant of a non-exclusive telecommunications franchise to Astound Broadband, LLC, for the installation, operation, and maintenance of a telecommunication system within the City’s rights-of-way. Astound Broadband, LLC, is a telecommunications company that provides private line, internet access services, dark fiber services and lit fiber services. If this franchise is approved Astound will still be required to obtain all appropriate permits and approvals prior to commencing construction and/or installing their facilities in the right-of-way.</p> <p>While State law prohibits the City from imposing a franchise fee for telecommunications systems, the franchise does require Franchisee to pay the City for its administrative costs incurred in preparing and administering the franchise agreement. The Franchisee will reimburse the City for its legal and out-of-pocket costs (i.e. publication, mailing and copying).</p> <p>Pursuant to RCW 35A.47.040 Franchise ordinances must go through two readings for adoption. Approval today would be for the first reading.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities 2/16/2016			
RECOMMENDED ACTION: Move to Approve the Ordinance of the City Council of the City of Buckley, Pierce County, Washington, establishing a new Franchise Agreement between Astound Broadband, LLC, and the City of Buckley and establishing an effective date.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

CITY OF BUCKLEY
ORDINANCE NO. _____

An ORDINANCE of the City Council of the City of Buckley, Pierce County, Washington, establishing a new Franchise Agreement between Astound Broadband, LLC and the City of Buckley.

WHEREAS, the City is authorized to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems and otherwise regulate telecommunications services within the City boundaries by virtue of federal and state statutes, by the City’s police powers, by its authority over its public rights-of-way, and by other City powers and authority; and

WHEREAS, Astound Broadband, LLC d/b/a Wave (“Franchisee”), desires to provide telecommunications services and to construct, operate and maintain a telecommunications system within the City; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, the City Council has determined that the terms of the Franchise are consistent with their desired objectives and serves the interest of the community and its citizens.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

Section 1. Franchise Granted.

1.1 Pursuant to RCW 35A.47.040, the city of Buckley, a Washington municipal corporation (the “City”), grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions set forth below, a Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 40.

1.2 This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease, and use all necessary Facilities for a telecommunications network in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City, including such additional areas as may be subsequently included in the corporate limits of the City during the term of this Franchise (the “Franchise Area”), as approved pursuant to City permits issued pursuant to Section 8.2. The phrase “Rights-of-Way” (singular “Right-of-Way”) as used in this Franchise, means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways, and parking whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad right-of-way, airports, harbor areas, buildings, parks, poles, conduits, dedicated but un-opened right-of-way, and any land, facilities, or property owned, maintained, or leased by the City in its governmental or proprietary capacity or as an operator of a utility. To the extent that easements are designated for only certain functions or do not permit such Facilities, such easements will not be considered part of the Rights-of-Way. “Facilities” as used in this Franchise means one or more elements of Franchisee’s telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from “Facilities,” to the extent such equipment is located in zoned residential areas of the City.

Section 2. Authority Limited to Occupation of Public Rights-of-Way.

2.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City’s Rights-of-Way. Such use must be in compliance with the Buckley Municipal Code provisions, including and not limited to Chapter 13.35. Franchisee represents that it expects to provide the following services within the City: telecommunications services, private line, internet access services, dark fiber services and lit fiber services (the “Services”). Nothing contained within this Franchise shall be construed to grant or convey any

right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services. A more detailed description of Franchisee's telecommunications system and Services is described in Exhibit A. If Franchisee desires to expand the Services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service; provided, however, that Franchisee may not offer Cable Services pursuant to Section 2.3.

2.2 As described in Section 8, construction is not authorized without the appropriate permits, leases, easements, or approvals. This Franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across, or to otherwise use City owned or leased properties of any kind outside of the incorporated area of the City or to install Facilities on, under, over, across, or otherwise use any City owned or leased property other than the City's Rights-of-Way. This Franchise does not convey any right to Franchisee to install its Facilities on, under, over, or across any facility or structure owned by a third-party without such written approval of the third-party. Further this Franchise does not convey any right to continue in any streets, avenues, alleys, roads or public places which are eliminated from the City limits by reason of subsequent disincorporation or reduction of City limits. No substantive expansions, additions to, or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the City pursuant to Section 8.2. As of the effective date of this Franchise, Franchisee has no owned Facilities located in the City's Rights-of-Way.

2.3 Under this Franchise, the Facilities shall not be used for Cable Services as that term is defined in 47 U.S.C. § 522(6).

2.4 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise.

Section 3. Non-Exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any Rights-of-Way or affect its jurisdiction over any Rights-of-Way or any part of Right-of-Way, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of Right-of-Way as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description.

Section 4. Location of Telecommunications Facilities. Franchisee is maintaining a telecommunications network consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards, the Buckley Municipal Code, and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area.

Section 5. Relocation of Facilities.

5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way,

street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

5.2 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

5.3 If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall:

(a) At least forty five (45) days prior to commencing the project, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency situation, defined for purposes of this Franchise as a condition posing an imminent threat to property, life, health, or safety of any person or entity, the City shall give Franchisee written notice as soon as practicable; and

(b) At least forty five (45) days prior to commencing the project, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee's Facilities so that Franchisee may

relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

(c) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the City's project.

5.4 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted to the City at least thirty (30) days prior to commencement of the project. The City shall evaluate the alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section 5.

5.5 The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

5.6 Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 17, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the

control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

5.7 Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon thirty (30) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

5.8 If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.4 the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 15.3 and Section 15.4.

5.9 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

6.1 Franchisee must place its Facilities underground except as otherwise expressly provided herein or in available City standards, or in areas where any other telecommunications or cable company has placed Facilities above ground. Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of a permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense at such time as the City requires all other utilities, except electrical utilities, with aerial facilities in the area to convert them to underground installation. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions where other utilities are to be constructed underground and any development or subdivision where utilities are currently underground.

6.2 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number of conduits of Franchisee's Facilities being undergrounded in comparison to the total number of conduits of all other utility facilities being undergrounded. This Section 6.2 shall only apply to the extent Franchisee has existing aerial utilities in the City or is specifically authorized to build aerial utilities by the City.

6.3 Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using orange spray paint, unless otherwise specified by the City, and within two (2) feet of the actual location.

6.4 Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

6.5 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.5. Franchisee may remove any underground cable from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or

other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. If Franchisee ceases to use all or a portion of the underground cable and conduit in the Right-of-Way for a period of twelve consecutive months or more, and such cable or conduit is not removed, then it shall be deemed abandoned and title thereto shall vest in the City at no cost to the City. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable or conduit from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

6.6 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of Franchisee's Facilities.

Section 7. Maps and Records.

7.1 After construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps in compliance with the Buckley Municipal Code Section 13.35.160. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

7.2 Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with information sufficient to demonstrate: 1) that Franchisee has complied with all applicable requirements of this Franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes due the City in connection with Franchisee's Services and Facilities have been properly collected and paid by Franchisee.

7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the Buckley Municipal Code or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 8 shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

8.2 Unless not required by the Buckley Municipal Code, whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and shall comply with the requirements of the Buckley Municipal Code Chapter 13.35. In addition, Franchisee shall give the City at least one working day prior written notice of its intent to commence work in the Rights-of-Way. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or in the Buckley Municipal Code.

8.3 If either the City or Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 8.3, the party planning such

excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties and in accordance with the applicable codes, rules and regulations; and

(c) To the extent reasonably possible, the Franchisee shall, at the direction of the city, cooperate with the City and provide other franchisees with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic related impacts.

(d) Either party may deny such request for safety reasons.

8.4 Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property in "as good as" or "better" than the condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter

onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

8.5 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

8.6 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice as determined by the City, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated as ordered by the City to minimize public inconvenience, disruption, or damages.

8.7 Franchisee acknowledges that it, and not the City, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC") with respect to Franchisee's Facilities, if applicable. Franchisee shall indemnify and hold the City harmless from any fines or

other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may, upon at least forty-eight (48) hours' prior written notice to Franchisee, either terminate this Franchise immediately if the equipment is not brought into compliance by the expiration of such notice period or may proceed to cure the conditions of noncompliance at Franchisee's expense, and collect all reasonable costs from Franchisee in accordance with the provisions of Section 15.3 and Section 15.4.

8.8 The granting of this franchise shall not preclude the City, its accredited agents or its contractors, from blasting, grading or doing other necessary road work contiguous to the Franchisee's improvements. The City shall provide Franchisee with twenty-four (24) hours written notice of any blasting, grading, excavating or doing other necessary road work contiguous to Franchisee's improvement.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities nor for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, which shall include Buckley Municipal Code Section 13.35.090 and employ all necessary devices as required by applicable law

during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 15.3 and Section 15.4.

10.3 Additional safety standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

(d) Franchisee shall permit material tests by the Public Works Director as further described in the Buckley Municipal Code Section 13.35.210.

10.4 Unsafe Conditions and Nuisances in the Rights-of-Way. Franchisee shall comply with any order issued by the Public Works Director or his/her designee regarding the correction or discontinuance of an unsafe, nonconforming or unauthorized condition within the Rights-of-Way as further described by the Buckley Municipal Code Section 13.35.250 and any stop work orders as described in the Buckley Municipal Code Section 13.35.290. Further, Franchisee shall comply with any determinations by the Public Works Director or his/her designee regarding “Nuisance Utility Facilities” as that term is defined in the Buckley Municipal Code Section 13.35.270.

Section 11. Work of Contractors and Subcontractors. Franchisee’s contractors and subcontractors shall be licensed and bonded in accordance with State law and the City’s ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. City Conduit. Except in emergency situations, Franchisee shall inform the Public Works Director with at least thirty (30) days’ advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit, and related structures necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such notification shall be in addition to the requirement to apply for and obtain permits pursuant to Section 8.2.

Section 13. Restoration after Construction.

13.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 19, at Franchisee’s own cost and expense, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to a condition “as good as” or “better” than the condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance

or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. All trees, landscaping and grounds removed, damaged or disturbed as a result of the installation, construction, relocation, maintenance or repair, shall be replaced or restored, at Franchisee's cost and expense, in "as good as" or "better" than the condition the Rights-of-Way were in immediately prior to any such work. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (Chapter 332-120 WAC), and local standards and specifications.

13.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the permits issued by the City, should any be required. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

13.3 If conditions (e.g. weather) make the complete restoration required under Section 13 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

13.4 In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time agreed to by the Public Works Director, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 15.3 and Section 15.4. In addition, and pursuant to Section 15.3 and Section 15.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work.

13.5 The provisions of this Section 13 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 14. Emergencies.

14.1 In the event of any emergency in which any of Franchisee's Facilities located in or under any street endangers the property, life, health, or safety of any person, entity or the City, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities and to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity or the City, without first applying for and obtaining a permit as required by this Franchise. Franchisee shall notify the City, verbally or in writing, as soon as practicable following the onset of the emergency. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than forty-eight hours after beginning emergency work in the Rights-of Way. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If the City becomes aware of an emergency before the Franchisee, then the City shall notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's operations.

14.2 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively "Endangered Property") or endangers the public, the Public Works Director or his/her designee, may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the Endangered Property or the public, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully

comply with such directions, or if an emergency situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Sections 15.3 and 15.4.

14.3 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the gross negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 14 except to the extent caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.

Section 15. Recovery of Costs.

15.1 Franchisee shall pay a grant fee in an amount not to exceed Four Thousand Dollars (\$4,000) for the City's legal costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 15.3.

15.2 In addition to Section 15.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 15.3 and Section 15.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the

extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

15.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

15.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 16. Franchise Fees and Utility Taxes.

16.1 Franchisee represents that its Services, as authorized under this Franchise, are a telephone business as defined in RCW 82.16.010, or that it is a service provider as used in RCW 35.21.860 and defined in RCW 35.99.010. As a result, the City will not impose franchise fees under the terms of this Franchise. The City reserves its right to impose a franchise fee on Franchisee if Franchisee's Services as authorized by this Franchise change such that the statutory

prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are otherwise removed. The City also reserves its right to require that Franchisee obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee's operations as allowed under applicable law. Nothing contained within this Franchise shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

16.2 Franchisee acknowledges that its operation with the City constitutes a telecommunication business subject to the utility tax imposed pursuant to the Buckley City Code Chapter 3.96. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under Buckley City Code Chapter 3.96, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Buckley City Code Chapter 3.96 as may be permitted by law.

Section 17. Indemnification.

17.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise.

17.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 17. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

17.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 17.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

17.4 The parties acknowledge that this Franchise is subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's liability shall be only to the

extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

17.5 Notwithstanding any other provisions of this Section 17, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

17.6 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise.

Section 18. Insurance.

18.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents, representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits consistent with this Section 18. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured

endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and

(d) Umbrella liability policy with limits not less than \$10,000,000 per occurrence and in the aggregate.

18.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 18. Franchisee's umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies.

18.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by

or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 18 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of Franchisee's insurance and shall not contribute with it.

18.4 Franchisee is obligated to notify the City of any cancellation or intent not to renew any insurance policy, required pursuant to this Section 18, thirty (30) days prior to any such cancellation. Within five (5) days prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 18. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 18 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 21 below. Notwithstanding the cure period described in Section 21.1 and 21.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

18.5 Franchisee's maintenance of insurance as required by this Section 18 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 19. Abandonment of Franchisee's Telecommunications Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Notwithstanding the above, the City may permit Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of City's notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section 19 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place. The provisions of this Section 19 shall survive the expiration, revocation, or termination of this Franchise.

Section 20. Bonds.

20.1 Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety acceptable to the City equal to at least 150% of the estimated value of the work and the estimated cost to restore existing improvements as determined by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work,

recording of all easements, provision of as-built drawings, and the posting of a Warranty Bond as described in Section 20.2. Compliance with the performance deposit requirements described in the Buckley Municipal Code Section 13.35.220 shall satisfy the provisions of this Section 20.1.

20.2 Franchisee shall furnish a two-year warranty bond (“Warranty Bond”), or other surety acceptable to the City, at the time of final acceptance of construction work on the Facilities within the Rights-of-Way. The Warranty Bond amount will be equal to twenty-five percent (25%) of the actual construction costs. The Warranty Bond in this Section 20.2 must be in place prior to City’s release of the Performance Bond required by Section 20.1. Compliance with the warranty deposit requirements described in the Buckley Municipal Code Section 13.35.220 shall satisfy the provisions of this Section 20.2.

20.3 Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) (“Franchise Bond”) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise, following written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities. Franchisee specifically agrees that its failure to comply with the terms of this Section 20.3 shall constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 21.2. Franchisee further agrees to replenish the Franchise Bond within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the Franchise Bond. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 21. Remedies to Enforce Compliance.

21.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or

remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

21.2 If either party violates or fails to comply with any of the provisions of this Franchise, or a permit issued as required by Section 8.2, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 21.1 above, or in

the event Franchisee has failed to timely cure the breach, the City, at its sole discretion, may elect to (1) revoke this Franchise pursuant to Section 22, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary), or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required. Liquidated damages described in this Section 21.2 shall not be offset against any sums due to the City as a tax or reimbursement pursuant to Section 15. Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, from enforcement of this Franchise.

Section 22. Revocation.

If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the Buckley City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure, the City may revoke all rights conferred and this Franchise may be revoked by the Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Buckley City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Buckley City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Buckley City Council does not grant any additional period, the Buckley City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 23. Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or any other covenants, agreements or option.

Section 24. Police Powers and City Regulations. Nothing within this Franchise shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise and the franchises of similarly-situated entities, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee and other similarly-situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over this Franchise.

Section 25. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 26. Acceptance. This Franchise may be accepted by Franchisee by its filing with the City Clerk of an unconditional written acceptance, within thirty (30) days from the City's execution of this Franchise, in the form attached as Exhibit B. Failure of Franchisee to so accept this Franchise shall be deemed a rejection by Franchisee and the rights and privileges granted shall cease. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 18, any Performance Bonds, if applicable, pursuant to Section 20.1, and the Franchise Bond required pursuant to Section 20.3, and the costs described in Section 15.1.

Section 27. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7, Section 8, Section 13, Section 14, Section 16, Section 17, Section 18, Section 19, Section 20, and Section 28 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall

survive this Franchise, and any renewals or extensions, to the extent provided for in those sections. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned where Franchisee is named.

Section 28. Changes of Ownership or Control.

28.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 28.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

28.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of

Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following the revocation procedure described in Section 22 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 15.3 and Section 15.4, and shall pay the applicable application fee.

28.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 28.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 29. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other

agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 30. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Franchisee's Facilities for the fair market value. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 31. Vacation. If at any time the City, by ordinance and in accordance with applicable laws, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall use reasonable efforts to reserve an appurtenant easement for public utilities within the vacated portion of the Rights-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 1.1. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days' written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 32. Notice. Any notice or information required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

CITY OF BUCKLEY
Attn: City Clerk
PO Box 1960
Buckley WA 98321
Telephone: 360-829-1921

Astound Broadband, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Steve Weed, CEO and
Byron Springer, EVP
Telephone: 425-896-1891

Section 33. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 34. Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 17 of this Franchise.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, or any person under its control to do the same.

Franchisee will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees and Taxes. Prior to constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise.

Section 38. Miscellaneous.

38.1 The City and Franchisee respectively represent that their respective signatories are duly authorized and have full right, power, and authority to execute this Franchise on such party's behalf.

38.2 This Franchise shall be construed in accordance with the laws of the State of Washington. The United States District Court for the Western District of Washington, and Pierce County Superior Court have proper venue for any dispute related to this Franchise.

38.3 Section captions and headings are intended solely to facilitate the reading of this Franchise. Such captions and headings shall not affect the meaning or interpretation of the text within this Franchise.

38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

38.5 Franchisee shall be responsible for obtaining all other required approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee.

38.6 This Franchise is subject to all applicable federal, State and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996, as amended and the Rules and Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations.

38.7 There are no third party beneficiaries to this Franchise.

38.8 This Franchise may be enforced at both law and in equity.

Section 39. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

Section 40. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF BUCKLEY THIS ____ DAY OF _____, 2016; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2016.

Mayor Patricia Johnson

Attest: _____
Joanne Starr, City Clerk

APPROVED AS TO FORM:

James E. Haney, City Attorney

<u>Vote</u>	Lyn Rose	Cristi Boyle Barrett	Marvin Sundstrom	Beau Burkett	John Leggett	Milt Tremblay	Jenney Kyllonen
Ayes:							
Nays:							
Abstentions:							
Absent:							

PUBLISHED:

EFFECTIVE:

EXHIBIT A
Page 1 of 2

Services: Telecommunications services, private line, internet access services, dark fiber services and lit fiber services.

Red Line = Aerial Construction
Yellow Line = Underground Construction

City-wide view.

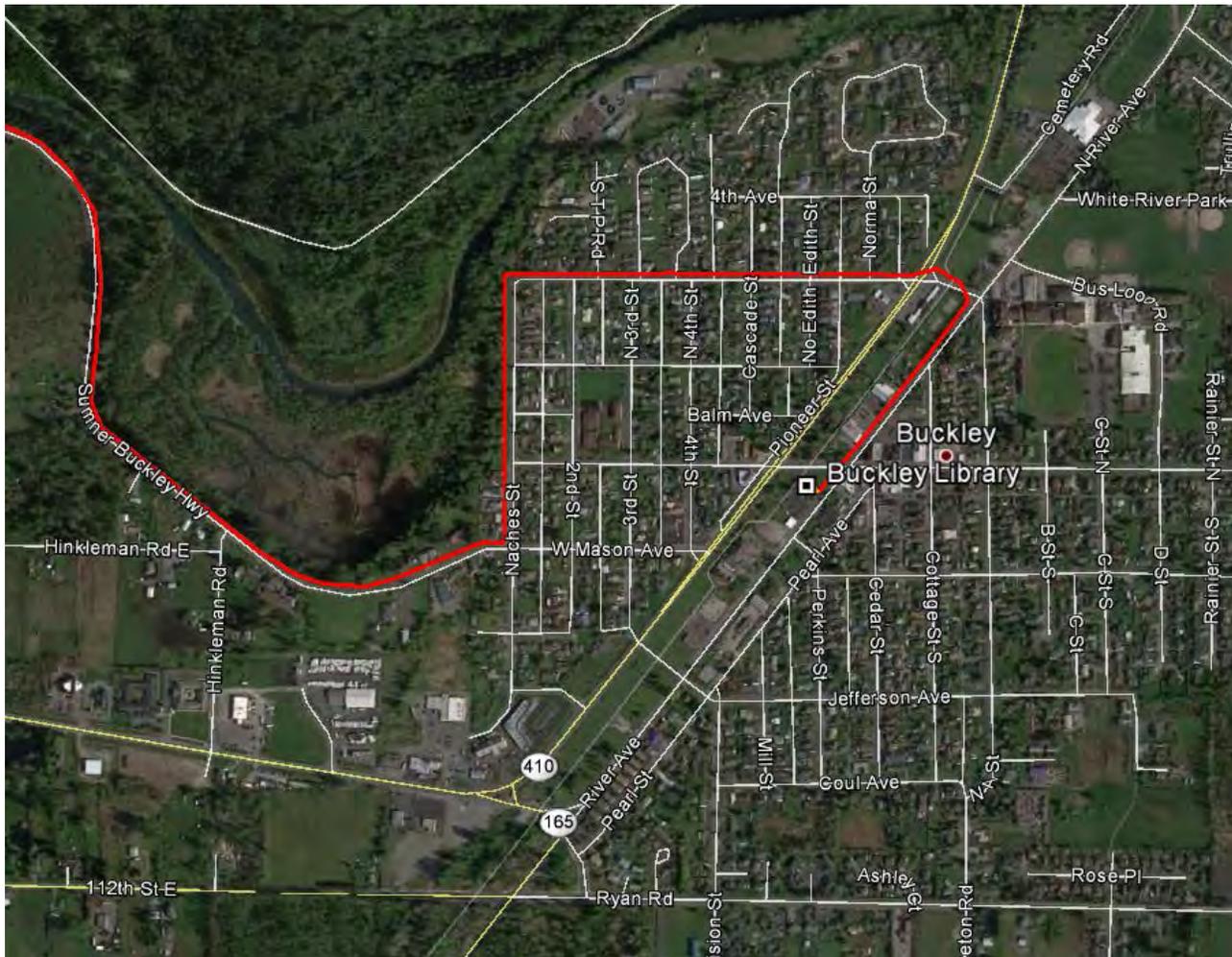


EXHIBIT A
Page 2 of 2

Services: Telecommunications services, private line, internet access services, dark fiber services and lit fiber services.

Red Line = Aerial Construction
Yellow Line = Underground Construction

Enhanced view of Buckley Library location.



EXHIBIT B

STATEMENT OF ACCEPTANCE

Astound Broadband, LLC d/b/a Wave (“Astound”) for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Astound declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Astound has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

Astound Broadband, LLC

By: _____
Name: _____
Title: _____

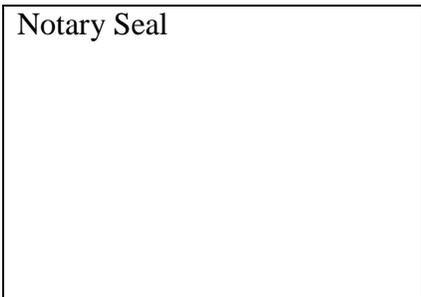
Date: _____

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
Washington
My appointment expires: _____

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No __-16: Repealing Ordinance #03-16 and Adopting Misc. Code Section Amendments - HE & BOA Conversions.	Agenda Date: March 8, 2016		AB16-032
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson	X	X
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
Muni Court – Jessica Cash			
Attachments: ORD #03-16 and Corrected Ordinance			
<p>SUMMARY STATEMENT: On January 26, 2016 the Council adopted ORD #03-16 amending miscellaneous code sections related to the Hearing Examiner and Board of Adjustments; however, during codification it was discovered that a previous draft version of the ordinance had been included in the packet for Council consideration instead of the final one that went to Planning Commission and Public Hearing. The error has been identified and staff is recommending that the City Council repeal the previous draft adopted in ORD #03-16 and consider adopting a new corrected version that has been recommended by the Planning Commission and gone through the Hearing process.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: Motion to Approve ORD No. __-16 Repealing ORD #03-16 and Adopting Misc. Code Section Amendments related to the Hearing Examiner and Board of Adjustment Conversions.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

ORDINANCE NO. ____ - 16

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, AMENDING SECTIONS BMC 1.12.020(1), 8.18.030(1), 12.04.020 (5), 12.04.040, 12.08.140, 12.08.260, 12.08.320, 12.08.330(1&4), 12.04.340, 14.30.920, 19.12.145, 19.12.155, 19.20.010(2), 19.30.120, 19.30.140(3 & 3.k), 19.30.210, 19.30.220, 19.30.270, 19.32.030, 19.32.060, 19.32.090(2.b), 19.42.030, 20.01.020(6&24), 20.01.030, 20.01.050, 20.01.090(5.a&6), 20.01.100(3,4,&8), 20.01.200, 20.01.220, 20.01.240, 20.01.250(1.d.v), AND 20.01.260; AMENDING CHAPTER 19.40 BMC; REPEALING CHAPTER 2.34 BMC; TO REMOVE THE BOARD OF ADJUSTMENT FROM THE CITY'S DECISION-MAKING BODIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 35A.663.110 RCW allows code cities to create Boards of Adjustment; and

WHEREAS, the City of Buckley created the Board of Adjustment in Article X of Ordinance 652 on March 14, 1961; and

WHEREAS, the code regarding the Board of Adjustment was modified periodically over the years; and

WHEREAS, Section 35A.63.170 RCW allows a Hearing Examiner to hear and decide applications and hear appeals of administrative decisions; and

WHEREAS, the City of Buckley instituted the Hearing Examiner system through Ordinance 10-09 in 2009; and

WHEREAS, the City of Buckley accepts the expertise and knowledge of the hearing examiner; and

WHEREAS, the planning commission developed an ordinance to remove the Board of Adjustment from the code in favor of the Hearing Examiner system; and

WHEREAS, the planning commission conducted a public hearing on this ordinance January 11, 2016; and

WHEREAS, the proposal received environmental review with a determination of non-significance issued December 2, 2015; and

WHEREAS, the request for expedited review in place of the 60-day notice was received by the Washington State Department of Commerce December 3, 2015, under Material ID Number 21870 informing it of the proposed change in development regulations; and

WHEREAS, the Department of Commerce granted expedited review on December 18, 2015; and

WHEREAS, the City Council reviewed and approved a draft version of the ordinance on January 26, 2016 as ORD No. 03-16; however, the version that the City Council considered and adopted was a previous draft that had not gone through the Planning Commission and Hearing process and contained certain errors and omissions that were thought to have been removed; and

WHEREAS, the City Council desires to correct this error by repealing ORD No. 03-16 and replacing it through adoption with the correct version that had gone through the Planning Commission and Hearing process;

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

Section 1. Ordinance No. 03-16 is hereby repealed in its entirety.

