



BUCKLEY CITY COUNCIL MEETING AGENDA
October 11, 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 #17-16
Next Resolution #16-13
Next Agenda Bill #AB16-120

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

1. ORD: Franchise Agreement - Solid Waste Disposal with DM Disposal – 1st Reading Pg. 8
2. ORD: Adopting Emergency Moratorium- Marijuana (Prod & Process - GC Zone) Pg.28
3. ORD: Adopting Emergency Moratorium – Contractor & Outdoor Storage Yds. - GC Zone Pg.32
4. Final Acceptance – Skate Park Reconstruction Project Pg.36
5. Lease/Purchase Agreement - Del's Farm Supply Property to Burbank's Pg.46
6. Agreement – Emergency Medical Services – AMR Pg.63
7. Short Plat - Amendment Pg.71

D. Consent Agenda

Pg.77

8. A. Approve Minutes of September 27, 2016 City Council Meeting
Approve Minutes of October 4, 2016 City Council Study Session
- B. Claims
- C. Transfer Voucher
- D. Payroll

E. Committee Reports

Pg.86

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

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



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321
360-829-1921 ♦ Fax 360-829-2659 ♦ <http://www.cityofbuckley.com>

CITY OF BUCKLEY MEETING LIST

BUDGET MEETINGS IN COLOR

Oct 10	10:30 AM	Buckley Hall Board – City Hall
Oct 10	7:00 PM	Planning Commission
Oct 11	7:00 PM	City Council
Oct 18	9:30 AM	Admin, Finance & Public Safety – City Hall
Oct 18	7:00 PM	Transportation & Utilities (BUDGET) – City Hall
Oct 20	4:00 PM	Community Services (BUDGET) – City Hall
Oct 24	7:00 PM	Planning Commission
Oct 25	7:00 PM	City Council
Nov 1	9:30 AM	Admin, Finance & Public Safety (City Hall)
Nov 1	7:00 PM	Council Budget Workshop (Dept. Presentations)
Nov 2	7:00 PM	Council Budget Workshop (Dept. Presentations)
Nov 7	7:00 PM	Planning Commission
Nov 8	7:00 PM	City Council Public Hearing: Budget & Levy Certify Property Tax, EMS & Fire Station Levies
Nov 14	10:30 AM	Buckley Hall Board (City Hall)
Nov 15	9:30 AM	Admin, Finance & Public Safety (City Hall)
Nov 15	7:00 PM	Transportation & Utilities (City Hall)
Nov 17	4:00 PM	Community Services
Nov 21	7:00 PM	Planning Commission
Nov 22	7:00 PM	City Council Adopt 2017 Budget
Nov 29	3:00 PM	Joint Community Coordinating Com. (City Hall)

The above meetings will be held in the Multi-Purpose Center located at 811 Main Street unless otherwise noted.

Last Revised October 6, 2016

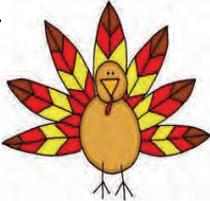
October 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3 <i>7 Planning Commission</i>	4 <i>9:30 Admin, Fin & PS—BUDGET</i> <i>7 City Council</i>	5	6	7	8
9	10 <i>10:30 Buckley Hall Board</i>	11 <i>7 City Council</i>	12	13	14	15
16	17 <i>7 Planning Commission</i>	18 <i>9:30 Admin, Fin & PS</i> <i>7 Transportation & Utilities—BUDGET</i>	19	20 <i>4 Community Services—BUDGET</i>	21	22
23	24	25 <i>7 City Council</i>	26	27	28	29
30	31 					

November 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
		<p>1 9:30