Section 2. Buckley Municipal Code Section 1.12.020(1) BMC is hereby amended as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

(1) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer ~~or the Buckley board of adjustment~~ or city administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community. ...

Section 3. Buckley Municipal Code Chapter 2.34 is hereby repealed.

Section 4. Buckley Municipal Code Section 8.18.030(1) BMC is hereby amended as follows:

8.18.030 Definitions.

The words and phrases in this chapter shall have the following meanings, unless the context otherwise indicates:

(1) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer ~~or the Buckley board of adjustment~~ or city administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community. ...

Section 5. Buckley Municipal Code Section 12.04.020 (5) BMC is hereby amended as follows:

12.04.020 Definitions.

All words in this chapter shall be given their common meaning unless the context indicates otherwise. The definitions of the words set forth below shall be utilized in interpreting the ordinance codified in this chapter: ...

(5) "Agency" means the city council, the planning commission, ~~the board of adjustment~~, hearing examiner, or any other department, officer, board or commission within the city that is authorized to make law, hear contested cases, or otherwise take action as defined in this section, except the municipal court. ...

Section 6. Buckley Municipal Code Section 12.04.040 is hereby amended as follows:

12.04.040 Additional timing considerations.

(1) For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory body, such as the planning commission ~~or board of adjustment~~ or hearing examiner.

(2) If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications. Said request shall contain the location and nature of the proposed action. The applicant shall be required to pay the city's actual cost of evaluating said request. The planning **director** shall prepare an estimate of the proposed cost of review and that amount shall be paid prior to the commencement of the review process.

Section 7. Buckley Municipal Code Section 12.04.340 BMC is hereby repealed and replaced with the following:

BMC 12.04.340 Appeals.

Appeals of SEPA determinations shall be in accordance with 20.01 BMC.

Section 8. Buckley Municipal Code Section 12.08.140 BMC is hereby amended as follows:

12.08.140 Exception – Public agency and utility.

(1) If the application of this title would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical areas permit application; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The planning director shall prepare a recommendation to the ~~board of adjustment~~ decision maker identified in BMC 20.01 based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (4) of this section.

(3) ~~Board of adjustment~~ Review. The ~~board of adjustment~~ decision maker identified in BMC 20.01 shall review the application and planning director's recommendation and conduct a public hearing pursuant to the provisions of BMC Title 20. The ~~board of adjustment~~ decision maker

shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

(4) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

- (a) There is no other practical alternative to the proposed development with less impact on the critical areas; and
 - (b) The application of this title would unreasonably restrict the ability to provide utility services to the public; and
 - (c) The proposal meets the criteria in BMC [12.08.280](#), Review criteria.
- (5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 01-12 § 2, 2012; Ord. 21-05 § 2, 2005).

Section 9. Buckley Municipal Code Section 12.08.260 BMC is hereby amended as follows:

12.08.260 Innovative mitigation.

(1) The city may encourage, facilitate, and approve innovative mitigation projects for Class III and Class IV wetlands. Class II wetlands may be considered after review and approval by the ~~board of adjustment~~ *decision maker identified in BMC 20.01*. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (a) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
 - (b) The applicant(s) demonstrates the organizational and fiscal capability to act cooperatively;
 - (c) The applicant(s) demonstrates that long-term management of the habitat area will be provided; and
 - (d) There is a clear potential for success of the proposed mitigation at the identified mitigation site.
- (2) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.
- (3) Any innovative mitigation project being considered under this section shall be required to satisfy the mitigation plan and monitoring requirements of BMC [12.08.250](#).

Section 10. Buckley Municipal Code Section 12.08.320 BMC is hereby amended as follows:

12.08.320 Appeals.

(1) Any person may appeal ~~to the board of adjustment~~ *to the decision maker identified in Chapter 20.01 BMC* a final administrative order, requirement, permit decision, condition and/or determination made; provided, that such appeal shall be filed in writing to the city planning department within 14 calendar days of the date of the written decision, order, requirement or determination is posted.

- (2) For the purpose of this section, the city's order, requirement, permit decision or determination shall not be deemed final until it is reduced to writing and mailed to the applicant.
- (3) The appeal shall be upheld if the applicant proves that the decision appealed is clearly erroneous or based upon error of law. (Ord. 21-05 § 2, 2005).

Section 11. Buckley Municipal Code Section 12.08.330(1&4) BMC is hereby amended as follows:

12.08.330 Variances.

- (1) An applicant who seeks a modification from the requirements of this title may pursue a variance by filing a written application with the city. Upon the filing of a proper application, the ~~board of adjustment~~ *decision maker* shall conduct a duly noticed public hearing and review the application and make a finding that the request meets or fails to meet the variance criteria.
- (2) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:
- (a) There are special conditions and circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that do not apply generally to other properties; and
 - (b) The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of special circumstances is denied the property in question; and
 - (c) Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and
 - (d) Granting the variance will not violate, abrogate, or ignore the goals, objectives or policies of this title or other adopted city land use policies or the comprehensive plan.
- (3) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title.
- (4) Additional Considerations for Frequently Flooded Areas. In addition to consideration of the review criteria in subsection (2) of this section, the ~~board of adjustment~~ *decision maker* shall also consider the following for activities proposed within a frequently flooded area:
- (a) The danger to life and property due to flooding, erosion damage, or materials swept onto other lands during flood events; and
 - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the proposed use; and
 - (c) The importance of the services provided by the proposed use to the community; and
 - (d) The necessity to the proposed use of a waterfront location, where applicable, and the availability of alternative locations for the proposed use that are not subject to flooding or erosion damage; and
 - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles; and
 - (f) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (g) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

(6) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result. (Ord. 01-12 § 5, 2012; Ord. 21-05 § 2, 2005).

Section 12. Buckley Municipal Code Section 14.30.920 BMC is hereby amended as follows:

14.30.920 Appeals.

Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, ~~to the board of adjustment~~ subject to the provisions of BMC 20.01.260.

Section 13. Buckley Municipal Code Section 19.12.145 BMC is hereby amended as follows:

19.12.145 Conditional use.

“Conditional use” means a use listed among those classified in any given zone but permitted to locate in that zone only after a review by the ~~board of adjustment~~ or appropriate city-designated official and the granting of a conditional use permit imposing such design and performance standards as will make the use compatible with other permitted uses in the same vicinity and assure against imposing excessive demands upon public utilities.

Section 14. A new section 19.12.154 is hereby added to the Buckley Municipal Code to provide as follows:

19.12.154 Designated official.

“Designated official” shall be that person or entity designated by the BMC to have the authority to make a specified decision or action. The authority of a designated official will often be specified in Chapter 20.01 BMC.

Section 15. Buckley Municipal Code Section 19.12.155 BMC is hereby amended as follows:

19.12.155 Dwelling, caretaker’s.

“Caretaker’s dwelling” means a dwelling unit, located inside a principal building on the lot, which is designed for and used exclusively by the property owner or by another person and his or her family, employed to provide security or custodial services for a commercial or industrial use on the same lot. Caretaker’s dwelling units may be allowed by the ~~board of adjustment~~ or appropriate city-designated official subject to the performance regulations for conditional use permits, and to the following additional requirements:

(1) The dwelling unit shall only be allowed as an accessory use to the principal use(s) permitted in the zone;

- (2) The dwelling unit shall be located inside the principal building on the property. The appearance of the building shall remain commercial or industrial;
- (3) That portion of the principal building containing the dwelling unit shall observe a minimum setback of eight feet from property lines;
- (4) Only one caretaker's dwelling shall be allowed on the site or lot;
- (5) The caretaker's dwelling shall be removed upon a change in the use or ownership of the property.

Section 16. Buckley Municipal Code Section 19.20.010(2) is hereby amended as follows:

19.20.010 Requirements common to all zones.

(1) Residential Zones.

- (a) The maximum height for structures shall be 30 feet except as modified by other sections of this code.
- (b) Normal building appurtenances and projections such as chimneys, cupolas, ventilators, or other structures placed on or extending above roof level may exceed the 30-foot building height limit to a maximum height of 45 feet.
- (c) Except for ham radio antennas regulated under BMC 19.22.060, the height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, BMC 19.25.100(2)(k) and other applicable provisions of this code.
- (d) Pitch of Roofs of Single-Family, Multiple-Family and Duplex Dwellings. All roofs of single-family dwellings, multiple-family dwellings and duplex dwellings within this classification must have a minimum pitch of 4:12; provided, however, that there shall be no minimum pitch required on deck and patio covers and carport roofs.
- (e) Duplex Dwellings. Each duplex dwelling shall have an attached or detached two-car enclosed garage per unit.
- (f) Standards for street and utility construction shall be as specified under Chapter 17.08 BMC and the City of Buckley Development Guidelines and Public Works Standards. Full street frontage improvements shall be required.

(2) Commercial Zones.

- (a) The maximum height for structures shall be 35 feet except as modified by other sections of this code; provided, said height limitation may be increased for steeples, clock towers and other similar noncommercial unoccupied structures upon application to and approval by the ~~board of adjustment~~ *decision-maker in accordance with BMC 20.01(commmercial height modification), who may.* ~~The board may~~ grant, deny or modify the application as ~~it deems~~ appropriate. The proposed structure should be in size proportional to the structure to which it is associated and should be so constructed as to minimize blockage of panoramic views from public properties and rights-of-way, and preserve the scenic view from adjacent properties. The applicant shall pay the same application fee as is charged for a code variance.
- (b) The height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, BMC 19.25.100(2)(k) and other applicable provisions of this code.
- (c) Pitch of Roofs of Single-Family, Multiple-Family and Duplex Dwellings. All roofs of single-family dwellings, multiple-family dwellings and duplex dwellings within this classification must

have a minimum pitch of 4:12; provided, however, that there shall be no minimum pitch required on deck and patio covers and carport roofs.

(d) Standards for street and utility construction shall be as specified under Chapter [17.08 BMC](#) and the City of Buckley Development Guidelines and Public Works Standards. Full street frontage improvements shall be required.

(e) Mixed-Use Dwelling Units. Dwelling units are allowed above commercial uses in the HC, CC, and NMU zones.

(3) Public “P” and Sensitive “S” Zones.

(a) The maximum height of all structures shall be 35 feet.

(i) In the S zone, this measurement shall be as required by the shoreline master program or Chapter [173-27 WAC](#), from existing grade to the highest point of the structure as defined in Chapter [173-27 WAC](#), regardless of location of the shoreline jurisdiction.

(ii) In the P zone normal building appurtenances and projections such as chimneys, cupolas, ventilators, or other structures placed on or extending above roof level may exceed the maximum height if the projection does not interfere with views to Mt. Rainier or to the river.

(iii) The height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, Chapter [19.25 BMC](#).

Section 17. Buckley Municipal Code Section 19.30.120 is hereby amended as follows:

19.30.120 Residential (R-6,000, R-8,000, R-20,000) zone signs.

Signs in the residential (R-6,000, R-8,000, R-20,000) zones are limited as follows:

(1) One residential identification sign or nameplate not exceeding two square feet of sign surface area is allowed on each individual residence. Nameplates or identification signs may be mounted on the residence or accessory structure to the residence and may be illuminated by indirect lighting only.

(2) One sign identifying nonresidential uses, not exceeding 16 square feet of sign surface area, is allowed within the R-20,000 residential agricultural zone to advertise the sale of products raised on the premises. The maximum height for the sign shall be six feet. The sign may be monument or mounted on a wall, fence or other structure.

(3) Approved home occupations as defined in BMC [19.12.245](#) are limited to one wall sign not exceeding six square feet of sign surface area. Only one such sign shall be allowed on the premises and may be illuminated by indirect lighting only.

(4) ~~Approved c~~Conditional uses ~~that have received approval through the board of adjustment or designated official~~ are limited to one advertising sign not exceeding 16 square feet. The maximum height for the sign shall be five feet. The sign may be monument or mounted on a wall, fence or other structure.

(5) Two permanent residential development identification signs not exceeding 16 square feet of sign surface area for each sign are allowed per subdivision. The maximum height for the sign shall be eight feet. The sign may be monument or mounted on a wall, fence or other structure.

Section 18. Buckley Municipal Code Section 19.30.140(3 & 3.k) is hereby amended as follows:

19.30.140 Off-premises signs.

Off-premises signs shall not be allowed except as herein provided:

(1) Community Bulletin Board Signs. Signs of a public service nature which are nonadvertising or nonpromotional and are used for providing public service information to the community by public service clubs or other nonprofit organizations may be allowed within any zone, subject to the following:

(a) Any such sign to be located within the right-of-way of a state highway shall be subject to approval by the Department of Transportation.

(b) Approval of the owner, submitted in writing, of the property on which the sign is to be placed.

(c) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver.

(d) Size. Shall be no larger than necessary to clearly inform the public. Community bulletin board signs shall not exceed 40 square feet of sign surface area.

(e) Illumination. May be internally or indirectly illuminated.

(2) Off-Premises Public Service Signs. Informational signs of a public service nature meant to guide or direct pedestrian or vehicular traffic to uses such as places of worship, schools, city parks, fire stations, police stations, municipal buildings, public libraries, community centers, points of interest and other similar noncommercial uses (B.P.O.E., Kiwanis, etc.) may be allowed within any zone subject to the following:

(a) Any such sign which is to be located within the right-of-way of a state highway shall be subject to approval by the Washington Department of Transportation.

(b) Approval of the owner, submitted in writing to the city, of the property on which the sign is to be placed.

(c) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver, whether private drives or public rights-of-way.

(d) Size. Shall not be larger than four square feet of sign surface area. Consolidated city identification and/or community-service-club-type signs shall not exceed 32 square feet of sign surface area. Business identification directional signs on dead-end streets shall meet the following criteria: all units will have letters six inches in height, dark color on a light background, not longer than four feet per unit and meeting corner visibility requirements; details to be approved by the planning director for each installation.

(e) Illumination. May be indirectly illuminated.

(3) Off-Premises Permanent Directional Signs. To provide business identification for sites located in areas not directly abutting a minor or principal arterial, such as on dead-ends or on local access or collector streets, one off-premises sign may be approved by the ~~board of adjustment~~ or designated official in a commercial or industrial zone subject to the following:

(a) The subject business has demonstrated a need for off-premises signage and how the sign will benefit the community; and

(b) If more than one business in an immediate area has a similar need for an off-premises sign, all must be consolidated and identified on the same sign; and

(c) The location of the off-premises sign is at the nearest intersection of the closest principal or minor arterial on which the subject property is located; and

(d) The off-premises sign is located in a commercial or industrial district; and

(e) The square footage of the off-premises sign has been included in the subject property's total square footage sign allowance. The combined area total of property's signage plus the proposed sign does not exceed the total allowable signage for the subject property; and

(f) The proposed off-premises sign meets the sign requirements of the zone where located; and

- (g) Any such sign which is to be located within the right-of-way of a state highway shall be subject to approval by the Department of Transportation; and
- (h) Approval of the owner of the property, submitted in writing, on which the sign is to be placed; and
- (i) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver; and
- (j) Illumination. May be internally or indirectly illuminated; however, the sign shall not be an electronic messaging display center, or have any changeable message or flashing lights; and
- (k) All other conditions that the ~~board of adjustment~~ or designated official determines are reasonable and serve the interest of public health, safety and welfare.

Section 19. Buckley Municipal Code Section , 19.30.210 BMC is hereby amended as follows:

19.30.210 Variances.

The ~~board of adjustment~~ or designated official may grant a variance from the provisions of this chapter subject to the variance provisions of BMC 19.40.030.

Section 20. Buckley Municipal Code Section 19.30.220 BMC is hereby amended as follows:

19.30.220 Planning director’s authority.

The planning director is authorized and directed to be the administrator of this chapter, in consultation with the building official, to make necessary interpretations subject to appeal to the ~~board of adjustment~~ or designated official, and the planning director is designated to process all required permits. The planning director is authorized and directed to enforce all provisions of this chapter with the building official’s consultation for consideration of the structural integrity of proposed and existing signs.

Buckley Municipal Code Section 19.30.270 BMC is hereby amended as follows:

19.30.270 Appeal from sign code administrative interpretations and decisions.

Sign code administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, ~~to the board of adjustment subject to the provisions of in accordance with BMC 20.01.260. Every appeal shall be filed with the planning director within 21 days after the date the decision of the matter being appealed became final. A notice of appeal shall be delivered to the planning department by mail or personal delivery, and must be received by 5:00 p.m. on the last business day of the appeal period, with the required appeal fee.~~

Section 21. Buckley Municipal Code Section 19.32.030 is hereby amended as follows:

19.32.030 Types distinguished.

- (1) Type A Home Occupation. A home occupation where the residents use their dwelling as a place of work.
- (2) Type B Home Occupation. A home occupation where the residents use their dwelling as a place of work but that exceeds the standards of the Type A home occupation. Type B home

occupations shall be permitted only as conditional uses and with approval by the ~~board of adjustment or~~ designated official subject to the provisions of Chapter 19.40 BMC and BMC 19.32.060. Type B home occupations shall be filed on forms provided by and in the manner set forth by the planning department, with application fee paid as established by adopted fee schedule.

Section 22. Buckley Municipal Code Section , 19.32.060 BMC is hereby amended as follows:

19.32.060 Criteria for approval – Type B or “major” home occupation.

(1) Type B or “major” home occupations shall be allowed subject to a conditional use permit, and shall meet the requirements set forth in BMC 19.32.050(5) through (14) and the following requirements:

(a) The business, including operations and storage, shall occupy no more than half of the residential gross floor area, which includes all accessory buildings. If the business occupies an accessory building, the square footage of that building shall not be larger than the primary residential building;

(b) The building official shall determine the maximum occupancy load of the structure(s) in which the home occupation is proposed; ~~the board of adjustment or~~ designated official shall consider this number along with all other pertinent facts and comments in determining the maximum number of employees allowed on the premises to work in the home occupation at any one time;

(c) The subject property shall not be altered except to install screening or buffers or to provide parking for no more than four vehicles. No parking in yards and buffers shall be allowed;

(d) No more than three vehicles shall be parked on the property as a result of the business at any one time;

(e) On-site sales shall be limited to items produced on the premises or incidental to the major home occupation;

(f) Traffic generated by the home occupation shall not noticeably affect the residential character of the neighborhood; and

(g) Accessways shall be accessible to emergency vehicles.

(2) Major home occupations include, but are not limited to, the following:

(a) Home occupations that do not meet all of the criteria in BMC 19.32.050, Criteria for approval – Type A or “minor” home occupation;

(b) Auto repairing, vehicle detailing, and vehicle, boat or trailer painting and major appliance repair;

(c) Commercial welding and machine shops.

Section 23. Buckley Municipal Code Section 19.32.090(2.b) BMC is hereby amended as follows:

19.32.090 Revocation of permits.1

(1) Upon determination that a violation of decision criteria or a condition of approval may have occurred, the director shall notify the owner of a home occupation of the alleged violation and of the revocation procedures if the business is not brought into conformance within 30 calendar days.

- (2) If the business is not brought into conformance within the time specified above:
- (a) If the business is a Type A “minor” home occupation, the planning department will refer nonconformance to the city administrator for revocation of the business license pursuant to BMC 6.04.160; or
 - (b) If the business is a Type B “major” home occupation, the planning department will refer the nonconformance to the ~~board of adjustment~~ or designated official for public hearing and revocation of the conditional use permit pursuant to BMC 19.40.190.
- (3) When a permit or business license is revoked, the director shall notify the owner by certified mail of the revocation and the findings upon which revocation is based.
- (4) Nothing in this section shall be construed as limiting other code enforcement remedies available to the city.

Section 24. Buckley Municipal Code Chapter 19.40 is hereby amended as follows:

19.40.010 Purpose.

This chapter is intended to detail the procedures and responsibilities of the ~~board of adjustment~~ or designated official in the processing, consideration and issuance of variances and conditional use permits. In regard to variances, this chapter shall apply to claims that the provisions of the zoning code are unduly prohibitive to reasonable use of property as intended by this title. In regards to conditional use permits, this chapter shall apply after application for consideration and issuance of a conditional use permit subject to the conditions set forth in this title.

19.40.020 Variances and authority to grant.

Upon the filing of a proper application, the ~~board of adjustment~~ *designated official* shall have the authority, subject to provisions of this chapter, to grant, upon such conditions as it may determine, variances from required lot width, depth or area; required front, side or rear yards; required height of buildings, fences and structures; maximum floor area, impervious surface coverage and signage; and required parking. Nothing in this chapter shall be construed to give any property owner a right to use any property in any manner which requires a variance, unless a variance for such use has first been granted and is in full force and effect pursuant to all conditions attached thereto. Further, the authority to grant a variance does not extend to use regulations set forth in this title. No variance shall permit a use not permitted in the zone district applicable to a property.

19.40.030 Required findings to grant variance.

Each determination granting a variance shall be supported by written findings showing specifically wherein all of the following conditions exist:

- (1) Because of unusual conditions applicable to the subject property, including size, shape, topography, location, natural features or surroundings, which were not created by the owner or applicant, the strict application of this title would deprive the property of rights and privileges enjoyed by other properties in the vicinity and zone in which the subject property is located; and
- (2) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and
- (3) That the granting of such variance will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of

the surrounding neighborhood, and will not be injurious to the property or improvements of such vicinity and/or zone in which the property is located; and

(4) The literal interpretation and strict application of the applicable provisions or requirements of this title could cause undue and unnecessary hardship; and

(5) The requested variance would be consistent with the spirit and purpose of the zoning code and adopted land use policies or comprehensive plan, as applicable.

19.40.040 Conditions on variance approvals.

The ~~board of adjustment or~~ designated official shall have the authority to impose conditions and safeguards as it deems necessary to protect and enhance the health, safety and welfare of the surrounding area, and to assure that the proposed variance fully meets the criteria set forth in BMC 19.40.030.

19.40.050 Public hearing required for variance.

Before the ~~board of adjustment or~~ designated official may grant, amend or deny any application for a variance, the ~~board of adjustment or~~ designated official shall conduct a duly noticed public hearing. Upon completion of the hearing, the board or official shall grant, amend with conditions or deny with findings the variance application in accordance with the provisions of this chapter.

19.40.060 Expiration of variance grant.

Any variance granted by the ~~board of adjustment or~~ designated official shall become null and void if not exercised within the time specified in such variance or, if no time is specified, within one year of the date of approval of such variance. A variance shall be deemed exercised and remain in full force and effect when a building permit has been issued and substantial construction accomplished in reliance upon said permit. If such variance is abandoned or is discontinued for a continuous period of one year, it may not thereafter be reestablished unless authorized in accordance with the procedure for variance prescribed in this chapter.

19.40.070 Extension of time for variance permit.

Upon written request by a property owner or his/her authorized representative, also designated in writing, prior to the date of variance expiration, and following consideration at a public meeting, the ~~board of adjustment or~~ designated official may grant an extension of time up to but not exceeding one year. Such extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the property since the granting of the variance which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare

19.40.080 Cancellation of a variance.

A valid variance granted by the ~~board of adjustment or~~ designated official may be canceled at any time. Cancellation must be initiated by the owner of the property covered by the variance by means of a written request to the planning director. The variance shall then become null and void 15 calendar days thereafter.

19.40.090 Revocation of a variance.

Following a public hearing, the ~~board of adjustment or~~ designated official may revoke or add additional conditions to any variance issued on any one or more of the following grounds:

- (1) That the approval was obtained by fraud or that erroneous information was presented by the applicant or his/her designated representative and considered in the granting of the variance;
- (2) That the variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- (3) That the use for which the approval was granted is being so exercised as to constitute a nuisance.

19.40.100 Posting of performance bonds.

Notwithstanding the provisions of BMC 19.40.040, whenever a variance is granted upon any condition or limitation, the person seeking the variance may be required to furnish security in the form of money, letter of credit from a bank, or a surety bond in an amount fixed by the ~~board of adjustment~~ or designated official to ensure compliance with the conditions and limitations upon which variance is granted. Every such bond shall be a performance bond payable to the city and shall be conditional upon compliance with the conditions and limitations upon which such variance is granted.

19.40.110 Appeals ~~to superior court~~ of variance determination.

A final action ~~of the board of adjustment or designated official~~ under this chapter with respect to a variance shall be ~~deemed final and conclusive unless, within 21 calendar days of the issuance of the decision being appealed, the applicant, property owner or any other person aggrieved or adversely affected by said decision files an appeal with the Pierce County superior court and properly serves it on all necessary parties. Said appeal shall be governed by the provisions of the Land Use Petition Act, Chapter 347, Sections 701—719, Laws of 1995, 1995 Regular Session.~~ appealed in accordance with BMC 20.01.

19.40.120 Conditional use permits and authority to grant.

Certain uses require a special degree of control due to unusual effects or characteristics peculiar to them, or because of size, location, type of equipment used, or demands upon public facilities resulting from such use. Therefore, the ~~board of adjustment~~ or designated official shall have the authority subject to provisions of this chapter to grant, upon such conditions as they may determine, a conditional use permit as may be in harmony with the scope and purpose of this title and zone district in which the use is to be located, and the goals, objectives and policies of the Buckley comprehensive plan. Nothing in this chapter shall be construed to give any property owner a right to use any property in any manner which requires a conditional use permit, unless a conditional use permit for such use has first been granted and is in full force and effect pursuant to all conditions attached thereto.

19.40.130 Required findings to grant conditional use permit.

Each conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions exist:

- (1) That the use for which the conditional use permit is applied is specified by this title as being conditionally permitted within and is consistent with the description and purpose of the zone district in which the property is located;
- (2) That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established

character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;

(3) That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and, further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;

(4) That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features, as are required by this title or as needed in the opinion of the ~~board of adjustment~~ or designated official, and are properly provided to be compatible and harmonious with adjacent and nearby uses;

(5) That the granting of such conditional use permit will not be contrary to the adopted Buckley comprehensive plan, or to the objectives of any code, ordinance, regulation, specifications or plan in effect to implement the comprehensive plan.

19.40.140 Conditions on conditional use permit approvals.

The ~~board of adjustment~~ or designated official shall have the authority to impose conditions and safeguards as it deems necessary to protect and enhance the health, safety and welfare of the surrounding area and to assure that the proposed use or activity fully meets the findings set forth in BMC 19.40.130. No conditional use permit shall require as a condition the dedication of land for any purpose not reasonably related to the use of property for which the conditional use permit is requested, nor posting of a bond to guarantee installation of public improvements not reasonably related to the use of property for which the conditional use permit is requested.

19.40.150 Public hearing required for conditional use permit.

Before the ~~board of adjustment~~ or designated official may grant, amend or deny an application for a conditional use permit, the board shall conduct a duly noticed public hearing. Upon completion of the hearing, the commission or official shall grant, amend or deny the conditional use permit application in accordance with the provisions of this chapter.

19.40.160 Expiration of conditional use permit.

Any conditional use permit granted by the ~~board of adjustment~~ or designated official shall become null and void if not exercised within the time specified in such permit or, if no time is specified, within one year of the date of approval of such permit. A conditional use permit shall be deemed exercised and remain in full force and effect when a building permit has been issued and substantial construction accomplished in reliance upon the conditional use permit. If such permit is abandoned or is discontinued for a continuous period of one year, it may not thereafter be reestablished unless authorized in accordance with the procedure prescribed herein for the establishment of a conditionally permitted use.

19.40.170 Extension of time of conditional use permit.

Upon written request by a property owner or his/her authorized representative prior to the date of conditional use permit expiration, and following consideration at a public meeting, the ~~board of adjustment~~ or designated official may grant an extension of time up to but not exceeding one year. Such extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the property since the granting of the permit which would be

injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare.

19.40.180 Cancellation of a conditional use permit.

A valid conditional use permit granted by the ~~board of adjustment or~~ designated official may be canceled at any time. Cancellation must be initiated by the owner of the property covered by conditional use permit by means of a written request to the planning **director**. The permit shall then become null and void within 30 calendar days thereafter.

19.40.190 Revocation of a conditional use permit.

Following a public hearing, the ~~board of adjustment or~~ designated official may revoke or add additional conditions to any conditional use permit issued on any one or more of the following grounds:

- (1) That the approval was obtained by fraud or that erroneous information was presented by the applicant or designated representative and considered in the granting of the permit;
- (2) That the use for which such approval is granted is not being exercised;
- (3) That the use for which such approval is granted has ceased to exist or has been suspended for one year or more;
- (4) That the conditional use permit granted is being, or recently has been, exercised contrary to the terms of conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- (5) That the use for which the approval was granted is being so exercised as to constitute a nuisance.

19.40.200 Posting of performance bonds.

Notwithstanding the provisions of BMC 19.40.140, whenever a conditional use permit is granted upon any condition or limitation, the person seeking the conditional use permit may be required to furnish security in the form of money or a surety bond in an amount fixed by the ~~board of adjustment or~~ designated official to ensure compliance with the conditions and limitations upon which permit is granted. Every such bond shall be a performance bond and shall be in a form approved by the city attorney, shall be payable to the city and shall be conditioned upon compliance with the conditions and limitations upon which such permit is required.

19.40.210 Appeals ~~to superior court~~ on conditional use permit determination.

A final decision of the ~~board of adjustment or designated official~~ under this chapter with respect to a conditional use permit shall be ~~deemed final and conclusive unless, within 21 calendar days of the issuance of the decision being appealed, the applicant, property owner or any other person aggrieved or adversely affected by said decision files an appeal with the Pierce County superior court and properly serves it on all necessary parties. Said appeal shall be governed by the provisions of the Land Use Petition Act, Chapter 347, Sections 701—719, Laws of 1995, 1995 Regular Session.~~ filed in accordance with BMC 20.01.

Section 25. Buckley Municipal Code Section 19.42.030 is hereby amended as follows:

19.42.030 Buckley's hearings board Hearing Examiner.

The Buckley board of adjustment, hereinafter known as “the hearings board,” hearing examiner is vested with authority to:

- (1) Approve, approve with conditions, or deny shoreline variance and conditional use permits after considering the findings and recommendations of the administrator; the decision shall be forwarded to the Department of Ecology for final action; provided, that any decisions of this matter made by the city may be further appealed to the State Shorelines Hearings Board as provided in the Act.
- (2) Conduct public hearings ~~and forward a recommendation to the city council~~ on appeals of the administrator’s actions, interpretations, and decisions related to Chapter 19.42 BMC.
- (3) At the discretion of the city, require any applicant granted a shoreline permit to post a bond or other acceptable security with the city conditioned to assure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent of the estimated development cost including attached conditions until such time as the project is completed. Such bonds or securities shall be approved as to form by the city attorney.

Section 26. Buckley Municipal Code Section 20.01.020 BMC is hereby amended as follows:

20.01.020 Definitions.

The following definitions shall apply throughout this title: ...

~~(6) “City of Buckley board of adjustment” means a board appointed by the city council and created to hear and decide appeals of orders, decisions or determinations made by the staff and to authorize upon appeal in specific cases such as variances from the provision of the zoning ordinance or other land use regulatory ordinances as the city may adopt.~~

...

~~(24) “Type B process” means a process which involves an application that is subject to standards that require the exercise of certain discretion and about which there may be a considerable public interest.~~

“Type A-3 process” means an application that is subject to objective and subjective standards that require the exercise of discretion about nontechnical issues and about which may be a public interest.

...

Section 27. Buckley Municipal Code Section 20.01.030 is amended as follows:

BMC 20.01.030 Procedures for processing development project permits.
 (1) Project Permit Application Framework. The project permit application framework is set forth in Tables 1 and 2 as follows:

Table 1: Application Process

Procedural Steps	Application Process					
	Type “A” Actions Administrative Type “B” Actions Board of Adjustment (BOA)			Type “C” Actions Planning Commission, Hearing Examiner and City Council		
	Type A-1	Type A-2	Type B-A-3	Type C-1	Type C-2	Type C-3

Recommendation by:	N/A	N/A	<u>Staff Planning Commission</u>	Staff	Staff	Staff
Notice of application	No	Yes	Yes	Yes	Yes	No
Open Record Public Hearing	See Note 1	See Note 1	Yes Board of Adjustment <u>Planning Commission</u>	Yes Planning Commission	Yes Hearing Examiner	No
Final Decision-Making Body	Staff	Staff	Board of Adjustment <u>Director</u>	City Council	Hearing Examiner/City Council ³	City Council
Appeal Authority ⁵	BOA <u>Hearing examiner</u>	BOA/City Council <u>Hearing examiner 2</u>	City Council ⁴ <u>Hearing Examiner</u>	Pierce County Superior Court ⁵⁴	Pierce County Superior Court	Pierce County Superior Court

1. Note: Public hearing only on appeal of an administrative decision, open record hearing before ~~board of adjustment~~-hearing examiner.

2. SEPA appeals are to be consolidated with the hearing on the underlying permit as required by the SEPA rules.

3. Note: Appeal to council hearing examiner on appeals of SEPA determinations.

3. Note: Council is the final decision-making body for mobile home parks, planned unit developments, all rezones, and major PUD amendments.

4 Note: ~~Board of adjustment decisions on variances must be appealed directly to Pierce County superior court.~~

54. Note: Comprehensive plan amendments, shoreline permits, and BMC land use text amendment, and area-wide rezones are potentially appealable to the Growth Management Hearings Board or Shoreline Hearings Board.

No assurances are made as to the accuracy of Table 1 in identifying the appellate forum with jurisdiction to hear appeals of final City decisions. It is the responsibility of the appellant to determine where to file appeals of final city decisions.

Table 2: Application Type

Type A-1 administrative w/o notice; Type A-2 administrative w/ notice; Type A-3 administrative hearing and recommendation from the planning commission; ~~Type B quasi-judicial, public hearing w/ board of adjustment~~; Type C-1 legislative or quasi-judicial w/ city council recommendation from the planning commission; Type C-2 quasi-judicial w/ hearing examiner; Type C-3 ministerial or administrative w/ city council.

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
Title 12, Environment						
12.08	Critical areas conditional use		B			

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
12.08.130	Critical area exemption	A-1				
12.08.140	Critical area exception – public agency and utility		B		<u>C-2</u>	
12.08.330	Critical areas variance		B		<u>C-2</u>	
12.08.260	Innovative wetland mitigation		B		<u>C-2</u>	
12.08.150	Reasonable use exception				C-2	
12.04	SEPA determination	A-2				
19.42.050	Shoreline exemption	A-1				
	Shoreline substantial development permit	A-2				
19.42.120	Shoreline conditional use permit		B		<u>C-2</u>	
19.42.120	Shoreline variance		B		<u>C-2</u>	
12.08.130	Wetland exemptions	A-1				
12.11.040	Floodplain development permit	A-1				
Title 16, Buildings and Construction						
16.06.020	Building and other construction permits	A-1				
16.80.010	Canopies	A-1				
16.12.070	Fences	A-1				
16.12.070	Fence variances	<u>A-23</u>	B			
15.04.050	Gas fitter's permit	A-1				
16.01.010	Land disturbing activity permit	A-1				
16.40.040	Mobile home installation permit	A-1				
14.06.140	Sewer permit	A-1				
13.08.010	Sidewalk construction permit	A-1				
16.10.010	Temporary dwelling permit	A-1				
14.06.390	Wastewater discharge (also from state DOE)	A-1				
Title 17, Design and Construction Standards, and Development Guidelines and Public Works Standards (DGS)						
17.08	Acceptance of public improvement					C-3
17.08.050	Dedication of public easements and rights-of-way					C-3
DGS 4.07(C)	Frontage improvement exceptions					C-3
DGS 4.21	Light standards	A-1				

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
	Modification of public improvement requirement					C-3
DGS 2.02	Major variances of Development Guidelines and Public Works Standards		B			C-3
DGS 2.02	Minor variances of Development Guidelines and Public Works Standards	A-1				
DGS 2.01	Right-of-way use permits	A-1				
	Title 18, Subdivisions					
18.34.040	Boundary line adjustment	A-1				
18.34.040	Boundary line adjustment, non-conforming lots					C-3
	Binding site plans					
18.36.060	Preliminary binding site plans				C-2	
18.36.090	Final binding site plan amendments					C-3
18.36.070	Adjustments (minor) to binding site plan approved plans	A-1			C-2	
18.36.070	Adjustments (not minor) to binding site plan approved plans				C-2	
	Short subdivisions (short plats)					
18.32.070	Preliminary short subdivisions	A-2				
18.32.080	Final short subdivisions					C-3
18.32.100	Amendments (minor) to unrecorded short plats	A-1				
18.32.100	Amendments to approved or recorded final short plats					C-3
	Subdivisions (long plats)					
18.16.020	Preliminary subdivisions (long plats)				C-2	
18.16.030	Final subdivisions					C-3
	Amendments to approved (not recorded) preliminary plats				C-2	
RCW 58.17.215	Amendments to approved (recorded) final plats (alteration of recorded plat)					C-3
	Title 19, Zoning					
19.06.030	Comprehensive plan amendments			C-1		

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
<u>19.20.010</u>	<u>Commercial height modification</u>	<u>A-2</u>	B			
19.40.120	Conditional use permits, zoning code		B		<u>C-2</u>	
19.50.070, 19.51.050	Design review	A-1				
19.52	Development code text amendments			C-1		
19.32.050	Home occupation Type A with minor impact	A-1				
19.32.060, 19.40	Home occupation Type B with potential impacts		B		<u>C-2</u>	
19.34.020	Mobile home parks				C-2 ^c	
<u>19.30.140</u>	<u>Off-premises directional signs</u>	<u>A-1</u>	B			
19.30.060	Sign permit	A-1				
19.33	Site plan reviews (commercial/industrial)				C-2	
19.33.120	Site plans amendment commercial/industrial/multifamily				C-2	
19.33.110	Site plans – technical adjustment	A-1				
19.52	Rezones, legislative			C-1		
19.52	Rezones, site-specific			C-1	<u>C-2</u>	
	Planned unit developments (PUDs)				C-2 ^c	
	• PUD amendments				C-2 ^c	
	• PUD amendments – technical adjustment	A-1				
	Telecommunication facilities (collocation)	A-1				
19.25.110	<u>Telecommunication facilities waiver</u>				C-2	<u>C-3</u>
19.25.110	<u>Telecommunication facilities CUP</u>				C-2	
19.25.110	<u>Telecommunication facilities variance</u>				C-2	
19.30.210	Variances, sign code	A-3	B			
19.40.020	Variances, zoning and sign code		B		<u>C-2</u>	

(2) Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications shall be subject to Type A-1 and Type A-2 process (administrative), ~~Type B process (board of adjustment)~~, Type C-1 (planning commission/city council), Type C-2 or Type C-3 process (hearing examiner/city council) as defined in BMC 20.01.020. As used in subsection (1) of this section:

- (a) Administrative decisions.(i) A Type A-1 ~~process shall be~~ is an administrative process that does not require public notice;

~~(bii)~~ A Type A-2 process shall be is an administrative process that requires public notice;

~~(iii)~~ A Type A-3 process is an administrative process that requires public review with the planning commission;

~~(e)~~ **A Type B is a quasi-judicial process that requires a public hearing (the decision-making body for a Type B process shall be the board of adjustment);**

~~(db)~~ Type C-1 processes are legislative or quasi-judicial and require public hearings. The ~~(the decision-making body for Type C-1 processes shall be the city council.~~

~~(ec)~~ Type C-2 processes are quasi-judicial and require public hearings (the decision-making body shall be the hearing examiner, except the city council shall be the decision-making body for mobile home parks, planned unit developments and major planned unit development amendments);

~~(fd)~~ Type C-3 processes are largely ministerial or administrative and do not require a public hearing (the decision-making body for Type C-3 is the city council).

(3) Exemptions from the requirements of project permit application processing as defined in this chapter are contained in BMC 20.01.070.

Section 28. Buckley Municipal Code Section 20.01.050 is hereby amended as follows:

20.01.050 Projects requiring two or more permit applications.

(1) Optional Consolidation. A project that involves two or more permit applications may be subject to a consolidated project permit review process as established in this chapter. The applicant may determine whether the applications shall be processed collectively or individually. If the applications are processed under the individual procedure option, the highest type procedure must be processed prior to the subsequent lower procedure.

(2) Consolidated Permit Processing. When the project is reviewed under the consolidated procedure option, the highest procedure required for any part of the project application must be applied. All project permits being reviewed through the consolidated permit review process shall be included in the following:

(a) Determination of completeness;

(b) Notice of application;

(c) Notice of final decision;

(d) Single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination. (RCW 36.70B.060(5))

(3) Public Hearing for Consolidated Applications. The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing.

(4) Decision-Maker(s). Applications processed in accordance with subsection (2) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker(s) *to the extent consistent with state law*. The *order of decision making authority, from highest to lowest is City Council, hearing examiner, and staff* ~~hearing examiner is the highest, followed by the board of adjustment, and then the director.~~

(5) Consolidation with the Other Government Agencies. The city is also authorized to consolidate project review with the permit procedures of other government agencies. Joint public hearings with other agencies shall be processed according to BMC 20.01.060.

Section 29. Buckley Municipal Code Section 20.01.090 BMC is hereby amended as follows:

20.01.090 Administrative approvals subject to notice (Type A-2) – Process overview.

(1) Administrative Decision. The director shall approve, approve with conditions, or deny (with or without prejudice) all Type A-2 permit applications, subject to the determination of completeness, the notice of application, the notice of decision and appeal requirements of this section.

(2) Notice of Application. Within 14 working days after the date an application subject to a Type A-2 process was accepted as complete, the review authority shall issue a public notice of the pending review consistent with the requirements of BMC 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by ensuring posting of the property, mailing and by publication in the city's official newspaper as provided in BMC 20.01.140.

(3) Additional Posting. The review authority may also require notices to be posted in conspicuous places visible on the site or in the vicinity of a proposed action at least 10 working days before the close of the comment period.

(4) Staff Report. The director shall issue written findings and conclusions supporting Type A-2 decisions.

(5) Appeal Procedures. An applicant or other party of record who may be aggrieved by the administrative decision of a Type A-2 application may appeal the decision to the following:

(a) Appeals for Type A-2 administrative decisions will be to the ~~board of adjustment, hearing examiner~~ *except for appeals of a SEPA determination of nonsignificance* ~~except that SEPA appeals shall be consolidated with the hearing on the associated permit application as required by the SEPA rules;~~

(b) ~~Appeals for Type A-2 SEPA determinations of nonsignificance will be to the city council; provided, that in either case a written appeal is filed in conformance with BMC 20.01.260.~~

(6) ~~Public Hearing on Appeal. If a Type A-2 decision is appealed for other than a SEPA determination of nonsignificance, an open record public hearing will be held before the board of adjustment consistent with the requirements of BMC 20.01.210.~~

Section 30. Buckley Municipal Code Section 20.01.070 BMC is hereby amended as follows:

Section 31. Buckley Municipal Code Section 20.01.100 BMC is hereby amended as follows:

20.01.100 ~~Type B and C-1 and Type C-2~~ procedures – ~~Quasi-judicial decisions~~ – Process overview.

(1) Determination of Completeness and Notice of Application. All ~~Type B, C-1 and C-2~~ procedures require the issuance of determination of completeness and notice of application consistent with BMC 20.01.130 and 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by ensuring posting of the property, mailing and by publication in the city's official newspaper as provided in BMC 20.01.140.

(2) Staff Report. At least five days before a public hearing ~~for all types of procedures~~, the director shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with the city's development code as amended, adopted plans and regulations. The staff report shall include proposed findings, conclusions and recommendations for disposition of the development application. The staff report shall include and consider all written public comments on the application.

(3) Recommendations. ~~For Type B procedures, staff makes recommendations to the board of adjustment. For Type C-1 procedures, staff makes recommendations to the planning commission, which then makes its own recommendation to the city council. For Type C-2 procedures, the staff makes its recommendations to the hearing examiner. For Type C-3 procedures, staff makes recommendations to the city council.~~ Staff shall make recommendation on C-2 applications to decision makers and recommending bodies, as appropriate, after reviewing the application and applicable codes.

(4) Required Findings. ~~The planning commission, hearing examiner or board of adjustment shall recommend to approve~~ In addition to satisfying any other review criteria specified by the BMC, the decision maker or recommending body may approve or recommend to approve a proposed C-2 project only if it ~~first~~ makes the following findings and conclusions:

- (a) The project is consistent with the Buckley comprehensive plan and meets the requirements and intent of the Buckley Municipal Code;
- (b) The project is not detrimental to the public health, safety and welfare;
- (c) The project complies with ~~adequately mitigates impacts identified under~~ Chapter 12.04 BMC, State Environmental Policy Act, and Chapter 12.08 BMC, Critical Areas – General Provisions, as amended.

(5) Public Hearing. A public hearing on quasi-judicial decisions shall be held for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's development code, adopted plans and regulations.

(6) Notice of Public Hearing. At least ~~15~~ 14 days before the date of the hearing for an application subject to ~~Type B or Types C-1 and C-2~~ review, the review authority shall issue a public notice. Notice of the public hearing shall be in accordance with BMC 20.01.190.

(7) Notice of Public Meeting or Workshop. Notice shall be given consistent with Chapter 1.28 BMC and RCW 36.70A.035, Public participation – Notice provisions.

(8) Quasi-Judicial Action. Upon receiving a recommendation on a C-2 application, the ~~board of adjustment (for Type B)~~ decision maker shall hold an open record public hearing and make a

decision on a recommendation, including consideration of any appeals of the recommendation. For Type C-1 decisions, the planning commission after receiving a staff review of the application shall hold an open record public hearing and forward a recommendation to the city council for decision. For Type C-2 decisions, the hearing examiner after receiving a staff review of the application shall hold an open record public hearing and make a decision on the application.

(9) Quasi-Judicial Decisions. A quasi-judicial decision on a recommendation following an open record public hearing shall include one of the following actions:

- (a) Approve as recommended;
- (b) Approve with additional conditions;
- (c) Modify, with or without the applicant's concurrence; provided, that the modifications do not:
 - (i) Enlarge the area or scope of the project;
 - (ii) Increase the density or proposed building size; or
 - (iii) Significantly increase adverse environmental impacts as determined by the responsible official;
- (d) Deny without prejudice (reapplication or resubmittal is permitted);
- (e) Deny with prejudice (reapplication or resubmittal is not allowed for one year); or
- (f) Remand for further proceedings and/or evidentiary hearing in accordance with BMC [20.01.240](#).

Section 32. Buckley Municipal Code Section 20.01.200 BMC is hereby amended as follows:

20.01.200 Notice of public meetings.

Public meetings of the planning commission, ~~board of adjustment~~ and city council shall comply with applicable notice requirements of the Open Public Meetings Act, Chapter [42.30](#) RCW, Chapter [1.28](#) BMC, and, if applicable, notice shall be given consistent with RCW [36.70A.035](#), Public participation – Notice provisions.

Section 33. Buckley Municipal Code Section 20.01.220 BMC is hereby amended as follows:

20.01.220 Procedures for public meetings.

The city council and planning commission may adopt by majority vote the procedural rules for their respective public meetings on matters subject to this chapter. ~~Generally a public meeting does not involve formal public comment. A public meeting is not a public hearing. The city council, planning commission and the board of adjustment may, but are not required to, provide for written comments or questions prior to a meeting to assist that body in its actions at its public meeting and may allow comments at a public meeting.~~

Section 34. Buckley Municipal Code Section 20.01.240 BMC is hereby amended as follows:

20.01.240 Remand.

In the event the ~~board of adjustment~~, the hearing examiner or the city council determines that the public hearing record, the record on appeal or the administrative decision is insufficient or otherwise flawed, the council may remand the matter back to the hearing authority ~~planning~~

~~commission, board of adjustment or director, as applicable~~, to correct the deficiencies as consistent with state law, in particular the one hearing rule of the Regulatory Reform Act, Chapter 36.70B RCW. Remand is available upon a showing of:

- (1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;
- (2) Unlawfulness of procedure or of decision-making process; or
- (3) Mistake of material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

Section 35. Buckley Municipal Code Section 20.01.250 BMC is hereby amended as follows:

20.01.250 Final decision.

(1) Notice of Final Decision.

(a) The city shall provide a notice of decision that also includes a statement of any threshold determination made under SEPA (Chapter 43.21C RCW) and the procedures for administrative appeal, if any.

(b) The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

(c) Notice of the decision shall be provided to the public as set forth in BMC 20.01.190.

The director shall issue a notice of final decision within 120 days of the issuance of the determination of completeness pursuant to BMC 20.01.130; provided, that the time period for issuance of a notice of final decision on a preliminary plat shall be 90 days, for a final plat 30 days, and a short plat 30 days to the extent that these shorter time periods are mandated by state law and only for subdivision applications that have not been returned to the applicant for further information. The notice of decision shall include a statement of the threshold determination made under Chapter 12.04 BMC as amended and the procedures for an appeal (if any) of the permit decision or recommendation. Said notice shall also state that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The department shall provide notice of the decision to the Pierce County assessor.

(d) In calculating the 120-day period for issuance of the notice of final decision, the following periods shall be excluded:

(i) Any period during which the applicant has been requested by the director to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines that the additional information provided satisfies the request for information, or 14 days after the date the additional information is provided to the city;

(ii) If the director determines that the information submitted is insufficient, the applicant shall be informed of the particular insufficiencies and the procedures set forth in subsection (1)(d)(i) of this section for calculating the exclusion period shall apply;

(iii) Any period during which an environmental impact statement (EIS) is being prepared pursuant to Chapter 43.21C RCW. The time period for preparation of an EIS shall be governed by Chapter 43.21C RCW;

- (iv) Any period for consideration and issuance of a decision for administrative appeals of project permits, which shall be not more than 90 days for open record appeals and 60 days for closed record appeals, unless a longer period is agreed to by the director and the applicant;
 - (v) Any remand to the planning commission, ~~board of adjustment~~, hearing examiner or director;
 - (vi) Any period during which the applicant has failed to pay any applicable fees or deposits after having been notified of such by the city shall be excluded from the time period in this chapter;
 - (vii) Any extension of time mutually agreed to by the director and the applicant.
- (f) If the city is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.
- (g) The time limits established in this title do not apply if a project permit application:
- (i) Requires an amendment to the comprehensive plan or a development regulation;
 - (ii) Requires siting approval of an essential public facility as provided in RCW 36.70A.200; or
 - (iii) Is substantially revised by the applicant, in which case the time period shall start from the date that a determination of completeness for the revised application is issued by the director pursuant to BMC 20.01.130 and RCW 36.70B.070.
- (2) Effective Date. The final decision of the council, hearing examiner or hearing body shall be effective on the date stated in the decision, motion, resolution, or ordinance; provided, that the appeal periods shall be calculated from the date of issuance of the land use decision, as provided in the Land Use Petition Act, Chapter 36.70C RCW. For the purposes of this chapter, the date on which a land use decision is issued is:
- (a) Three days after a written decision is mailed by the city, or, if not mailed, the date on which the city provides notice that a written decision is publicly available;
 - (b) If the land use decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the city council passes the ordinance or resolution;
 - (c) If neither subsection (2)(a) nor (b) of this section applies, the date the decision is entered into the public record.

Section 36. Buckley Municipal Code Section 20.01.260 BMC is hereby amended as follows:

20.01.260 Appeals.

(1) Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative ~~Type A-1 and Type A-2~~ decisions may be appealed to the appeal authority designated in BMC 20.01.030, Table 1, by applicants or parties of record, ~~to the board of adjustment~~—within 14 days from the date of the decision.

(a) SEPA determinations of nonsignificance may shall be appealed to the ~~city council~~ hearing examiner; provided that an appeal of a determination of significance shall follow Chapter 43.21C RCW and Chapter 197-11 WAC.

(2) Consolidated Public Hearing. All appeals of SEPA threshold determinations made pursuant to Chapter 12.04 BMC as amended (other than determinations of significance) shall be considered together with the decision on the project application in a single, consolidated public hearing.

~~(3) Appeal of Board of adjustment Decisions. Except for variances, Final decisions of the board of adjustment may be appealed, by parties of record from the hearing, to the city council Pierce County Superior Court.~~

~~(4) Procedures for Appeals. Appeals shall be conducted in accordance with the board of adjustment's and city council's rules of procedure of the hearing body and shall serve to provide argument and guidance for the body's decision.~~

~~(a) The parties to an appeal of a planning commission recommendation may submit timely written statements or arguments.~~

~~(54) Filing. A notice of appeal shall be delivered to the planning department by mail or personal delivery, and must be received by ~~5:00~~ 4:00 p.m. on the last business day of the appeal period, with the required appeal fee.~~

~~(a) SEPA appeals shall be filed with the Responsible Official within seven days after the end of the SEPA determination's comment period ends.~~

~~(b) Every permit appeal subject to City review shall be filed with the director within 14 days after the date of the decision of the matter being appealed became final.~~ (65) Contents of the Notice of

(65) Contents of the Notice of Appeal to the Board of adjustment or the City Council. The notice of appeal shall contain a concise statement identifying:

(a) The decision being appealed;

(b) The name and address of the appellant and his/her interest(s) in the matter;

(c) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;

(d) The desired outcome or changes to the decision; and

(e) The appeal fee.

~~(76) Board of adjustment or City Council Hearing body actions on Appeal. The decision following an appeal hearing shall include one of the following actions:~~

(a) Grant the appeal in whole or in part.

(b) Deny the appeal in whole or in part.

(c) Remand for further proceedings and/or evidentiary hearing in accordance with BMC 20.01.240.

(d) The hearing body may receive new evidence in addition to that contained in the record on appeal only if it relates to the validity of the underlying decision at the time the decision was made and is needed to decide disputed issues regarding:

(i) The proper constitution of or disqualification grounds pertaining to the decision-maker.

(ii) The use of unlawful procedure.

~~(87) Judicial Appeal. Appeals from the final decisions of the board of adjustment, the hearing examiner or the city council on Type B, Types C-1, C-2 and C-3 procedures and appeals from any other final decisions specifically authorized (subject to timely exhaustion of all administrative remedies) shall be made to Pierce County superior court within 21 calendar days of the date the decision or the date the action becomes final, as defined in BMC 20.01.250(2), unless another time period is established by state law or local ordinance.~~

~~(a) All appeals must conform with procedures set forth in Chapter 36.70C RCW. BMC 20.01.030 identifies final decisions appealable to superior court. In lieu of superior court, some appeals of final decisions are required by state law to be filed in other forums. The appellant bears the responsibility of filing an appeal in the proper forum and no assurances are made as to the accuracy of the forums designated for appeal in Table 1, BMC 20.01.030.~~

(b) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

(c) Prior to the preparation of any records, the appellant shall post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

8. The filing and content requirements of appeals subject to City review in this section shall be considered jurisdictional. Failure to strictly comply with filing and content requirements shall result in dismissal of the appeal.

Section 37. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 38. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 39. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this
day of
, 2016.

MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:

CITY CLERK, JOANNE STARR

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:
BY

PUBLISHED:

EFFECTIVE:

PHIL OLBRECHTS

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No __-16: Amending BMC 13.35.110 “Permit Exceptions”	Agenda Date: March 8, 2016		AB16-033
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		X
Muni Court – Jessica Cash			
Attachments: Ordinance			
<p>SUMMARY STATEMENT: BMC 13.35.110 (C) provides that right-of-way use permits shall not be required for a public utility, under franchise agreement with the city, performs normal maintenance as defined in the franchise agreement in order to protect the existing utility system. The City currently has two active franchisees operating in the City and another under consideration, and none of these franchise agreements defines “normal maintenance”. Based on this language none of the franchisees activities fall under the exception criteria so there is no apparent need for this provision.</p> <p>In order to eliminate confusion and clarify the exception provisions the staff is requesting that the Council amend BMC 13.35.110 to eliminate this provision from the code.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: Motion to Approve ORD No. __-16 Amending BMC 13.35.110 “Permit Exceptions”.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

**CITY OF BUCKLEY
ORDINANCE NO. __-15**

**AN ORDINANCE OF THE BUCKLEY MUNICIPAL CODE
AMENDING CHAPTER 13.35.110 REGARDING RIGHT-OF-WAY
USE PERMIT EXCEPTIONS.**

WHEREAS, the City Council of the City of Buckley has the responsibility under the Constitution of the State of Washington for the improvement, maintenance, and protection of public ways within the corporate limits of the City pursuant to RCW 35A.11.020 and Chapter 35A.47 RCW; and

WHEREAS, in order to protect and preserve the public health, safety, and welfare through adoption of Ordinance No. 13-13 the City Council established policies and regulations to provide for the issuance of right-of-way use permits in order to regulate activities within rights-of-way in the City and to provide for the fees, charges, security devices, and procedures required to administer the permit process;

WHEREAS, BMC 13.35.110 provides right-of-way permit exceptions for certain activities under specific circumstances; and

WHEREAS, BMC 13.35.110 (C) states that permits shall not be required for a public utility, under franchise agreement with the city, performs normal maintenance as defined in the franchise agreement in order to protect the existing utility system.; and

WHEREAS, the City currently has two active franchisees operating in the City and another under consideration, and none of these agreements defines “normal maintenance”; and

WHEREAS, as a result of the language in these agreements none of the franchisees activities fall under the exception so there is no apparent need for this provision. In addition the provision leads to some confusion when City staff attempt to determine whether or not an activity is exempt from the permit requirements; and

WHEREAS, in order to eliminate confusion and clarify the exception provisions the City Council desires to amend BMC 13.35.110 to eliminate this provision from the code;

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

Section 1. Chapter 13.35.110 of the Buckley Municipal Code entitled “Permit Exception” is hereby amended to read as follows:

13.35.110 PERMIT EXCEPTION.

- A. A right-of-way use permit is not required for franchised utilities when responding to emergencies that require disturbance of the right-of-way typical of a Type B Permit; provided, that the Department shall be notified by the responding utility or contractor verbally or in writing, as soon as practicable following onset of an emergency. Nothing herein shall relieve a responding utility or contractor from the requirement to apply for a right-of-way use permit as provided in this chapter within forty-eight (48) hours after beginning emergency work in the right-of-way.
- B. Permits shall not be required for routine maintenance and construction work performed by the City.
- ~~C. Permits shall not be required for a public utility, under franchise agreement with the city, performs normal maintenance as defined in the franchise agreement in order to protect the existing utility system.~~
- D. Permits are not required for City Public Works Department construction projects, even though SEPA may be required.
- E. Permits are not required for the ordinary construction and maintenance of landscaping or irrigation systems in the planter strip of the right-of-way. Blockage of the right-of-way associated with ordinary maintenance of landscaping requires the appropriate permit.
- F. Permits are not required for community, nonprofit, or other activities for which a special event permit has been issued.
- G. The director shall have authority to reduce or waive permit requirements when it is determined that the work being done is “minor repair or construction” as defined herein.
- H. The director shall also have the authority to reduce or waive permit requirements when it is determined that the work being done is for site “investigative” work as defined herein, where surface intrusions are minimal such as for potholing to locate underground utilities and plans for repair and restoration have been agreed to prior to the work being performed

Section 2. Severability. If any portion of this ordinance is found or rendered invalid or ineffective, all remaining provisions shall remain in full force and effect.

Section 3. This Ordinance shall be in full force and effect five days from and after its passage, approval and publication as provided by law.

Passed by the City Council on the 8th day of _____, 2016.

Mayor Pat Johnson

Attest:

Joanne Starr, Deputy City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

PUBLISHED: _____
EFFECTIVE: _____

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No. ____-16: Vacating Portions of 112th St E ROW	Agenda Date: March 8, 2016		AB16-034
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts	X	X
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
Police Depart – Chief Arsanto			
Other –			
Attachments: Ordinance, Staff Report, PSA, Notice			
SUMMARY STATEMENT: See attached staff report and findings in the ordinance.			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities - 2015			
RECOMMENDED ACTION: Move to Approve ORD No. ____-16 Vacating Portions of 112th St E ROW.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

ORDINANCE NO. ___ - 16

AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, VACATING A PORTION OF 112th STREET E RIGHT-OF-WAY.

WHEREAS, RCW 35.79 and RCW 35A.47.020 grants authority to the City to establish procedures, notice requirements and fees for the vacation of streets and alleys within the City; and

WHEREAS, The City Council through adoption of Resolution #16-01 initiated the vacation of a portion of 112th Street E. that is no longer in use as a public right-of-way described on Exhibit “A” attached hereto and incorporated herein; and

WHEREAS, the City of Buckley pursuant to RCW 35.79.010 and BMC 13.25.060, passed a Resolution 16-01 setting a public hearing on the vacation for February 9, 2016; and

WHEREAS, a public hearing was held on February 9, 2016 pursuant to legal notice by the Buckley City Council heretofore and the matter of the vacation was considered; and

WHEREAS, the Buckley City Council determined that as conditioned the vacation of the right-of-way complies with all of the review criteria of BMC 13.35 and would be in the public interest; and

WHEREAS, the Buckley City Council approved the vacation on the conditions set forth below,

WHEREAS, this street vacation is being approved in order to facilitate a City realignment project for SR165/SR410/RyanRd/112thStE. The realignment project also involves a purchase and sale agreement approved by the City Council on December 8, 2015 (“Purchase and Sale Agreement”). The conditions of approval for this vacation are dependent upon the actions of the other party to the Purchase and Sale Agreement, Dantzler 410 LLC,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY,

PIERCE COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Vacation and Conditions. A portion of 112th Street E, as described in Exhibit “A”, attached hereto and incorporated by this reference, is hereby vacated upon satisfaction of the conditions identified below:

- A. Payment of \$46,893 to City of Buckley (“City”) by Dantzler 410 LLC. It is acknowledged that payment of this amount will be satisfied by the Dantzler 410 LLC payment of the full purchase price specified in the Purchase and Sale Agreement.
- B. As part of this vacation, the City retains utility easements for itself and PSE natural gas facilities within the vacation area. Dantzler 410 LLC shall grant utility easements to City and PSE for City and PSE natural gas facilities located within the entire vacation area legally described in Ex. A. Said easements shall grant full access to the City and PSE for maintenance, repair, expansion and replacement of utility facilities. It is recognized that Dantzler 410 LLC will only acquire ownership of the eastern half of the 112th Street E right of way via the transfer of property from the City to Dantzler 410 LLC pursuant to the Purchase and Sale Agreement. Dantzler 410 LLC may have to agree, as determined necessary by the Mayor, to an amendment to the Purchase and Sale agreement that would require the utility easement in order to satisfy this condition.
- C. Dantzler 410 LLC shall have the requisite ownership rights to execute all the documents required by this ordinance.

All of the conditions required by this vacation ordinance shall be completed by the execution of documents approved by the Mayor. The Mayor is authorized to approve and execute such documents without additional approval from the Council. This ordinance shall not be published or recorded until all conditions herein have been met or adequate assurance of completion has been provided as approved by the Mayor.

Section 2. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city once all conditions have been met, and shall take effect and be in full force five (5) days after publication.

Passed by the City Council on the ____ day of _____, 2016.

Mayor Pat Johnson

Attest:

Dave Schmidt, City Administrator

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

PUBLISHED: _____, 2016

EFFECTIVE: _____, 2016



City of Buckley

P.O. Box 1960 ♦ Buckley, WA 98321 ♦ (360) 829-1921 ext. 200

VACATION OF PORTIONS OF 112th ST E RIGHT-OF-WAY

To: Mayor & City Council
From: Trans/Utilities Committee & City Staff

Subject: Staff Advisory Report - Findings and Recommendations

Public Hearing/Meeting Date, Time, and Place: City of Buckley Multi-Purpose Building
811 Main Street
Buckley, WA 98321
7 PM Tuesday, 2/9/2016

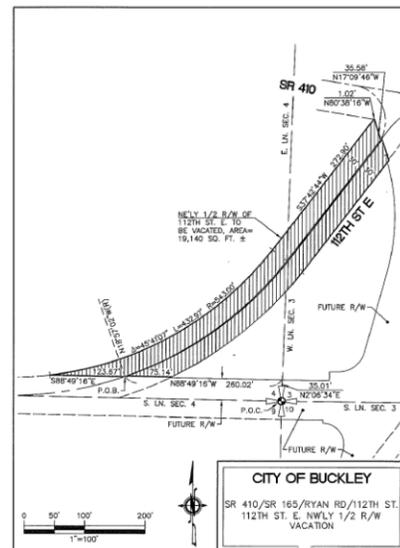
I. INTRODUCTION

A. Petitioner Information

1) **Petitioner:** City Initiated
PO Box 1960
Buckley, WA 98321

2) **Vacation Request:** The City initiated the SR165/SR410/RyanRd/112thStE Realignment Project in 2007. Phase I of the project was awarded in May, 2011 and completed in March, 2013. Phase II of the project is currently scheduled to begin sometime in the spring of 2016. The completion of Phase 1 of the project resulted in the abandonment of portions of 112th St E as depicted in the illustration. Due to the fact that this portion of the 112th St E right-of-way is no longer needed for public purposes, the City is initiating a vacation of the unused right-of-way pursuant to BMC 13.25.

3) **Site/Project Location:** Subject property consists of 35,567 square feet of public right-of-way abutting parcels #0619091028, #0619048006 and #9540150050 which is located between 112th Street E. and SR410, Buckley, WA 98321. The portions of right-of-way are areas of 112th St E that have been abandoned as part of the SR410/SR165/RyanRd/112th E Realignment Project.



4) Site Development and Zoning

- a. **Land Use:** Property to be vacated is existing abandoned public right-of-way.
- b. **Zoning:** The zoning of the property is GC commercial.
- c. **Terrain & Vegetation:** The right-of-way property is an abandoned roadway with graveled surface.
- d. **Neighboring Development and Zoning:** Property is bounded to the west by the now vacant commercial Motorcycle Shop and to the east by undeveloped City owned open space.

5) Public Hearing Notification: Notice of the public hearing and proposal description published in the January 20, 2016 legal section of The Enumclaw Courier Herald, posted on the City Bulletin Boards Wednesday, January 13, 2016 and mailed to all petitioners at the addresses on the petition and all owners of property abutting the street or alley proposed to be vacated, as shown on the records of the Pierce County assessor.

6) Review Criteria: BMC 13.25.110 provides that; a determination shall include, but not be limited to, consideration of the following criteria:

- (1) Whether a change of use or vacation of the street or alley will better serve the public;
- (2) Whether the street or alley is no longer required for public use or public access;
- (3) Whether the substitution of a new and different public way would be more useful to the public;
- (4) Whether conditions may so change in the future as to provide a greater use or need than presently exists; and
- (5) Whether objections to the proposed vacation are made by owners of private property (exclusive of petitioners) abutting the street or alley or other governmental agencies or members of the general public.

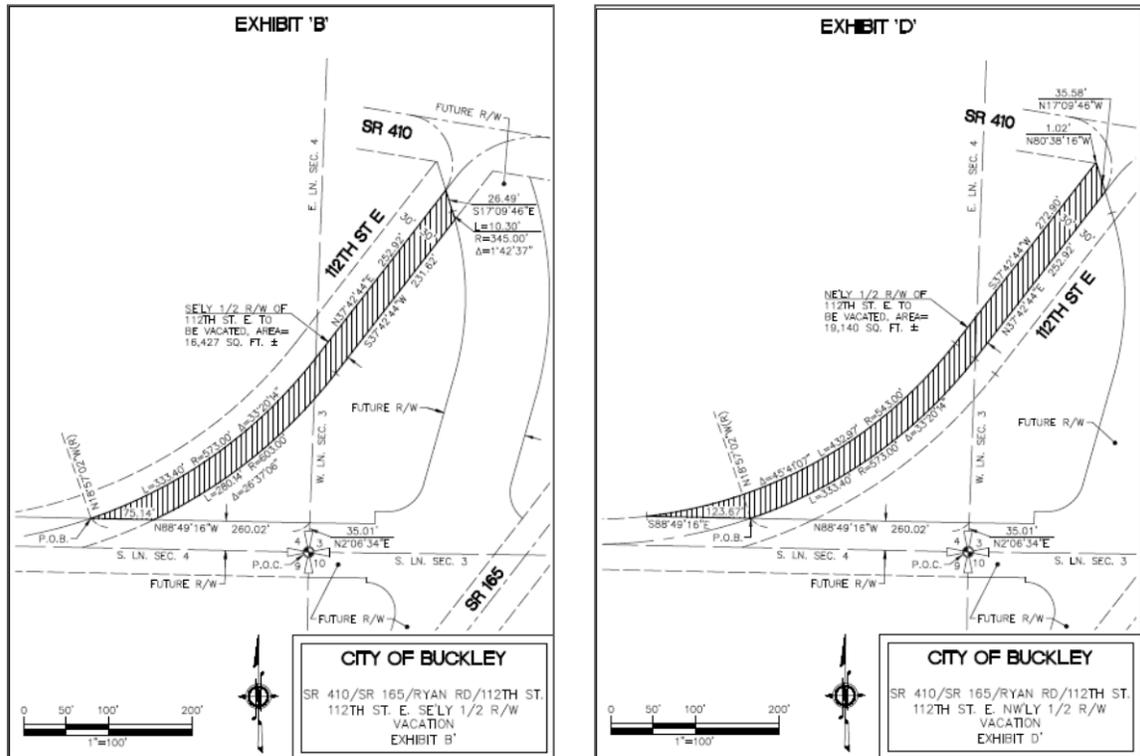
II. REVIEW CRITERIA

(1) Whether a change of use or vacation of the street or alley will better serve the public;

Facts: As indicated in #2 above, the City initiated the SR165/SR410/RyanRd/112thStE Realignment Project in 2007. Phase I of the project was awarded in May, 2011 and completed in March, 2013. Phase II of the project is currently scheduled to begin sometime in the spring of 2016. The completion of Phase 1 of the project resulted in the abandonment of portions of 112th St E as depicted in the illustration. Due to the fact that this portion of the 112th St E right-of-way is no longer needed for public purposes, the City is initiating a vacation of the unused right-of-way pursuant to BMC 13.25.

The portion of right-of-way to be vacated is abandoned as a connecting roadway and no longer provides a transportation purpose. Design and construction of the Realignment Project was intended to resolve safety concerns with the previous alignment and intersection of multiple roadways and required that the City create and dedicate public

land as new right-of-way to accommodate the new alignment. Future street plans adopted by the City Council in 2010 which illustrates that there are no planned improvements for this right-of-way section.



The attached survey map illustrates the “existing” alignment and configuration of the area to be vacated.

In accordance with BMC 13.25.140 and 13.25.150 the City has had a formal appraisal conducted of the area and submitted it for record. The appraisal was conducted based on a scope of work designed by the City that included determining the market value of the right-of-way area to be vacated and the parcels owned by the City identified for purchase through the negotiation. The City sought values for the following;

1. Value of the property(s) as is in their current undeveloped state; and
2. Value of the property with the assumption that all of the wetland mitigation issues have been dealt with and the buyer can now utilize the property with this condition solved. (City has already completed wetland mitigation for that portion of Wetland H located on PC Parcel #0619091028)

The appraisal arrived at a value of \$2.45/SF which was the upper portion of the value range. For purposes of valuation and vacation the right-of-way has been divided into two separate tracts and a completed survey identifies that the west 30’ of right-of-way from centerline consists of an area 19,140 SF in size with a value of \$46,893. The east 30’ of right-of-way consists of an area 16,427 SF in size with a value of \$40,246.

BMC 13.25.140 provides that;

(1) Where a vacation for a dedicated street or alley which does not abut a body of fresh or salt water has been initiated by petition, the owners of the property abutting the area to be vacated shall pay to the city, prior to the passage of the ordinance vacating the area, the full cost of any physical closures and/or road repairs required by the director of public works and (a) one-half of the fair market value of the area to be vacated; or (b) if area was acquired at public expense or has been part of a dedicated public right-of-way for 25 years or more, the full fair market value of the area to be vacated.

The right-of-way proposed to be vacated as indicated above has been divided into two separate tracts. The west 30' of right-of-way from centerline, valued at \$46,893, abuts Pierce County Tax Parcel's #0619048006 and #9540150050, which are both owned by Dantzler 410 LLC. The east 30' of right-of-way, valued at \$40,246, abuts Pierce County Tax Parcel #0619091028 and owned by the City of Buckley.

On December 8, 2015 the City Council approved an Agreement with Dantzler 410 LLC for the purchase of the property outlined in the appraisal, which included the 30' of right-of-way abutting the adjoining parcel. The Purchase and Sale Agreement included terms and conditions related to the approval and transfer of the west 30' of right-of-way to be vacated and guaranteed payment for full market value for the 19,140 SF area. In addition to terms and conditions related to the purchase of the right-of-way to be vacated the buyer also agreed to pay all application fees for the street vacation. Approval and execution of the contract by the City Council that ensures payment for full market value of the area to be vacated should satisfy the intent of BMC 13.25.140.

The abandoned right-of-way proposed to be vacated lies in between undeveloped City property to the east and minimally developed commercial property to the west. Vacation of the area would result in additional land area be added to these areas expanding the potential for commercial development, which the Comprehensive Plan indicates is a strategy for economic development.

Findings: As illustrated in the survey map and discussed above the portion of right-of-way to be vacated is abandoned as a connecting roadway and no longer provides a transportation purpose. Design and construction of the Realignment Project was intended to resolve safety concerns with the previous alignment and intersection of multiple roadways and required that the City create and dedicate public land as new right-of-way to accommodate the new alignment. Future street plans adopted by the City Council in 2010 illustrates that there are no planned improvements for this right-of-way section.

In addition the vacation and proposed consolidation of the area to be vacated into the existing Pierce County Tax Parcel's #0619048006 and #9540150050 provides an opportunity to expand and develop this property into a commercial gateway to the City that supports the economic development goals for the community as identified in the Comprehensive Plan. Therefore staff finds that the vacation would serve the public interest.

(2) Whether the street or alley is no longer required for public use or public access;

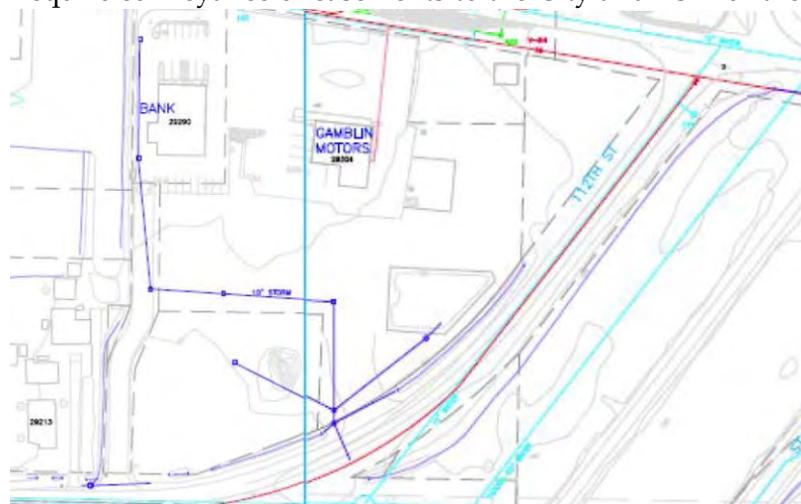
Facts: As illustrated in the survey map and discussed above the portion of right-of-way to be vacated is abandoned as a connecting roadway and no longer provides a transportation purpose. Design and construction of the Realignment Project was intended to resolve safety concerns with the previous alignment and intersection of multiple roadways and required that the City create and dedicate public land as new right-of-way to accommodate the new alignment. Future street plans adopted by the City Council in 2010 illustrates that there are no planned improvements for this right-of-way section.

The right-of-way to be vacated currently contains public utilities consisting of a 12" water distribution main and stormwater drainage facilities. In addition the area contains a PSE owned natural gas pipeline. PSE owns and operates the natural gas pipeline under a Franchise Agreement with the City that was adopted in 2014. The Agreement provides terms related to the vacation of right-of-way and states;

5.5. Vacation of Right-of-way: *If the City considers vacating any portion of the Right-of-way in or on which any PSE Facilities are located, the City shall give PSE advance written notice of the same to allow PSE the opportunity to review and comment on the proposed vacation. Thereafter, unless otherwise requested by PSE, the City shall reserve and grant an easement to PSE in its vacation ordinance adequate for the operation, repair, maintenance and replacement of the Facilities based on the input received from PSE; provided that the City shall not be required to reserve an easement if the vacation is done as part of a Public Improvement Project and the Facilities are to be relocated under Section 5.4.1. Further, the City shall not be required to reserve an easement if the planned vacation is conditioned upon a vacation petitioner's payment to PSE of the cost of relocating the existing Facilities to another area of the Right-of-way or to private easement, including necessary service reconnections caused by the relocation.*

Therefore prior to approving the vacation, consideration must be given to including provisions to retain and/or require conveyance of easements to the City and PSE for the construction, repair and maintenance of existing and future utilities and services.

Findings: As discussed in #1 above the portion of right-of-way to be vacated is abandoned as a connecting roadway and no longer provides a transportation purpose. Design and construction of the Realignment



Project was intended to resolve safety concerns with the previous alignment and intersection of multiple roadways and required that the City create and dedicate public land as new right-of-way to accommodate the new alignment. Future street plans adopted by the City Council in 2010 illustrates that there are no planned improvements for this right-of-way section.

However, the right-of-way to be vacated contains public utilities so any approval should be subject to a condition that requires that utility easements are conveyed to the City and PSE for the construction, repair and maintenance of existing and future utilities and services.

Therefore staff finds that subject to a condition that requires that utility easements are conveyed to the City and PSE for the construction, repair and maintenance of existing and future utilities the area would no longer serve transportation benefit to the City and would no longer be needed for public use and access.

(3) Whether the substitution of a new and different public way would be more useful to the public;

Facts: As indicated #1 above, the portion of right-of-way to be vacated is abandoned as a connecting roadway and no longer provides a transportation purpose. Design and construction of the Realignment Project was intended to resolve safety concerns with the previous alignment and intersection of multiple roadways and required that the City create and dedicate public land as new right-of-way to accommodate the new alignment. As such the creation and dedication of new right-of-way for the Realignment Project may be construed as substitution of a new and different public way that is more useful to the public as a result of addressing safety concerns with the previous roadway configuration.

Findings: Staff finds that the creation and dedication of new right-of-way for the Realignment Project may be construed as substitution of a new and different public way and due to the elimination of safety concerns with the previous roadway configuration is more useful to the public.

(4) Whether conditions may so change in the future as to provide a greater use or need than presently exists; and

Facts: As discussed in the previous review criteria above adopted Future Street plans illustrate that there are no planned improvements for this right-of-way section. In addition a review of the City 20 year Transportation Capital Improvement Plan reveals no projects for this right-of-way.

Also the abandoned right-of-way proposed to be vacated lies in between undeveloped City property to the east and minimally developed commercial property to the west. Vacation of the area would result in additional land area be added to these areas expanding the potential for commercial development, which the Comprehensive Plan indicates is a strategy for economic development. Expanding this right-of-way into existing undeveloped commercial property satisfies the City's long term land use

planning strategy for the area and leads to future commercial development that benefits the community as whole. As such the incorporation and conversion of this area into commercially zoned land can be construed as being the greater use than presently exists.

Findings: Review of adopted City transportation planning documents reveal that the City has no plans for expanded improvements in the subject area.

Vacation of the area would result in additional land area be added to these areas expanding the potential for commercial development, which the Comprehensive Plan indicates is a strategy for economic development. Expanding this right-of-way into existing undeveloped commercial property satisfies the City's long term land use planning strategy for the area and leads to future commercial development that benefits the community as whole. Therefore staff finds that there are no future conditions that should occur that generate a greater use or need than presently exists.

(5) Whether objections to the proposed vacation are made by owners of private property (exclusive of petitioners) abutting the street or alley or other governmental agencies or members of the general public.

Facts: Pursuant to BMC 13.25.080 the City conducted a public hearing on the proposed vacation on February 9, 2016. The Notice of Public Hearing was; (1) published once in the city's official newspaper, (2) posted at official posting locations in the City, and (3) mailed to all owners of property abutting the street or alley proposed to be vacated, as shown on the records of the Pierce County assessor, and (4) mailed to all organizations that have known utilities in the vacation area.

To date, staff has received no objections to the vacation and there were no oral or written comments given at the public hearing.. However, as indicated in #2 above the right-of-way to be vacated currently contains public utilities consisting of a 12" water distribution main and stormwater drainage facilities. In addition the area contains a PSE owned natural gas pipeline. PSE owns and operates the natural gas pipeline under a Franchise Agreement with the City that was adopted in 2014. Therefore prior to approving the vacation, consideration must be given to including provisions to retain and/or require conveyance of easements to the City and PSE for the construction, repair and maintenance of existing and future utilities and services.

Findings: Therefore staff finds that subject to a condition that requires that utility easements are conveyed to the City and PSE for the construction, repair and maintenance of existing and future utilities, the proposal meets the review criteria of #5.

13.25.140 Compensation for vacation.

(1) Where a vacation for a dedicated street or alley which does not abut a body of fresh or salt water has been initiated by petition, the owners of the property abutting the area to be vacated shall pay to the city, prior to the passage of the ordinance vacating the area, the full cost of any physical closures and/or road repairs required by the director of public works and (a) one-half of the fair market value of the area to be vacated; or (b) if area was acquired at public expense or has been part of a dedicated

public right-of-way for 25 years or more, the full fair market value of the area to be vacated.

Facts: As indicated in #1 above On December 8, 2015 the City Council approved an Agreement with Dantzer 410 LLC for the purchase of the property outlined in the appraisal, which included the 30' of right-of-way abutting the adjoining parcel. The Purchase and Sale Agreement included terms and conditions related to the approval and transfer of the west 30' of right-of-way to be vacated and guaranteed payment for full market value for the 19,140 SF area. In addition to terms and conditions related to the purchase of the right-of-way to be vacated the buyer also agreed to pay all application fees for the street vacation. Approval and execution of the contract by the City Council that ensures payment for full market value of the area to be vacated should satisfy the intent of BMC 13.25.140.

Findings: Staff finds that approval and execution of the contract by the City Council that ensures payment for full market value of the area to be vacated satisfies the intent of BMC 13.25.140.

Conclusion & Recommendation: City staff finds that as conditioned the vacation of the 35,567 square feet of public right-of-way abutting parcels #0619091028, #0619048006 and #9540150050 meets the review criteria of BMC 13.25.110 and recommends that the City Council approve the vacation based on the following;

1. Dantzer 410 LLC shall be required to convey utility easements to the City and PSE for the construction, repair and maintenance of existing and future utilities. This easement shall be recorded with Pierce County; and
2. Dantzer 410 LLC shall be required to record all deeds and transfers with Pierce County and be responsible for any and all filing fees and costs

Signed _____
Dave Schmidt, City Administrator

Date _____

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is by and between the City of Buckley (“Seller”), a Washington municipal corporation (when acting in its capacity as seller, Dantzler 410 LLC, (“Buyer”). The City of Buckley shall be referred to as “Seller” and when acting in its governmental capacity, the City of Buckley shall be referred to as the “City”).

In consideration of the mutual covenants, conditions and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. **Property to be Purchased.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the real property, together with any improvements thereon, legally described in Exhibit A attached hereto and incorporated hereon (the “Property”).

2. **Purchase Price.** The purchase price for the Property is **\$165,000** (the “Purchase Price”). The Purchase Price shall be payable in cash or other guaranteed funds at Closing (as defined below).

3. **Lot Line Adjustment and Street Vacation Contingency.** The property legally described in Exhibit A will be the result of a lot line adjustment and a street vacation that is yet to be approved by the City. The necessary lot line adjustment and street vacation are depicted in Exhibit B. The Closing of the sale of the Property hereunder is contingent upon the City’s approval of the lot line adjustment and street vacation depicted in Exhibit B. Should either action not receive approval, this agreement shall be terminated without liability to either party. Buyer shall pay all application fees for the street vacation and lot line adjustment. Seller shall prepare all necessary application materials.

4. **Title to Property.**

4.1 **Conveyance.** On the Closing Date, Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged standard form Statutory Warranty Deed (the “Deed”), subject only to (i) printed general exceptions appearing in the title policy form; and (ii) the Permitted Exceptions Buyer approves pursuant to Section 4.2 below.

4.2 **Permitted Exceptions.** At least 30 days prior to closing, the City shall procure a preliminary commitment for an owner’s ALTA standard coverage policy of title insurance in the amount of the Purchase Price issued and accompanied by copies of all documents referred to in the commitment (the “Preliminary Commitment”). The Title Company shall provide Seller a copy of any supplements and updates thereto at the same time as such information is provided to Buyer. Buyer shall notify Seller of any objectionable matters in the Preliminary Commitment and the Supplemental Report #1 within seven (7) days of the date of the parties’ mutual execution of this Agreement (the “Disapproved Exceptions”), and within seven (7) days of any additional supplemental reports issued by the Title Company. Exceptions to title appearing on the Preliminary Commitment and any supplemental commitment, other than

Disapproved Exceptions, shall be deemed to be “Permitted Exceptions.” Seller shall have seven (7) days after receipt of Buyer’s Disapproved Exceptions to give Buyer written notice: (i) that Seller will remove the Disapproved Exceptions from title on or before the Closing; or (ii) the Seller elects not to remove some or all of the Disapproved Exceptions. If Seller gives Buyer notice under clause (ii), Buyer shall have seven (7) days to elect to proceed with the purchase and take the Property subject to such exceptions (which exceptions shall then constitute Permitted Exceptions), or to terminate this Agreement, in which case neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement. If Buyer shall fail to give Seller written notice of its election within said seven (7) days, Buyer shall be deemed to have elected to treat the exceptions as Permitted Exceptions. Notwithstanding the foregoing, Buyer acknowledges that (i) the standard printed exceptions set forth in the Preliminary Commitment shall be Permitted Exceptions, and (ii) that Seller shall be required to remove any Disapproved Exceptions which solely constitute monetary encumbrances.

4.3 **Title Policy.** Seller shall, at its sole expense, cause Title Company to issue to Buyer at Closing an ALTA standard coverage owner’s policy of title insurance insuring Buyer’s title to the Property in the full amount of the Purchase Price, subject only to the Permitted Exceptions and the standard preprinted exceptions contained in the Title Company’s title policy form (the “Title Policy”). If Buyer elects to obtain an extended coverage title policy, Buyer shall be solely responsible for the premium due for the difference between standard and extended coverage.

5. **Closing.**

5.1 **Closing Date.** This purchase and sale will be closed at the Buckley City Hall, 933 Main Street, Buckley, Washington, with Geiersbach & Kraft acting as escrow agent. The closing (“Closing”) will occur on or before June 1, 2016 (the “Closing Date”). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer (which date shall then become the “Closing Date”), the escrow agent shall immediately terminate the escrow and return all documents to the party that deposited them. Should approval of the street vacation and boundary line adjustment occur less than 60 days from closing, the closing date shall be extended to be 60 days from the last approval of the boundary line adjustment or street vacation in order to give the City sufficient time to procure a title report and title insurance and for the parties to addresses any objections to the report. If the closing date is extended by a total of more than 180 days, either party may terminate this agreement with no reimbursement of costs to either party.

5.2 **Seller’s Escrow Deposits.** On or before the Closing Date, Seller shall deposit into escrow the following:

5.2.1 the duly executed and acknowledged Deed;

5.2.2 a duly executed and completed Real Estate Excise Tax Affidavit;

5.2.3 a duly executed non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended;

5.2.4 all documents and/or funds required to remove all monetary liens, encumbrances or assessments and to pay Seller's share of closing costs and title insurance premium; and

5.2.5 a certificate restating and reaffirming Seller's representations and warranties pursuant to this Agreement and confirming compliance with each of the conditions precedent and covenants herein, in the form of Exhibit C attached hereto.

5.2.6 Approved recording documents to finalize the lot line adjustment and street vacation identified in Section 3.

5.3 **Buyer's Escrow Deposits.** On or before the Closing Date, Buyer shall deposit into escrow the following:

5.3.1 cash in an amount sufficient to pay the Purchase Price;

5.3.2 a duly executed and completed Real Estate Excise Tax Affidavit;
and

5.3.3 a certificate restating and reaffirming Buyer's representations and warranties pursuant to this Agreement and confirming compliance with each of the conditions precedent and covenants herein, in the form of Exhibit D attached hereto.

5.4 **Additional Instruments and Documents.** Seller and Buyer shall each deposit into escrow any other instruments and documents that are reasonably required by the escrow agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

5.5 **Real Property Prorations.** All revenues and expenses of the Property, including but not limited to, real property taxes, special assessments, rents, water, sewer and utility charges, and other expenses normal to the ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the Closing Date. Seller and Buyer hereby agree that if any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated within thirty (30) days after the Closing Date and either party owing the other party a sum of money based on subsequent prorations(s) shall promptly pay said sum to the other party. If payment is not made within ten (10) days after delivery of a bill therefore, the owing party shall pay interest on such amounts at the rate of eight percent (8%) per annum from the Closing Date to the date of payment.

5.6 **Closing Costs.**

5.6.1 **Seller's Costs.** At Closing, Seller shall pay (a) the premium for the title policy; (b) the real estate excise taxes applicable to the sale, if any; (c) one-half (1/2) of Title Company's escrow fee; and (d) one-half of the cost of recording the Deed.

5.6.2 **Buyer's Costs.** At Closing, Buyer shall pay (a) the cost of recording the Deed; (b) one-half (1/2) of the Title Company's escrow fee; and (c) the premiums for any title policy endorsements or extended coverage requested by Buyer.

5.7 **Possession.** Buyer shall be entitled to possession upon Closing.

5.8 **Conditions Precedent to Buyer's Obligations.** Buyer's obligation to close the purchase of the Property in accordance with the terms of this Agreement is expressly conditioned on, and subject to satisfaction of the following conditions precedent, which are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied, Buyer shall have the right, at its sole election, either to waive the condition in question and proceed with the purchase or in the alternative, to pursue any of the remedies set forth in Section 8.1 of this Agreement; PROVIDED that if the street vacation and lot line adjustment identified in Section are both not approved, the Buyer's sole remedy shall be termination of the agreement without liability to the Seller.

5.8.1 **Lot Line Adjustment.** The Lot Line Adjustment and Street Vacation specified in Section 3 have been approved.

5.8.2 **Performance by Seller.** Seller shall have timely performed all obligations required by this Agreement to be performed by it.

5.8.3 **Representations and Warranties.** All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date, and Seller shall have complied with all of Seller's covenants and agreements contained in or made pursuant to this Agreement.

5.9 **Conditions Precedent to Seller's Obligations.** Seller's obligation to sell the Property at Closing under this Agreement is expressly conditioned on, and subject to satisfaction of the following conditions precedent, which are intended solely for the benefit of Seller. If any of the foregoing conditions are not satisfied, Seller shall have the right, at its sole election, to the remedy set forth in Section 8.2 of this Agreement.

5.9.1 **Performance by Buyer.** Buyer shall have timely performed all obligations required by this Agreement to be performed by it.

6. **Representations and Warranties.**

6.1 **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that the following facts are true as of the parties' mutual execution of this Agreement and as of the Closing Date:

6.1.1 **No Litigation.** Except as disclosed in writing by Seller to Buyer, there is no pending or threatened litigation or administrative action with respect to the Property or to the Seller's interest in the Property.

6.1.2 **Authority of Seller.** This Agreement is a valid and binding obligation of the Seller, enforceable against Seller in accordance with its terms. Except for the

City's approval of the Lot Line Adjustment and Street Vacation as described in Section 3 of this Agreement, no authorizations or approvals, whether of organizational bodies, governmental bodies, or otherwise, will be necessary in order for Seller to enter into this Agreement and to perform its obligations as set forth herein. The consummation of the transactions contemplated hereunder will not conflict with or result in the breach of any law, regulation, writ, injunction or decree of any court or governmental instrumentality applicable to Seller or to the Property.

6.1.3 **Non-foreign Status/At-Source Withholding.** Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1954, as amended. Seller shall deliver to Buyer at Closing a Certificate of Non-foreign Status setting forth Seller's address and United States taxpayer identification number and certifying that it is not a foreign person as so defined.

6.1.4 **Other Agreements.** Except as contemplated by the Lot Line Adjustment and Street Vacation described in Section 3 of this Agreement, there are no other contracts or agreements in force or effect for the sale of, or a right of first refusal or option for, all or any portion of the Property, and Seller agrees: (a) not to enter into any such contracts or agreements between the date hereof and Closing and (b) to use its best efforts to terminate any such contracts that come to its attention between the date hereof and Closing. There are no contracts or other agreements affecting the Property that will not be terminated at or prior to Closing.

6.1.5 **Encumbrances.** Seller's execution, delivery and fulfillment of its obligations under this Agreement shall not result in any default or violation of any agreement by which Seller is bound or which will result in any lien, charge or encumbrance on the Property.

6.1.6 **Exiting Leases.** There are no existing leases on the Property.

6.1.7 **Environmental.** Seller has not generated, stored, released or disposed of any substance or material on the Property, the generation, storage or disposal of which is regulated under the Comprehensive Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Model Toxics Control Act (Chapter 70.105D RCW), or any comparable law, regulation, ordinance or order of any governmental body, except in compliance with such laws, regulations, ordinance or orders. Seller has obtained (and is in compliance with) all permits, licenses and other authorizations that are required under all federal, state and local environmental requirements customarily known to and followed by owners and operators of land similar to the Property and located in the area in which the Property is located, including any such laws, regulations or ordinances relating to emissions, discharges, releases or threatened releases of materials into the environment or otherwise relating to the use, treatment, storage, disposal, transport or handling of such materials. Neither Seller, nor to the best of Seller's knowledge, any prior owner, occupant or user of the Property has received any notice or other communications concerning any alleged violation of any environmental requirements. To the best of Seller's knowledge, there is not constructed, placed, deposited, stored, disposed of or located on the Property (i) any PCBs or transformers, capacitors, ballasts or other equipment which contains dielectric fluid containing PCBs; or (ii) any underground storage tanks. Any breach of this warranty prior to the Closing Date shall entitle the Buyer to terminate this Agreement. Upon such termination, the escrow will be terminated, all documents and other

funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement.

6.1.8 **Completeness of Statements.** To the best of Seller's knowledge, no representation or warranty by Seller in this Agreement or in any written material furnished by Seller to Buyer pursuant to or in connection with this Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary to make any statement herein or therein not misleading.

6.2 **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that the following facts are true as of the date of the parties' mutual execution of this Agreement and as of the Closing Date:

6.2.1 **Pending Actions.** To Buyer's knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, or proceeding pending against Buyer, which if adversely determined, could materially interfere with Buyer's consummation of the transactions contemplated by this Agreement.

6.2.2 **Authority of Seller.** This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. Except for the approval of Seller's City Council expressly authorizing Seller's sale of the Property and City approval of the lot line adjustment and street vacation identified in Section 3, no authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order for Seller to enter into this Agreement and to perform its obligations as set forth herein. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereunder will conflict with or result in the breach of any law, regulation, writ, injunction or decree of any court or governmental instrumentality applicable to Seller or to the Property.

7. **Maintenance of Property Pending Closing.** At all times before the Closing (except as is necessary for Seller to effect the Lot Line Adjustment), Seller shall manage and operate the Property in a manner consistent with Seller's past practices. Seller agrees: (a) to maintain all usual and necessary business records pertaining to the Property, consistent with Seller's past practices; (b) to maintain the Property in its current condition and state of repair (normal wear and tear and casualty loss excepted); and (c) to maintain its existing property and casualty insurance on the Property.

8. **Default.**

8.1 **By Seller.** In the event of any default or breach of this Agreement or any of the representations, warranties, terms, covenants, condition or provision hereof, by Seller, without legal excuse, Buyer shall have the right to (a) demand and have specific performance of this Agreement, or (b) terminate this Agreement upon written notice and demand reimbursement for all costs incurred in the preparation and execution of this Agreement.

8.2 **By Buyer.** In the event the sale and purchase of the Property fails to close because of any default of Buyer, without legal excuse, Seller shall have the right, as its sole and exclusive remedy, to (a) demand and have specific performance of this Agreement, or (b)

terminate this Agreement upon written notice and demand reimbursement for all costs incurred in the preparation and execution of this Agreement.

9. **Miscellaneous.**

9.1 **Notices.** Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by first class, certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller: The City of Buckley
933 Main St.
P.O. Box 1960
Buckley, WA 98321
Attn: Dave Schmidt

Buyer: Tom Dantzler
Dantzler 410 LLC
3321 204th Ave. Ct. E.
Lake Tapps, WA.
98391

With a copy to:

City Attorney: Phil A. Olbrechts, City Attorney
18833 NE 74th St
Granite Falls, WA 98252

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one (1) business day after deposit with the courier service, and if mailed, two (2) business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as transmission is verified; provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

9.2 **Authority.** The parties each represent and warrant that the persons signing below have the requisite authority to bind them.

9.3 **Brokers and Finders.** Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If any other broker or finder perfects a claim for a commission or finder's fee based on any other contract, dealings or communication, the party through whom the broker or finder

makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim.

9.4 **Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

9.5 **No Prior Purchase Rights.** Seller represents to Buyer that no person or entity, other than Buyer, has a contract or option to purchase the Property, or a right of first offer or similar purchase rights with respect to the Property.

9.6 **Governing Law; Venue.** This Agreement will be governed by and construed exclusively in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be in Pierce County Superior Court.

9.7 **Entire Agreement.** This Agreement and the exhibit hereto constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

9.8 **Attorneys' Fees.** In the event either party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other party and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not a jury.

9.9 **Time of the Essence.** Time is of the essence of this Agreement.

9.10 **Waiver.** Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

9.11 **Negotiation and Construction.** This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

9.12 **Tax Effect.** No party has made or is making any representations to the other concerning any of the tax effects of the transactions provided for in this Agreement. No party shall be liable for or in any way responsible to any other party because of any tax effect resulting from the transactions provided for in this Agreement.

9.13 **Representation.** It is agreed and acknowledged that the firm of Olbrechts and Associates PLLC represented only the Seller in the drafting of this Agreement, and Buyer acknowledges that it is entitled to seek separate legal counsel regarding this Agreement.

9.14 **Survival.** Sections 5.5, 9.1, 9.3, 9.6, 9.8, 9.13 and 9.14 shall survive the Closing of this Agreement.

9.15 **Counterparts.** This Agreement may be executed in a number of counterparts. Each of the counterparts will be deemed an original for all purposes and all counterparts will collectively constitute one Agreement.

This Agreement is effective as of the latest date set forth beneath the parties' signatures below.

BUYER:

By: _____

Date: _____

Its: _____

SELLER:

CITY OF BUCKLEY

Pat Johnson, Mayor

Date: _____

ATTEST AND AUTHENTICATED:

Joanne Starr, City Clerk

Date: _____

APPROVED AS TO FORM:

Phil A. Olbrechts, City Attorney

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 2015, before me personally appeared Tom Dantzler, to me known to be the _____ of _____, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized by said entity to execute said instrument.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2016.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ____ day of _____, 2015, before me personally appeared Pat Johnson, to me known to be the Mayor of the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2016.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____

EXHIBIT B
LOT LINE ADJUSTMENT AND STREET VACATION

112th Street East
Southeasterly R/W Vacation

THAT PORTION of the 112th Street East Right of Way lying within Sections 3 and 4, Township 19 North, Range 6 East, Willamette Meridian, described as follows:
 COMMENCING at the monument common to Sections 3, 4, 9, and 10 of said Township 19 North, Range 6 East;

THENCE North 02°06'34" East a distance of 35.01 feet along the East line of said Section 4 to a line parallel with and 35.00 feet Northerly, measured at right angles from the South line of said Section 4;
 THENCE North 88°49'16" West a distance of 260.02 feet along said parallel line to its intersection with the centerline of said 112th Street East Right of Way and the POINT OF BEGINNING, said point being the beginning of a 573.00 foot radius non-tangent curve to the left, the center of which bears North 18°57'02" West;

THENCE Northeasterly along the arc of said curve and said centerline a distance of 333.40 feet, through a central angle of 33°20'14";
 THENCE North 37°42'44" East a distance of 252.92 feet along said centerline;
 THENCE South 17°09'46" East a distance of 26.49 feet to the beginning of a 345.00 foot radius curve to the right;
 THENCE Southeasterly along the arc of said curve a distance of 10.30 feet, through a central angle of 01°42'37" to the Southeasterly Right of Way line of said 112th Street East;
 THENCE South 37°42'44" West a distance of 231.62 feet along said Southeasterly Right of Way line to the beginning of a 603.00 foot radius curve to the right;
 THENCE Southwesterly along the arc of said curve and said Southeasterly Right of Way line a distance of 280.14 feet, through a central angle of 26°37'06" to the aforesaid line that is parallel with and 35.00 feet Northerly, measured at right angles from the South line of said Section 4;
 THENCE North 88°49'16" West a distance of 75.14 feet along said parallel line to the POINT OF BEGINNING.

Contains: 16,427 Square Feet, more or less.

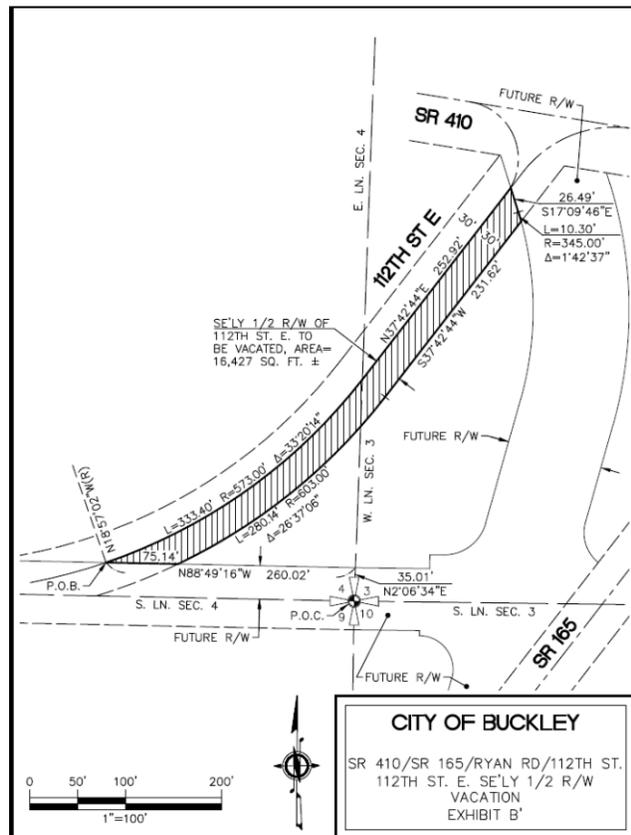


EXHIBIT C

SELLER'S CLOSING CERTIFICATE

In accordance with the terms of the Real Estate Purchase and Sale Agreement (the "Agreement") dated the __ day of _____, 2015 (the "Agreement"), by and between the City of Buckley, a Washington municipal corporation ("Seller") and Dantzler 410 LLC, ("Buyer"), Seller hereby certifies to Buyer that the representations and warranties of Seller contained in the Agreement are true and complete in all material respects as of the Closing Date as if made on and as of that date.

Seller further certifies that it has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by Seller on or prior to the Closing Date.

Capitalized terms herein not otherwise defined shall have the same meaning as in the Agreement.

This Certification is made effective as of the __ day of _____, 2016.

SELLER:

By: _____
Its: _____

EXHIBIT D

BUYER'S CLOSING CERTIFICATE

In accordance with the terms of the Real Estate Purchase and Sale Agreement (the "Agreement") dated the __ day of _____, 2015 (the "Agreement"), by and between the City of Buckley, a Washington municipal corporation ("Seller") and Dantzler 410 LLC, ("Buyer"), Buyer hereby certifies to Seller that the representations and warranties of Buyer contained in the Agreement are true and complete in all material respects as of the Closing Date as if made on and as of that date.

Buyer further certifies that it has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by Buyer on or prior to the Closing Date.

Capitalized terms herein not otherwise defined shall have the same meaning as in the Agreement.

This Certification is made effective as of the __ day of _____, 2016.

BUYER:

By:
Its: _____



**NOTICE OF PUBLIC HEARING
REGARDING THE VACATION OF PORTIONS OF 112th ST E RIGHT-OF-WAY**

NOTICE IS HEREBY GIVEN that the Buckley City Council has scheduled a Public Hearing for **Tuesday, February 9, 2016**, at 7:00 PM, at the Buckley Multipurpose Building, at 811 Main, Buckley. The purpose of the Public Hearing is to solicit public input and comment on the City's proposed vacation of 35,567 square feet of public right-of-way abutting parcels #0619091028, #0619048006 and #9540150050 located between 112th Street E. and SR410, Buckley, WA 98321. The portions of right-of-way are areas of 112th St E that have been abandoned as part of the SR410/SR165/RyanRd/112th E Realignment Project.

Each person wishing to speak at this Public Hearing will take the podium, clearly state their name and full address for the record, and will be allowed three (3) minutes in which to voice their comments and/or concerns on the matter at hand. Speakers are asked to avoid repetitious or irrelevant comments, and personal attacks will not be tolerated. Questions will not be taken at this time. If you have questions, please contact the City as indicated below, in advance of the Public Hearing.

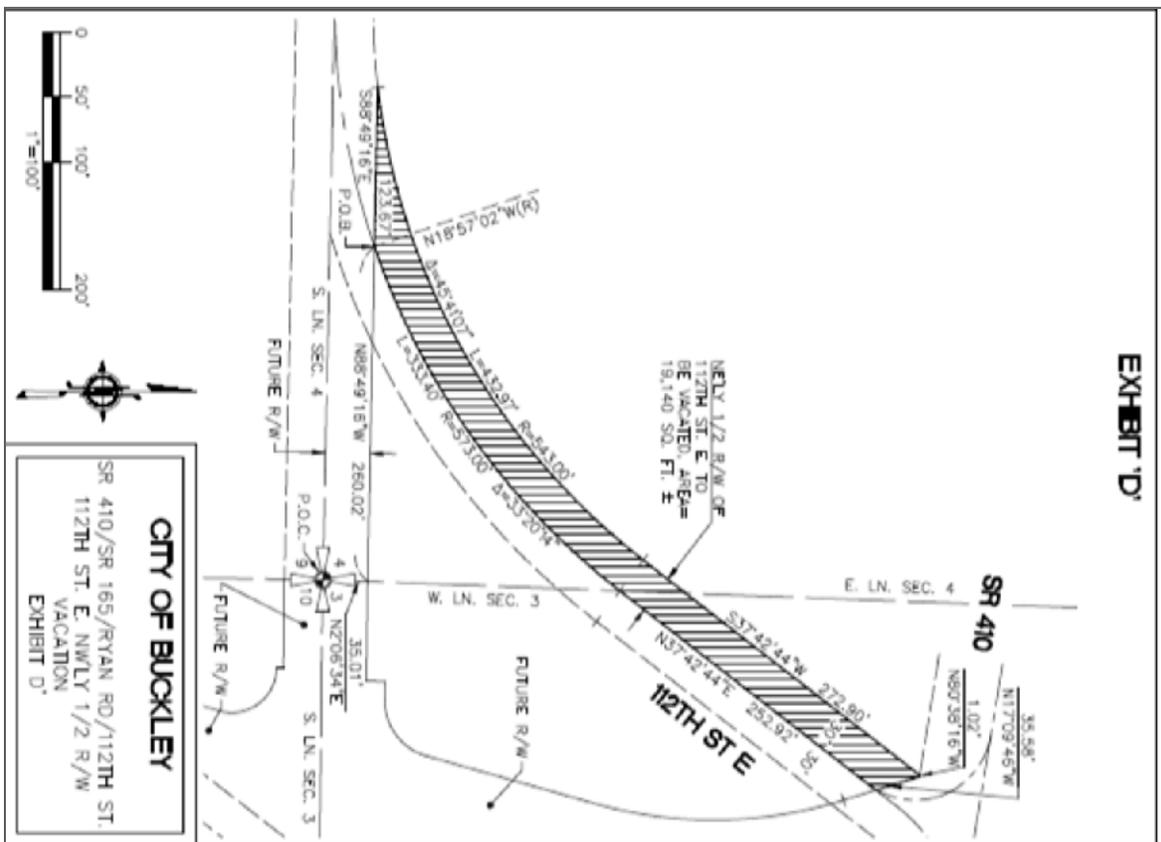
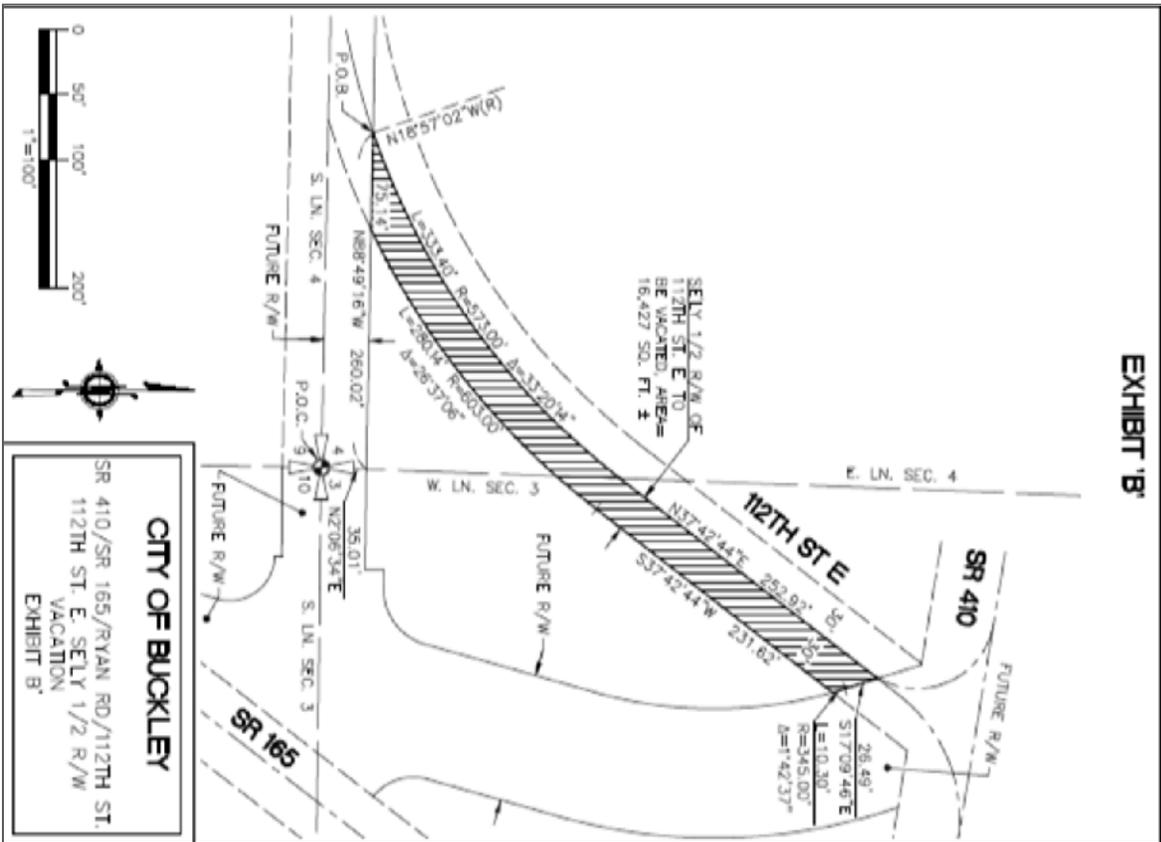
Buckley does not discriminate on the basis of disabilities. If you need special accommodation, please contact City Hall within three business days prior to the Public Hearing on (360) 761-7801.

Comments may be presented orally at the Public Hearing or may be submitted in writing to the City of Buckley, P. O. Box 1960, Buckley, WA 98321, or by e-mail to: city@cityofbuckley.com, prior to 5:00 PM on Monday, February 8, 2016. Questions may be answered by contacting City staff at (360) 761-7801.

Dated this 13th day of January, 2016.

Published: January 20, 2016

Posted: January 13, 2016



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: MOU - Mt Rainier Expansion Area Funding Request	Agenda Date: March 8, 2016		AB16-035
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	Other –		
Attachments: MOU			
<p>SUMMARY STATEMENT: Memorandum of Understanding between multiple stakeholders for development of the Carbon River Corridor and Mt. Rainier National Park Boundary Expansion Area. The MOU requests federal funding for:</p> <ol style="list-style-type: none"> 1. Planning the development of the Boundary Expansion Area, 2. An increase to base operating budget to manage the new components of the Boundary Expansion Area (e.g. new staff for education meadows), and 3. A timeline for implementing the development plan. 			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: Move to Authorize the Mayor to sign the MOU Funding Request for the Mt Rainier Expansion Area.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

**MEMORANDUM OF UNDERSTANDING
REQUESTING FEDERAL FUNDING FOR THE
MT. RAINIER NATIONAL PARK BOUNDARY EXPANSION AREA**

This Memorandum of Understanding Requesting Federal Funding for the Mt. Rainier National Park Boundary Expansion Area (“MOU”) is made and entered into by and between the agencies, organizations, and companies listed below, acting through the named officials on the signature page of this MOU. This MOU is dated for reference purposes only as _____, 2016.

Backcountry Horsemen – Pierce County Chapter
Town of Carbonado
Blacktail Ridge HOA
City of Buckley
Foothills Historical Society
Foothills Trail Coalition
Forterra
Friends of the Carbon Canyon
Hancock Natural Resources Group
Manke Lumber Company
Muckleshoot Tribe
Pacific Northwest Four-Wheel Drive Association
Pierce County
Pierce County Evergreen Council
Plum Creek Timber Company
Puyallup River Watershed Council
Puyallup Tribe
Tahoma Audubon
Tahoma Mountaineers
Town of South Prairie
Washington State Department of Archeology and Historical Preservation
Washington State Department of Transportation
White River School District
Town of Wilkeson
Wilkeson Historical Society

WHEREAS, the Carbon River Corridor (“Corridor”), following the river upstream from the historic communities of Wilkeson and Carbonado to Mt. Rainier National Park (“MRNP”), has some of the greatest concentrations of natural resources and culturally-significant heritage sites in the Puget Sound region. The Corridor, long used by Native American tribes and first settled by Europeans in the late-19th Century, supports a robust forest products economy, provides a variety of recreational opportunities and includes large tracts of critically significant wildlife habitat; and

WHEREAS, in November 2012, Corridor stakeholders convened to work collaboratively to conserve the Corridor’s rich natural and cultural resources as well as to develop a sustainable tourism economy. These stakeholders created the Carbon River Forum (“Forum”), which is a collaborative body comprised of public and private entities, elected officials, non-profits, Native American tribes, and local landowners and other stakeholders within the Corridor. The purpose of the Forum is to share information and to support implementation actions of its individual members around the following

topics including, but not limited to: conservation of natural, cultural and historic resources, tourism and recreation-based economy, transportation, and public safety. In addition, the Forum monitors, reviews, and comments on other land-use proposals; and

WHEREAS, at its third quarter meeting in October 2015, the Forum discussed the long-proposed development of the MRNP Boundary Expansion Area acquired by the National Park Service between 2007 and 2012 (Mount Rainier National Park Boundary Adjustment Act of 2004) following a presentation of a master’s thesis, which focused on park development concepts for the site (Shannon Sawyer, *21st Century Mission: Climate Change Adaptation & National Park Service Preservation*, University of Minnesota, College of Design, Master of Landscape Architecture Capstone Project, Spring 2015); and

WHEREAS, MRNP has completed the land acquisition, but does not have the funding to perform master planning for the site or the base operational budget to permanently staff the new facilities once they get built; and

WHEREAS, the Forum and community at-large desire that the development of the MRNP Boundary Expansion Area be developed to generate recreational use, to highlight natural and cultural heritage, and to increase economic activity in the communities within the Carbon River Corridor; and

NOW, THEREFORE, the Forum hereby requests:

1. Funding for planning the development of the Boundary Expansion Area,
2. An increase to base operating budget to manage the new components of the Boundary Expansion Area (e.g. new staff for education meadows), and
3. A timeline for implementing the development plan.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last date written below.

FOR BACKCOUNTRY HORSEMEN OF WASHINGTON – PIERCE COUNTY CHAPTER:

Signature: _____
Name: _____
Title: _____
Date: _____

FOR TOWN OF CARBONADO:

Signature: _____
Name: _____
Title: _____
Date: _____

FOR BLACKTAIL RIDGE HOA

Signature: _____
Name: _____
Title: _____
Date: _____

FOR CITY OF BUCKLEY:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR FOOTHILLS HISTORICAL SOCIETY:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR FOOTHILLS TRAIL COALITION:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR FORTERRA:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR FRIENDS OF THE CARBON CANYON:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR HANCOCK NATURAL RESOURCES GROUP

Signature: _____

Name: _____

Title: _____

Date: _____

FOR MANKE LUMBER COMPANY:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR MUCKLESHOOT TRIBE

Signature: _____

Name: _____

Title: _____

Date: _____

FOR PACIFIC NW FOUR-WHEEL DRIVE ASSOCIATION:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR PIERCE COUNTY:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR PIERCE COUNTY EVERGREEN COUNCIL

Signature: _____

Name: _____

Title: _____

Date: _____

FOR PLUM CREEK TIMBER COMPANY:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR PUYALLUP RIVER WATERSHED COUNCIL

Signature: _____

Name: _____

Title: _____

Date: _____

FOR PUYALLUP TRIBE

Signature: _____

Name: _____

Title: _____

Date: _____

FOR TAHOMA AUDUBON:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR TAHOMA MOUNTAINEERS:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR TOWN OF SOUTH PRAIRIE:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR WASHINGTON STATE DEPARTMENT OF ARCHEOLOGY AND HISTORICAL PRESERVATION

Signature: _____

Name: _____

Title: _____

Date: _____

FOR WASHINGTON STATE DEPARTMENT OF TRANSPORTATION:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR WHITE RIVER SCHOOL DISTRICT:

Signature: _____

Name: _____

Title: _____

Date: _____

FOR TOWN OF WILKESON:

Signature: _____

Name: _____

Title: _____

Date: _____

WILKESON HISTORICAL SOCIETY

Signature: _____

Name: _____

Title: _____

Date: _____

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Agreement – Municipal Court Judicial Services	Agenda Date: March 8, 2016		AB 16-036
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		X
	Muni Court – Jessica Cash	X	X
Attachments: Contract			
<p>SUMMARY STATEMENT: This is a housecleaning item that renews Judge Tedrick’s appointment as Municipal Court Judge for another four year term which is being made retroactive to January 2014. The previous appointment and agreement expired December 31, 2013 and staff failed to catch this expiration.</p> <p>This new Agreement being presented for consideration is to renew the services agreement with Judge Tedrick as the Judge of the Buckley Municipal Court for the term of January 1, 2014 to December 31, 2017.</p> <p>Staff requests and recommends that the City Council authorize the Mayor to execute the Agreement.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Admin/Fin/Public Safety 3/1/16			
RECOMMENDED ACTION: A MOTION to Approve the Agreement Between the City and Judge Tedrick for Municipal Court Judicial Services for the term of January 1, 2014 to December 31, 2017.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

MUNICIPAL COURT JUDICIAL SERVICES AGREEMENT

This agreement (the “**Agreement**”) is by and between the City of Buckley, Washington, a municipal corporation operating as a (non-charter) or (charter) code city under the Laws of the State of Washington (the “**City**”) and **Marjorie Lynn Tedrick Turner** and is dated the 1st day of March, 2016.

RECITALS

- A.** The City operates a Municipal Court pursuant to RCW 3.50 and Buckley Municipal Code (BMC) 2.28.
- B.** The Mayor or her predecessor has previously appointed, and the City Council has previously confirmed, Marjorie Lynn Tedrick Turner as the Judge of the Buckley Municipal Court for the terms of: a) remainder of Judge Richard Bathum’s term from May 1, 2000 through December 31, 2002; b) January 1, 2003 through December 31, 2006; c) January 1, 2006 through December 31, 2009; d) January 1, 2010 through December 31, 2013.
- C.** Marjorie Lynn Tedrick Turner meets the judicial qualifications set forth by Washington State law and has been appointed and confirmed by the City Council for the current four year term of January 1, 2014 to December 31, 2017.
- D.** Marjorie Lynn Tedrick Turner is willing and able to serve as the City’s Municipal Court Judge for the above referenced term and the City and Marjorie Lynn Tedrick Turner desire to enter into an agreement setting forth the relative rights, duties and obligations of the Parties.

Now, therefore, in consideration of the mutual promises and covenants set forth below, the sufficiency of which is acknowledged by the Parties, it is agreed as follows:

1. **Appointment** – Effective January 1, 2014, Marjorie Lynn Tedrick Turner is appointed to be the judge of Buckley Municipal Court until the current term expires and thereafter as agreed by the parties for another term.

2. **Term** - The term of this agreement shall be from January 1, 2014 through December 31, 2017 for the four year term prescribed by law. This agreement shall be in effect during the term specified unless terminated by mutual agreement or according to law.
3. **Duties** – Marjorie Lynn Tedrick Turner agrees to serve as the Municipal Court Judge for the City of Buckley with all the powers, duties, privileges and obligations which said office confers and in accordance with the Constitution of the United States, the Constitution of the State of Washington, the Revised Code of Washington, the Municipal Code of Buckley and all other applicable laws and treaties. Marjorie Lynn Tedrick Turner shall abide by the Rules of Judicial Conduct as promulgated by the Washington Supreme Court and shall at all times maintain her status as a licensed attorney in the state of Washington in the status of either active or judicial. The services provided will include regularly scheduled court sessions and any administrative work and out-of-court work done by the Municipal Court Judge, and all time expended for mandatory judicial education. Marjorie Tedrick shall also use her best efforts to improve the City’s Court by advancing the causes of justice, impartiality, fairness and efficiency in all of the Court’s business.
4. **Compensation** – The City shall compensate Marjorie Lynn Tedrick Turner at the flat rate of **\$1880.00** per month for all her time, both judicial and administrative. The City shall provide health care benefits for Marjorie Lynn Tedrick Turner at a proportionate cost share per the City’s Personnel Policy. The City shall also pay for the mandatory dues for membership in the District and Municipal Court Judge’s Association (DMCJA) for which membership is required of all municipal court judges. Further, the City shall reimburse Marjorie Lynn Tedrick Turner for all tuition and required materials for her mandatory attendance at Continuing Judicial Legal Education sessions as required by Washington State General Rules.
5. **Status** - Marjorie Lynn Tedrick Turner shall be an employee of the city and is subject to all pertinent withholding taxes, social security taxes, and retirement contributions.

6. **General Rule 29** – The parties agree that the provision of Washington State Rules of Court General Rule 29, which governs the election, term, vacancies, removal, selection, responsibilities and authorities of presiding judges in courts of limited jurisdiction, shall be applicable to all court operations and personnel.
7. **Qualifications** – Marjorie Lynn Tedrick Turner declares that she is, and shall at all times during the term of this Agreement, be qualified to serve as a Municipal Court Judge in that she is a citizen of the United States and of the State of Washington, and an attorney admitted to practice law before the courts of record of the State of Washington .
8. **Indemnity Agreement** – The City shall defend, indemnify and hold Marjorie Lynn Tedrick Turner and/ or pro tem judges that may serve in her absence, harmless from any and all claims arising out of the good faith performance of her duties and functions as the Buckley Municipal Court Judge.
9. **Judges Pro Tem** – In the event that Marjorie Lynn Tedrick Turner is the subject of an Affidavit of Prejudice or must by law recuse herself from hearing a case, the City will be responsible for paying a pro tem judge who serves in her stead at the hourly rate of \$53.05 for those specific hours worked. The city will also allow Marjorie Lynn Tedrick Turner 20 (twenty) hours of pro tem time per year to be paid by the city in the event of illness or absence due to time required to attend continuing education. All pro tem judges must at all times be qualified to serve in that position and the Court is ultimately responsible for determining that status.
10. **Mediation and Arbitration** – Should any dispute arise between the parties, the disputed matter shall be submitted to medication using a mediator from the JAMS (Tacoma office), and following the mediator selection process and mediation rules followed by JAMS. The parties shall each pay their own costs associated with mediation and shall each pay one half of the JAMS and mediator’s fees. If the mediation is unsuccessful, then the matter, at either party’s request, shall be

submitted to binding arbitration in accordance with the Uniform Arbitration Act, Chapter 7.04A RCW.

The substantially prevailing party shall be entitled to recover their costs and attorneys' fees incurred in the arbitration, and the substantially non-prevailing party shall pay the cost of the arbitration, including the arbitrator's fee.

Signed this _____ day of _____, _____

Marjorie Lynn Tedrick Turner

Dave Schmidt, City Administrator

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Emergency Medical Services Agreement – City of Buckley and American Medical Response	Agenda Date: March 8, 2016		AB 16-037 __
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore	X	
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	Fire Depart-Asst. Chief Skogen	X	
Attachments: Staff Report and Agreement			
SUMMARY STATEMENT: Although the agreement between the City of Buckley and AMR expired on June 30, 2015; AMR has maintained uninterrupted operations throughout the negotiations that led up to this proposed agreement. The City of Buckley and American Medical Response intend to renew the Emergency Medical Services Agreement for a new 1 year period commencing January 1, 2016. The Emergency Medical Services Agreement provides for the provision of Advanced Life Support and Emergency Medical Transport Services through a Public-Private Cooperation between the City of Buckley and American Medical Response, with the City of Buckley contributing \$80,000 financial compensation to AMR.			
COMMITTEE REVIEW AND RECOMMENDATION: AF & PS Committee reviewed at their January 5 th meeting and recommends approving.			
RECOMMENDED ACTION: MOTION approving the Agreement between the City of Buckley and American Medical Response related to Emergency Medical Services.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	



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EMERGENCY MEDICAL SERVICES AGREEMENT

THIS EMERGENCY MEDICAL SERVICES AGREEMENT ("Agreement") is made between American Medical Response Ambulance Service Inc., d/b/a American Medical Response ("AMR") and the City of Buckley ("BUCKLEY"). This Agreement is effective as of the Commencement Date as defined in Schedule "A".

WHEREAS, the communities of Buckley, Carbonado, Crystal Mountain, and Greenwater, Washington (the "Communities"), by and through an agreement between the Communities, have authorized BUCKLEY to contract on their behalf for the delivery of pre-hospital emergency medical services ("EMS") within their respective jurisdictions;

WHEREAS, AMR is a licensed provider of high quality EMS with the capability to provide EMS within the Communities' jurisdictions;

WHEREAS, the parties desire to use their combined resources to provide the highest quality emergency medical services to the residents and visitors within the Communities as appropriate to jurisdictional considerations, BUCKLEY desires to enter into a Public-Private Cooperation with AMR, and AMR desires to enter into a Public-Private Cooperation with BUCKLEY subject to the terms and conditions herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Exclusive Operating Area.

a. BUCKLEY hereby grants AMR the right to provide the EMS described on Schedule "A" (the "Services") within the service area specified (the "Service Area"). BUCKLEY shall require public safety answering points and communications facilities authorized to receive emergency medical calls and/or to dispatch emergency ambulances within the Service Area ("Communications Centers") to direct such calls to AMR in accordance with the dispatch protocols agreed upon by AMR and BUCKLEY ("Dispatch Protocols").

b. Notwithstanding the foregoing, BUCKLEY may enter into mutual aid agreements with other agencies, as deemed necessary to insure adequate coverage throughout the Service Area.

2. **Compliance.** The parties will comply in all material respects with all applicable federal, state and local laws and regulations, including the federal Anti-kickback Statute. AMR's ambulances will conform to applicable state and local regulations for medical equipment for ambulances and

be duly licensed for the transportation of patients. All personnel staffing vehicles that provide the Services will be licensed or certified as required by applicable law.

3. **Standards.** The Services shall be provided in accordance with prevailing industry standards of quality and care applicable to medical transportation services.

4. **Billing.** AMR shall be responsible for all patient and third party billing for the services it renders, and agrees that the rates to be billed shall comply with applicable laws. AMR's current rate schedule is attached as Schedule "B". AMR may raise rates with notice given to BUCKLEY.

5. **Consideration.** As part of the consideration for AMR's Services, BUCKLEY shall provide AMR with the following:

a. Financial compensation in the amount of \$80,000 (eighty-thousand dollars) annually, paid in equal quarterly installments. AMR shall invoice Buckley on or about the first day of March, June, September, and December. Buckley shall remit payment within 35 days of receipt of invoice.

b. One (1) staff person who is either an employee of BUCKLEY or a volunteer with the BUCKLEY fire department licensed at the EMT or Paramedic level, or who otherwise possesses training and certification requirements that satisfy State and Local requirements and protocol necessary to provide services under this agreement.

c. All dispatch and communication services necessary to the performance of this agreement.

d. Crew quarters and other housing as necessary to fulfill AMR's obligations hereunder.

e. All mandatory BUCKLEY training.

6. AMR Personnel. All AMR employees shall:

a. At the commencement of this Agreement be assigned to Buckley based on their seniority at AMR. In the event that any of the paramedics assigned to Buckley separates from AMR, or if any additional paramedics are needed to fill in for absences, vacations or authorized leaves, such additional paramedics shall be recalled in seniority order from AMR's paramedic recall list created on August 9, 2015 and which expires on August 9, 2016. If any open positions occur in

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EMERGENCY MEDICAL SERVICES AGREEMENT

Buckley after the expiration of that recall period, AMR shall give first preference of hire to paramedics who were on the recall list and who choose to apply. All applicants for open paramedic positions that will be filled after August 9, 2016 shall be required to participate in a formal interview conducted jointly by the parties and shall be jointly approved for hire by BUCKLEY and AMR.

b. Be scheduled such that an employee shall work a schedule agreed upon by both parties.

c. At all times be under the reasonable direction of the BUCKLEY Fire Chief and shall at all times comply with the chain of authority of the BUCKLEY Fire Department and all BUCKLEY policies and procedures. The AMR employee is expected to participate in the BUCKLEY Fire Department's daily work schedule, and can be assigned projects and program responsibilities at the discretion of AMR and BUCKLEY. The AMR employee will be expected to participate in BUCKLEY Fire Department drills. BUCKLEY shall have the right to deny any AMR employee the right to provide services under this Agreement for good cause. BUCKLEY shall advise AMR immediately of any such concerns, and shall provide AMR a reasonable opportunity to cure the situation.

d. Be subject to all AMR policies and procedures, including, but not limited to those related to clinical skills and are responsible for regular standards of employee performance during such times as they are acting in the capacity of ambulance crew members

e. Complete BUCKLEY Fire Department required training.

7. BUCKLEY Personnel. All BUCKLEY personnel shall:

a. Be mutually agreed upon the parties.

b. AMR shall have the right to deny any BUCKLEY personnel the right to provide services under this Agreement for good cause. AMR shall advise BUCKLEY immediately of any such concerns, and shall provide BUCKLEY a reasonable opportunity to cure the situation.

c. Successfully complete Washington State Fire Chief's Association's Emergency Vehicle Incident Prevention program or other acceptable drivers training program as agreed to by both parties, and must satisfy the Driver Qualification Standards of Emergency Medical Services Corporation ("EMSC"), AMR's parent company, included herein as Schedule "C".

d. Successfully complete AMR's online compliance training so long as AMR makes such training accessible to BUCKLEY personnel.

e. Provide AMR the information necessary to determine if the BUCKLEY employee or volunteer appears on the exclusion list maintained by the Office of the Inspector General of the Department of Health and Human Services. If BUCKLEY employee or volunteer appears on the exclusion list, the BUCKLEY employee or volunteer shall not be allowed to provide services under this Agreement.

f. Upon request, provide AMR the appropriate documentation indicating that the BUCKLEY employee/volunteer maintains the licensure and certifications necessary to provide services as an EMT or Paramedic.

8. Term Modifications. The parties agree to meet in in September of 2016 to assess the terms of this agreement and if so desired by each party, begin to negotiate a successor Agreement.

9. Inspection. With reasonable advance written notice to AMR, BUCKLEY shall have the right during normal business hours to inspect AMR's books and records related to this Agreement.

10. Hardship. If BUCKLEY brings to AMR's attention, with verification, that a financial hardship exists for a Patient as defined in AMR's Corporate Policy on Compassionate Care, AMR will use commercially reasonable efforts to reach a reasonable financial accommodation with the Patient or his or her family consistent with such Policy.

11. Indemnification. Each party will defend, indemnify and hold the other party harmless from and against all liability, claims and costs resulting from or alleged to result from any negligence or willful misconduct of the indemnifying party related to the performance of this Agreement. In the event of any such claim, the party to be indemnified shall provide notice to the other party as soon as reasonably possible.

12. Industrial Insurance Waiver. With respect to the performance of this Agreement and as to claims against any of the parties, their officers, agents, and employees, each party expressly waives its immunity to the other parties, only under Title 51 RCW, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement, extend to any claim brought by or on behalf of any employee of the party. This waiver is mutually negotiated by the parties to this Agreement.

13. Insurance. AMR and BUCKLEY shall be required to obtain and maintain insurance appropriate for their respective operations and shall name the other parties hereto as an additional insured for all liability arising out of or in connection with this Agreement and their respective operations by or on behalf of the named insured in the

EMERGENCY MEDICAL SERVICES AGREEMENT

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performance of this Agreement. In lieu of the insurance requirements of this section, BUCKLEY affirms that its participation in a municipal risk pool provides coverage in excess of the coverage otherwise required by this section. At a minimum, the insurance or self-insurance program shall include the following types and limits of coverage:

a. Commercial general liability insurance covering bodily injury, property damage, personal injury and employment practices using an occurrence policy form, in an amount no less than three million dollars (\$3,000,000.00) combined single limit for each occurrence. In addition to the requirements set forth above, said coverage shall either be endorsed with the following specific language or contain equivalent language in the policy:

i. In the absence of incidental medical malpractice coverage required above, professional liability insurance for all activities of the insuring party arising out of or in connection with the services provided under this Agreement, in an amount no less than three million dollars (\$3,000,000.00) combined single limit for each occurrence. Such insurance may be provided on a "claims made" basis.

ii. Automobile liability coverage including bodily injury and property damage in an amount no less than one million dollars (\$1,000,000.00) combined single limit for each occurrence. Said coverage shall include owned, hired, and non-owned vehicles.

b. Workers' Compensation coverage with statutory limits, as required by the Labor Code of the State of Washington.

14. **Record Retention.** AMR will retain books and records respecting Services rendered to Patients for the time periods required under all applicable laws (including the requirements of the Secretary of Health and Human Services ("HHS")) and allow access to such books and records by duly authorized agents of the Secretary of HHS, the Comptroller General and others to the extent required by law.

15. **Term.** The term of this Agreement shall be one (1) year, commencing on the Commencement Date set out in Schedule "A".

16. **Termination.** Each party may terminate this Agreement: (a) at any time without cause and at its sole discretion upon one-hundred & eighty (180) days written notice to the other party; or (b) upon the material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of written notice thereof to the other party.

17. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the following addresses:

If to BUCKLEY:

City of Buckley Fire Department
ATTN: Fire Chief
611 South Division Street
Buckley, WA 98321

If to AMR:

General Manager
American Medical Response
13075 Gateway Drive, Suite 100
Seattle, WA 98168

With Mandatory Copy to:

Legal Department
American Medical Response, Inc.
6200 South Syracuse Way, Suite 200
Greenwood Village, Colorado 80111

18. **Confidentiality.** All information with respect to the operations and business of a party (including the rates charged hereunder) and any other information considered to be and treated as confidential by that party gained during the negotiation or Term of this Agreement will be held in confidence by the other party and will not be divulged to any unauthorized person without prior written consent of the other party, except for access required by law, regulation and third party reimbursement agreements.

19. **Referrals.** It is not the intent of either party that any remuneration, benefit or privilege provided for under this Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing or ordering of any services other than the specific services described in this Agreement. Any payments specified herein are consistent with what the parties reasonably believe to be a fair market value for the services provided.

20. **Relationship.** In the performance of this Agreement, each party hereto shall be, as to the other, an independent contractor and neither party shall have the right or authority, express or implied, to bind or otherwise legally obligate the other. Nothing contained in this Agreement shall be construed to constitute either party assuming or undertaking

EMERGENCY MEDICAL SERVICES AGREEMENT

control or direction of the operations, activities or medical care rendered by the other. AMR and BUCKLEY administrative staff shall meet as frequently as necessary to address issues of mutual concern related to the provision of Services and the parties' respective rights and obligations hereunder.

21. **Force Majeure.** AMR shall not be responsible for any delay in or failure of performance resulting from acts of God, riot, war, civil unrest, natural disaster, labor dispute or other circumstances not reasonably within its control. BUCKLEY shall not be responsible for any delay in or failure of performance resulting from acts of God, riot, war, civil unrest, natural disaster, labor dispute or other circumstances not reasonably within its control.

22. **HIPAA.** Each party shall comply with the privacy and security provisions of the *Health Insurance Portability and Accountability Act of 1996* and the regulations thereunder ("HIPAA"). All Patient medical records shall be treated as confidential so as to comply with all state and federal laws.

23. **Compliance Program and Code of Conduct.** AMR has made available to BUCKLEY a copy of its Code of Conduct, Anti-kickback policies and other compliance policies, as may be changed from time-to-time, at AMR's web site, located at: www.amr.net, and BUCKLEY acknowledges receipt of such documents. AMR warrants that its personnel shall comply with AMR's compliance policies, including training related to the Anti-kickback Statute.

24. **Non-Exclusion.** Each party represents and certifies that neither it nor any practitioner who orders or provide Services on its behalf hereunder has been convicted of any conduct that constitutes grounds for mandatory exclusion as identified in 42 U.S.C. § 1320a-7(a). Each party further represents and certifies that it is not ineligible to participate in Federal health care programs or in any other state or federal government payment program. Each party agrees that if DHHS/OIG excludes it, or any of its practitioners or employees who order or provide Services, from participation in Federal health care programs, the party must notify the other party within five (5) days of knowledge of such fact, and the other party may immediately terminate this Agreement, unless the excluded party is a practitioner or employee who immediately discontinues ordering or providing Services hereunder.

25. **Equal Employment Opportunity.** If the provisions of Executive Order 11,246 are applicable to this Agreement, the parties incorporate the equal employment opportunity clause set forth in 41 C.F.R. part 60-1. If the provisions of Executive Order 13,201 are applicable to this Agreement, the parties incorporate the equal employment opportunity clause set forth in 29 C.F.R. part 470.

26. **Miscellaneous.** This Agreement (including the Schedules hereto): (a) constitutes the entire agreement between the parties with respect to the subject matter hereof, superseding all prior oral or written agreements with respect thereto; (b) may be amended only by written instrument executed by both parties; (c) may not be assigned by either party without the written consent of the other party, such consent not to be unreasonably withheld; (d) shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns; (e) shall be interpreted and enforced in accordance with the laws of the state where the Services are performed, without regard to the conflict of laws provisions thereof, and the federal laws of the United States applicable therein; (f) may be executed in several counterparts (including by facsimile), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement; and (g) shall not be effective until executed by both parties. In the event of a conflict between this Agreement and any Schedule hereto, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have hereto have caused this Agreement to be executed by their duly authorized representatives.

American Medical Response Ambulance Service Inc., d/b/a American Medical Response

By: _____
Name: _____
Title: _____
Date: _____

City of Buckley

By: _____
Pat Johnson, Mayor
Date: _____

ATTEST:

By: _____
Joanne Starr, City Clerk

APPROVED AS TO FORM:

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EMERGENCY MEDICAL SERVICES AGREEMENT

By: _____
Kristin Eick, Attorney for the City of Buckley

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MEDICAL TRANSPORTATION SERVICES AGREEMENT

SCHEDULE "A" PROVISION OF SERVICES

I. Emergency Medical Transportation Services

AMR shall have the right to provide, and shall provide, the following services within the Service Area:

"Advanced Life Support" or "ALS";

"Basic Life Support Service" or "BLS"; and

The Services shall be provided twenty-four (24) hours a day, seven (7) days a week through one (1) dedicated ambulance in the Service Area. AMR shall not utilize any personnel or ambulances allocated to provide services hereunder for any services other than those to be provided pursuant to this Agreement.

II. Ambulances

Ambulance. AMR will use one (1) Type II ALS ambulance to provide services hereunder, and the ambulance will be subject to replacement at not more than 300,000 miles or at such time that the ambulance has accumulated excessive wear and tear.

Ambulance Markings. AMR agrees that the ambulance used to provide services hereunder shall be painted and/or affixed with the proper markings or other signage as mutually agreed upon by the parties. The parties agree that any signage shall include but will not be limited to the appropriate identification of the Towns and AMR.

Maintenance, Supplies, Equipment and Replacement. AMR at its cost and expense will provide equipment, disposable medical supplies, preventative maintenance and fuel for the ambulance.

III. Service Area:

Services shall be provided in and around the jurisdictions of the City of Buckley, Pierce County Fire District 25, Pierce County Fire District 26, Carbonado Fire Department and those neighboring areas for which services are provided pursuant to the applicable dispatch protocols, mutual aid agreements and/or automatic aid agreements.

IV. Commencement Date

The Commencement Date referred to in Section 11 of this Agreement shall be: January 1, 2016.

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SCHEDULE "B"
RATES

AMR's current rates for ambulance Services provided to patients within Service Area are set forth below:

Effective Date	02/01/07		Effective Date	02/01/07
Expiration Date	00/00/00	CODE	Expiration Date	00/00/00
			ALS NON-EMERGENCY	
ALS BASE RATE	\$1,062.03	1170	BASE	\$1,062.03
ALS BASE RATE	\$1,062.03	1171	EMERGENCY BASE	\$1,062.03
ALS BASE RATE	\$1,062.03	1250	BLS BASE RATE	\$759.11
SCT BASE RATE	\$1,111.78	1251	BLS BASE RATE	\$759.11
BASE RATE	\$1,111.78	2250	BLS MILEAGE	\$17.30
ALS NON-EMERGENCY BASE	\$1,010.04	2251	BLS MILEAGE	\$17.30
EMERGENCY BASE	\$1,010.04	4123	ZOFRAN	\$47.25
WHEELCHAIR BASE RATE	\$27.04			
ALS MILEAGE	\$17.30			
ALS MILEAGE	\$17.30			
SCT MILEAGE	\$12.98			
SCT MILEAGE	\$12.98			
WHEELCHAIR MILEAGE	\$2.71			
OXYGEN ADMINISTERED	\$64.89			
NASAL AIRWAY	\$10.38			
ORAL AIRWAY	\$10.38			
COLD PACK ALS	\$10.82			
ELECTRODES DEFIB	\$54.08			
DRESSING ALS	\$5.36			
IRRIGATION SOLUTION ALS	\$13.79			
EKG ELECTRODES	\$28.12			
NEBULIZER-HAND HELD	\$16.22			
OB KIT ALS	\$27.04			
ELECTRODES PACING	\$105.99			
SPLINT EXTREMITY ALS	\$15.95			
CERVICAL COLLAR ALS	\$21.58			
COMBI TUBE	\$136.65			
BURN SHEET ALS	\$10.82			
NASAL CANNULA	\$10.42			
OXYGEN SUPPLY TUBING	\$6.06			
SYRINGES	\$3.79			
EMESIS BASIN ALS	\$5.36			
DISPOSABLE LINEN	\$17.85			
BAG VALVE MASK	\$67.12			
TRIANGULAR BANDAGE ALS	\$7.84			
DIAL A FLOW	\$10.82			
IV MINI TUBING	\$10.25			
OXYGEN MASK	\$16.87			
OXYGEN MASK NRB	\$16.87			
RESTRAINTS ALS	\$29.75			
SUCTION CATHETER ALS	\$17.30			
HOT PACK ALS	\$10.82			
ENDOTRACHEAL TUBE	\$21.85			

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HUMIDIFIER	\$5.95
BLOOD TUBES/SUPPLIES	\$27.04
HEPARIN LOCK FLUSH	\$7.57
PROTECTIVE GEAR SET	\$14.34
IV PUMP SET	\$25.96
IV STANDARD TUBING	\$14.34
T CONNECTOR	\$5.73
KLING ALS	\$5.36
VASOLINE GUAZE ALS	\$5.73
IV PUMP	\$54.08
LUERLOCK DOUBLE MALE	\$6.49
INVASIVE MONITORING CCT	\$113.42
NON-INVASIVE BP MONITORING CCT	\$76.53
PULSE OXIMETRY	\$38.26
SILVER SWADDLER	\$16.22
MULTI TRAUMA DRESSING ALS	\$11.90
BURN KIT	\$27.04
STERILE MASK	\$0.00
STERILE GLOVES	\$5.41
HEPARIN ADAPTOR	\$5.41
ATROPINE	\$15.05
BENADRYL	\$14.34
BRETYLIUM	\$60.81
CALCIUM CHLORIDE	\$26.62
EPINEPHRINE 1:10,000	\$21.85
GLUCAGON	\$51.93
NITRO OINTMENT	\$5.41
ISUPREL	\$18.78
LASIX	\$21.85
MAGNESIUM SULFATE	\$6.84
MORPHINE	\$28.38
NARCAN 0.4	\$41.09
NITRO SPRAY	\$47.45
NITRO PASTE	\$3.48
OXYTOCIN	\$13.22
SODIUM BICARBONATE	\$19.68
VALIUM 10MG	\$20.51
AMINOPHYLLIN	\$17.30
DECADRON	\$40.29
INAPSINE	\$17.18
ADENOSINE	\$124.92
DEMEROL	\$9.46
INDEROL	\$15.14
GLUCOSE	\$27.04
PHENERGAN	\$8.20
PROCARDIA	\$8.20
PROVENTIL NEBULIZER	\$19.68
VERAPAMIL	\$28.67
ACTIVATED CHARCOAL ALS	\$32.45
PRONESTYL	\$33.80

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IV FLUIDS	\$20.85
ALUPENT/ATROVENT	\$12.93
DOPAMINE	\$34.71
EPINEPHRINE 1:1000	\$20.83
NITRO TABLET	\$6.94
LIDOCAINE 2.5	\$20.83
LEVOPHED	\$24.07
IPECAC SYRUP	\$6.94
FUROSEMIDE	\$17.30
ZOFRAN	\$47.25
RACEMIC EPI NEBULIZER	\$25.46
CHEM STRIPS	\$6.94
OXYGEN SENSOR PROBE	\$80.99
ANECTINE	\$25.46
D50W/D25W	\$17.03
NARCAN 2.0	\$31.25
ATIVAN	\$21.63
LIDOCAINE 2.0	\$5.79
LIDOCAINE 1%	\$5.79
MANNITOL	\$5.41
SODIUM CHLORIDE .9%	\$5.79
PHENOBARBITAL	\$5.41
DILTIAZEM	\$48.67
METHYLPREDNISOLONE	\$7.57
METOCLOPRAMIDE/RAGLAN	\$85.44
DEBUTOMINE 250 MG	\$85.44
BREVITOL	\$15.14
NITROGLYCERIN DRIP	\$20.01
VERSED	\$107.07
NEEDLE THORACOTOMY	\$68.34
CRICOTHYROTOMY	\$68.34
DEFIBRILATION CARDIOVERSION	\$68.34
INTUBATION	\$68.34
SUCTIONING	\$43.97
BLOOD DRAW	\$50.91
C02 DETECTOR	\$55.43
PULSE OXIMETRY PROBE	\$60.18
MAST TROUSERS	\$37.32
EKG MONITORING	\$96.25
IV START	\$40.56
VENTILATOR CIRCUIT	\$54.08
DECONTAMINATION	\$94.89
SPINAL IMMOBILIZATION	\$48.67
TRANSTHORAC PACING	\$105.30
INTRAOSSEOUS INFUSION	\$54.08
HEAD BED ALS	\$10.82
BALLOON PUMP	\$57.32
MECHANICAL VENTILATOR	\$216.30
PICK UP EQUIPMENT/STAFF	\$108.15
EXTRA ATTENDANT	\$168.71

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WAIT TIME-30 MINUTES	\$108.15
WAIT TIME-15 MINUTES	\$32.45
WAIT TIME FERRY PER 1/2	\$64.89
EMERGENCY	\$51.38
STANDBY GROUND	\$91.93
NIGHT CALL	\$40.02
DRY RUN	\$0.00
TOLL CHARGE	\$5.41
TOLL CHG FERRY 1PS	\$10.82
TOLL CHG FERRY 2SJ	\$16.22

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SCHEDULE "C"

EMSC Driver Qualification Standards

A.1 All EMSC employees who drive a Company vehicle as part of their job duties must continuously meet the following standards as evidenced by their comprehensive DMV driving record and/or the Company's incident records.

A.2 EMSC employees who operate Company vehicles as part of their job duties must:

- (a) Be at least 18 years old
- (b) Have a valid driver's license and state-required endorsements applicable to their job, if any
- (c) Not have a currently suspended or revoked driver's license, even if the suspension or revocation does not apply to employment usage
- (d) Not have a conviction for any of the following (or state equivalents) within the prior 36-month period [per DMV records]:
 - 1. DUI, DWI, BAC, Driving with Ability Impaired, or other alcohol/drug-related offense involving the use of a motor vehicle
 - 2. Hit and run or leaving the scene of an accident
 - 3. Reckless driving
 - 4. Falling asleep at the wheel
 - 5. Speed contest or exhibition of speed
 - 6. Fleeing or eluding a police officer
 - 7. Use of a vehicle in a felony
 - 8. More than two (2) moving violations
 - 9. More than two (2) at-fault collisions
- (e) Not have more than two (2) on-duty collisions that involve corrective action for violation of the EMSC Vehicle Safety Policy in the past 36 months [per the Company's incident records].
- (f) Not have more than three (3) of the following in combination as reflected by DMV records and / or the Company's incident records within the past 36 months:
 - 1. Moving violations [per DMV report]
 - 2. At-fault collisions [per DMV report]
 - 3. On-duty collisions that involve corrective action for violation of the EMSC Vehicle Safety Policy [per the Company's incident records].

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Facility Use Agreement between DSHS / Rainier School and City of Buckley Fire Department.	Agenda Date: March 8, 2016		AB 16-038
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		X
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
Police Depart – Chief Arsanto			
	Fire Depart – Asst. Chief Skogen	X	
Attachments: Staff Report; Facility Use Agreement			
SUMMARY STATEMENT: The City of Buckley Fire Department has held a long-standing agreement with Department of Social and Health Services, Rainier School for use of their facilities. The purpose of using these facilities is to conduct firefighter training. At the request of Rainier School, the terms of this agreement are for one year. This agreement renewal would remain in effect until December 31, 2016.			
COMMITTEE REVIEW AND RECOMMENDATION: Not reviewed by committee.			
RECOMMENDED ACTION: A MOTION authoring the Mayor to sign the Facility Use Agreement between the City of Buckley and DSHS / Rainier School.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

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FACILITY USE AGREEMENT
BETWEEN

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
RAINIER SCHOOL

AND
BUCKLEY FIRE DEPT.

- 1. **Premises.** The State of Washington, Department of Social and Health Services, Rainier School (“DSHS”) grants a non-exclusive license to BUCKLEY FIRE DEPT. (“Licensee”) for use of the following described premises:

RAINIER SCHOOL STAFF DORM, BELLE KING BUILDING, BOYSCOUT CAMP AND/OR AVAILABLE CONFERENCE ROOMS

No other property owned by DSHS shall be used for any purpose by the Licensee.

- 2. **Definitions.** “Licensee” means the individual or entity entering into this Facility Use Agreement and includes the Licensee’s owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Agreement.

“Participant” means any individual participating in the use of the Premises under the terms of this Agreement, who is not included under the definition of Licensee.

- 3. **Term.** This Facility Use Agreement (“Agreement”) shall begin 01/01/16 and terminate on 01/01/2017, unless terminated sooner as provided herein.

- 4. **Permitted Use.** Licensee shall only use the Premises for the purpose(s) of RECRUIT ACADEMY TRAINING, at mutually agreeable dates and times. Licensee shall notify DSHS at least 2 days in advance prior to the use of the Premises.

Licensee shall notify DSHS at least 2 days in advance if Licensee needs to cancel use of the Premises for a specific event.

- 5. **Condition of Premises.** Licensee accepts Premises in their present condition “AS IS WHERE IS”. DSHS has no obligation to make any repairs, additions, or improvements to the Premises and expressly disclaims any warranty that the Premises are suitable for Licensee’s use.

- 6. **Responsibilities of Licensee.**

- a. Ensure Participants who use the Premises under this Agreement and are not employed by Licensee, sign the Indemnification and Hold Harmless Agreement in Exhibit A prior to the date(s) of permitted use, and provide those documents to DSHS.

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- b. Ensure Licensee and Participants stay within the Premises where the event or activity is held, and vacate the Premises after the event or activity has been completed, unless a walk-through of the Premises prior to departure is required.
- c. Notify DSHS of any individual who threatens the health or safety of Rainier School clients or other individuals, or damages the Premises. DSHS reserves the right to exclude any individual who violates the terms of this Agreement from future use of the Premises.
- d. Set-up of all conference rooms, and restoration of the layout of the rooms prior to departure.
- e. Supply all materials and equipment needed by Licensee, and remove materials and equipment from Premises upon departure. DSHS is not responsible for abandoned materials and equipment.

Condition at End of Use. Licensee, at its sole cost and expense, shall keep the Premises neat and clean, and return the Premises to DSHS in good condition upon departure.

Licensee shall notify and participate in a walk-through with DSHS prior to Licensee's departure from the Premises, to verify the condition of the Premises.

- 7. **Mutual and offsetting benefits.** DSHS provides this license for use of the Premises in consideration of mutual and offsetting benefits to the Licensee.

DSHS provides this license for use of the Premises in consideration of receipt of the following services (**STAFF TRAINING AS NEEDED AND COMMUNITY SERVICES**).

- 8. **Contacts.** The following individuals shall be responsible for all communications regarding the performance of this Agreement. Each party may amend the contact person by giving written notice to the other party.

The contact for the Licensee is:

Name: ALAN PREDMORE
 Title: FIRE CHIEF
 Address: PO BOX 1960
 Phone: 360.829.1441 FX 360.829.0133
 Email: APREDMORE@CITYOFBUCKLEY.COM

The contact for DSHS is:

Name: LYNN REEDY
 Title: AA4 / CONTRACT COORDINATOR
 Address: RAINIER SCHOOL 2120 RYAN RD BUCKLEY WA
 Phone: 360.829.3023
 Email: Reedylm@dshs.wa.gov

9. **Damage and Destruction.** If the Premises are damaged by fire or other casualty resulting from any act or negligence of Licensee's or Participant's use of the Premises, then Licensee shall be responsible for all costs of repair.

10. **Insurance.** The Licensee certifies, by checking the appropriate box below, initialing to the left of the box selected, and signing this Agreement, that:

_____ x The Licensee is self-insured or insured through a risk pool and shall pay for losses for which it is found liable; or

_____ The Licensee maintains Commercial General Liability Insurance (CGL), to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

11. **Indemnity / Hold Harmless.** The Licensee shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims of liability, loss, or damage, including but not limited to claims for property damage, personal injury, or death, arising out of use of the Premises.

Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

12. **Hazardous, Toxic, or Harmful Substances.** Licensee shall not use any substances on the Premises designated as or containing components designated as hazardous, toxic, dangerous, or harmful, or are subject to regulation by law.

15. **No Smoking.** No smoking is allowed at any time on the Premises.

16. **Governing Law and Venue.** This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in Thurston County.

17. **Revocation.** DSHS may revoke the license for this Agreement for any reason, by providing 90 calendar days written notice to the other party. In an emergency, DSHS may terminate the Agreement or specific event, and will notify the Lessee as soon as possible.

19. **Amendment.** This Agreement may only be modified by a written amendment signed by both parties. Only staff authorized to bind each of the parties may sign an amendment.

20. **Entire Agreement.** This written Agreement or its successor or replacement contains the entire agreement of the parties, and no other agreement, statement, or promise made by any party shall be binding or valid.



CITY OF BUCKLEY FIRE DEPARTMENT STAFF REPORT



March 8, 2016

To: Mayor and City Council

Fr: Eric Skogen, Assistant Fire Chief

Cc: Dave Schmidt, City Administrator

Re: DSHS, Rainier School Facility Use Agreement

The City of Buckley Fire Department prides itself in providing and hosting professional training and on-going education for our firefighters. One of the elements of this training is to provide as much realism as possible within a controlled environment. Training in real structures within our community provides an opportunity for our firefighters to practice life-saving skills that otherwise would not be possible.

For several years, The City of Buckley Fire Department has entered into an agreement with Department of Social and Health Services / Rainier School for use of its facilities to conduct this training. Rainier School has requested that the terms of this Facility Use Agreement remain in effect for one calendar year.

This Facility Use Agreement is a renewal of the previous agreement and would remain in effect until December 31, 2016.

CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Emergency Medical Services Interlocal Agreement between City of Buckley, Town of Carbonado, Pierce County Fire District 25 and Pierce County Fire District 26.	Agenda Date: March 8, 2016		AB 16-039
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore	X	
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	Fire Depart-Asst. Chief Skogen	X	
Attachments: Draft Interlocal Agreement			
SUMMARY STATEMENT: The parties of this Interlocal Agreement support a cooperative effort and sharing of resources between the parties for the most cost effective and efficient delivery of Paramedic and emergency medical transport services. The parties wish to designate the City of Buckley to negotiate and execute on their behalf with American Medical Response (AMR) for the provision of providing these services.			
COMMITTEE REVIEW AND RECOMMENDATION: AF & PS Committee reviewed at their January 5 th meeting and recommends approving.			
RECOMMENDED ACTION: MOTION approving the Interlocal Agreement between the City of Buckley, Town of Carbonado, Pierce County Fire District 25, and Pierce County Fire District 26 related to Emergency Medical Services.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

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**CITY OF BUCKLEY and TOWN OF CARBONADO
and PIERCE COUNTY FIRE DISTRICT No. 25 (Crystal Mountain)
and PIERCE COUNTY FIRE DISTRICT No. 26 (Greenwater)
INTERLOCAL COOPERATION AGREEMENT
REGARDING EMERGENCY MEDICAL TRANSPORT SERVICES**

THIS INTERLOCAL COOPERATION AGREEMENT is entered into by and between the City of Buckley and the Town of Carbonado and Pierce County Fire District No. 25 (Crystal Mountain) and Pierce County Fire District No. 26 (Greenwater) for the purpose of describing the authority and responsibility of each party regarding emergency medical transport services.

WHEREAS, each party provides fire and emergency medical services within their respective jurisdictions; and

WHEREAS, each party is limited in its individual resources to provide paramedic and emergency medical transport services; and

WHEREAS, the parties designate the City of Buckley to negotiate on their behalf with American Medical Response, an agreement to provide paramedic and emergency medical transport services for their respective jurisdictions; and

WHEREAS, the City of Buckley has negotiated an Emergency Medical Services Agreement with American Medical Response for paramedic and emergency medical transport services provided through a joint use of resources; and

WHEREAS, the parties of this Interlocal Agreement authorize the City of Buckley to execute the Emergency Medical Services Agreement with American Medical Response on their behalf; and

WHEREAS, the parties of this Interlocal Agreement support a cooperative effort and sharing of resources between the parties for the most cost effective and efficient delivery of paramedic and emergency medical transport services within the jurisdictions;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Parties.** The parties to this Agreement are as many of the following agencies that have signed this Agreement: The City of Buckley, WA; the Town of Carbonado, WA; Pierce County Fire District No. 25 (Crystal Mountain); and Pierce County Fire District No. 26 (Greenwater) Pierce County, WA.

Interlocal Cooperation Agreement
City of Buckley, Town of Carbonado, Pierce County Fire District No. 25 (Crystal Mountain),
and Pierce County Fire District No. 26 (Greenwater)
Emergency Medical Response/AMR
January 2016
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2. **Purpose.** The purpose of this Agreement is to describe the authority and responsibility of each agency and its personnel involved in emergency medical responses, in regard to the City of Buckley's entering an Emergency Medical Services Agreement with American Medical Response to provide an ambulance, its maintenance, its fuel, its medical equipment and supplies, and a certified paramedic full time, to serve the jurisdictions of the parties, in exchange for compensation and its right to serve and to bill transported patients in the service area of each party.
3. **Duration.** This Interlocal Agreement shall be effective ~~July 1st, 2012~~ January 1st, 2016, and after execution by the parties. The duration of this Interlocal Agreement is for three years; provided, that any agency may terminate its participation in the Interlocal Agreement upon sixty (60) calendar days written notice to each party of the Agreement. The parties reserve the right to negotiate a successor Agreement.
4. **Authority.** This Interlocal Cooperation Agreement is executed pursuant to the authority conferred upon the parties in Chapter 39.34, RCW the Interlocal Cooperation Act. In all respects, the parties shall be deemed to be acting in their governmental capacities.
5. **No new entity.** The parties of this Interlocal Agreement do not create a new entity to perform this Agreement.
6. **Administration.** The parties of this Interlocal Agreement designate that the City of Buckley shall be the Lead Agency on behalf of the parties of this Agreement for the purposes of negotiating and executing, and for the performance of the Emergency Medical Services Agreement with American Medical Response hereto attached as Exhibit 1. The City of Buckley shall negotiate an agreement with American Medical Response for services within the area of any party that joins this Interlocal Agreement. The City of Buckley shall review the agreement with signatory parties of this Interlocal Agreement before executing the American Medical Response Emergency Medical Services Agreement, and consider their input; and shall provide a copy of the American Medical Response Emergency Medical Services Agreement for review by any party who wishes to join this Interlocal Agreement after the American Medical Response Emergency Medical Services Agreement is signed.
7. **Scope.** The parties of this Interlocal Agreement agree to the cooperative use of personnel resources whenever possible for the provision of emergency medical transport services within the jurisdictions of the parties. Each party will make a reasonable effort to provide personnel, employees/volunteers, to meet the staffing needs of providing a driver for each ambulance transport originating in their respective jurisdiction. For the purposes of this agreement, a reasonable effort will include each party authorizing its employees/volunteers to volunteer with one or more of the other parties. Each party of this Interlocal Agreement will be responsible to meet the applicable obligations required of personnel performing under the terms of the Emergency Medical Services Agreement between the City of Buckley (Lead Agency) and American Medical Response.

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Interlocal Cooperation Agreement
City of Buckley, Town of Carbonado, Pierce County Fire District No. 25 (Crystal Mountain),
and Pierce County Fire District No. 26 (Greenwater)
Emergency Medical Response/AMR
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8. **Compensations and Payments.** When the agreement between the parties and AMR requires payment of a fee to AMR in exchange for a whole or part of services, the City of Buckley shall collect a proportionate share of the fee from each party of this agreement based on each jurisdictions proportionate use of the service. The formula identified in Appendix A of this agreement shall be used to determine the proportionate share of fee established on an annual basis.

The City of Buckley shall invoice each party of this agreement on a quarterly basis over the year for which a fee is owed. The City of Buckley shall invoice on or about the first day of February, May, August, and November and each party shall remit payment to Buckley within 35 days of receipt of invoice.

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8.9. **Property.** It is not expected that property shall be acquired or disposed of on behalf of this Interlocal Agreement.

9.10. **Compliance with Purchasing and Financing Laws.** The City of Buckley shall comply with relevant purchasing and financing laws in negotiating and administering the American Medical Response Emergency Medical Services Agreement.

10.11. **Identification of Party's Employees/Volunteers.** Besides the paramedic provided by American Medical Response, employees/volunteers of each party of this Interlocal Agreement may be on board the American Medical Response ambulance, as drivers or otherwise, on an as-needed basis. An employee/volunteer who serves more than one party shall be the employee/volunteer of the party in whose jurisdiction/response area that the employee/volunteer boards the ambulance.

11.12. **Integrated Agreement.** This Interlocal Agreement is the full and complete understanding of the parties and there are no other agreements, either verbal or written, which would alter the terms of this document. This Interlocal Agreement may be modified or amended only by supplemental written agreement hereafter negotiated by the parties.

12.13. **No Third Party Beneficiary.** The provisions of this Interlocal Agreement are not intended to create any third-party beneficiary contract rights, and therefore none should be deemed created by this Interlocal Agreement. This Interlocal Agreement between the parties is only intended to create rights and/or obligations between the signatory parties.

13.14. **Governing Law.** This Interlocal Agreement is entered into and shall be governed by the laws of the State of Washington. In the event of a dispute that has completed arbitration or been held ineligible for arbitration, the venue shall lie in Pierce County, Washington.

14.15. **Arbitration of Disputes.** It is the intent of the parties to this Interlocal Agreement that disputes, if any, between the parties hereto shall be resolved as informally and amicably as possible by settlement without the assistance of any

outside professionals in dispute resolution. However, if such conciliation fails, the parties agree that mediation may be used. If the parties are unable to resolve the dispute through mediation, then an arbitrator shall be selected through the auspices of the American Arbitration Association, or any such entity providing arbitrators as the parties may agree upon. The arbitration shall proceed, however, with a single arbitrator and with the parties sharing the costs proportionately. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. Only if arbitration is unsuccessful or declared by a court to be inapplicable to the dispute shall the parties proceed to Superior Court.

15.16. **Construction/Interpretation.** This Interlocal Agreement is being entered into and shall be construed and interpreted in accordance with the laws of the State of Washington.

16.17. **Hold Harmless/Indemnification.** Each of the parties which are signatories hereto, by executing this Interlocal Agreement, are deemed to hold harmless and indemnify any and all other parties for any negligence, errors or omissions of the indemnifying party. The indemnification and hold harmless is mutual with respect to any of the negligence, errors and omissions of any of the other parties, with respect to their own negligence, errors and omissions. Such indemnification extends not only to the actual party, but all employees, agents, volunteers and parties acting on their behalf.

17.18. **Waiver of Breach.** The failure of any party to this Interlocal Agreement to insist upon strict performance of any of the covenants and agreements contained in this agreement, or to exercise any option or right conferred by this Interlocal Agreement, in any one or more instances shall not be construed to be a waiver or relinquishment of any such option or right of any other covenants or agreements which shall all be and remain in full force and effect.

18.19. **Industrial Insurance Waiver.** With respect to the performance of this Interlocal Agreement and as to claims against any of the parties, their officers, agents, and employees, each party expressly waives its immunity to the other parties, only under Title 51 RCW, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement, extend to any claim brought by or on behalf of any employee of the party. This waiver is mutually negotiated by the parties to this Interlocal Agreement.

19.20. **Notices.** Any notice required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon deposit in the United States mail by registered or certified mail with proper postage prepaid and addressed to the party to be notified. Each party shall include the applicable address below the signature block hereof.

20.21. **Severability.** If any term, provision, covenant, or condition of this Interlocal Agreement is held by a court of competent jurisdiction to be invalid,

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void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

| 24.22. Captions. The captions used herein are for convenience only and are not a part of this Interlocal Agreement and do not in any way limit or amplify the terms and provisions hereof.

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CITY OF BUCKLEY

Address: PO Box 1960
Buckley, WA 98321-1960

TOWN OF CARBONADO

Address: Drawer 91
Carbonado, WA 98323

Patricia Johnson, Mayor

Wally Snover, Mayor

Dated: _____

Dated: _____

ATTEST:

ATTEST:

Joanne Starr, Clerk

Dailene Argo, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Kristin Eick, Attorney for the City of
Buckley

Michael Reynolds, Town Attorney

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**PIERCE COUNTY FIRE DISTRICT
No. 25 (Crystal Mountain)**
Address: 32004 Crystal Mt. Blvd.
Crystal Mountain, WA 98022

**PIERCE COUNTY FIRE DISTRICT
No. 26 (Greenwater)**
Address: 57905 SR 410 East
Greenwater, WA 98022

Abbie Bodette, Commissioner

James Harte, Commissioner

Dated: _____

Dated: _____

Samuel Wick, Commissioner

N. Peter Murray, Commissioner

Lee Pagaduan, Commissioner

Michael Smith, Commissioner

ATTEST:

ATTEST:

Paul Sowers, Fire Chief

Paul Sowers, Fire Chief

APPROVED AS TO FORM:

APPROVED AS TO FORM:

, District Attorney

, District Attorney

Interlocal Cooperation Agreement
City of Buckley, Town of Carbonado, Pierce County Fire District No. 25 (Crystal Mountain),
and Pierce County Fire District No. 26 (Greenwater)
Emergency Medical Response/AMR
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APPENDIX A

Total System Transports for the previous year (2015): = 473

	<u>Buckley¹</u>	<u>Carbonado²</u>	<u>Greenwater³</u>	<u>Crystal Mtn⁴</u>	<u>Other⁵</u>
Previous year total transports (2015)	<u>362</u>	<u>32</u>	<u>21</u>	<u>31</u>	<u>27</u>
Other ⁵ divided equally between the parties	<u>6.75</u>	<u>6.75</u>	<u>6.75</u>	<u>6.75</u>	
Adjusted Total	<u>368.75</u>	<u>38.75</u>	<u>27.75</u>	<u>37.75</u>	
Percentage of Total	<u>77.9%</u>	<u>8.2%</u>	<u>5.9%</u>	<u>8.0%</u>	

Required fee/subsidy to be paid to AMR in 2016 = \$80,000

	<u>Buckley</u>	<u>Carbonado</u>	<u>Greenwater</u>	<u>Crystal Mtn</u>
Percentage of transports times the fee/subsidy = Base Fee	<u>\$63,320</u>	<u>\$6560</u>	<u>\$4720</u>	<u>\$6,400</u>
Base Fee times 15% fee credit to Buckley (Administration Fee)	<u>credit</u>	<u>\$984</u>	<u>\$708</u>	<u>\$960</u>
\$20.50 times number of transports fee credit to Buckley (staffing costs)	<u>credit</u>	<u>\$794</u>	<u>\$567</u>	<u>\$774</u>
Adjusted Proportionate Cost Share	<u>see below</u>	<u>\$8,338</u>	<u>\$5,995</u>	<u>\$8,134</u>

Total fee/subsidy owed (2016) - \$80,000
less Carbonado share -(\$ 8,338)
less PCFD 26 (Greenwater) share -(\$ 5,995)
less PCFD 25 (Crystal Mtn) share -(\$ 8,134)

Balance equals Buckley share - \$57,533

¹ Total annual transports for the City of Buckley includes: All transports originating from within the boundaries of the City of Buckley; One-half (50%) of the transports originating from within the boundaries of the Town of Wilkeson; All transports originating from Mount Rainier National Park; and All transports originating from St. Elizabeth Hospital.

² Total annual transports for the Town of Carbonado includes: All transports originating from within the boundaries of the Town of Carbonado; and One-half (50%) of the transports originating from within the boundaries of the Town of Wilkeson.

³ Total annual transports for Pierce County Fire District No. 26 (Greenwater) includes: All transports originating from within the boundaries of Pierce County Fire District No. 26; and all transports originating from lands adjacent to Pierce County Fire District No. 26 for which they respond and request or initiate a transport.

⁴ Total annual transports for Pierce County Fire District No. 25 (Crystal Mountain) includes: All transports originating from within the boundaries of Pierce County Fire District No. 25; All transports originating from Crystal Mountain Ski Patrol; and all transports originating from lands adjacent to Pierce County Fire District No. 25 for which they respond and request or initiate a transport.

⁵ Total annual transports for OTHER includes: All transports originating from mutual-aid fire departments who have a mutual-aid agreement with one or more parties of this agreement.

Interlocal Cooperation Agreement
 City of Buckley, Town of Carbonado, Pierce County Fire District No. 25 (Crystal Mountain),
 and Pierce County Fire District No. 26 (Greenwater)
 Emergency Medical Response/AMR
 January 2016
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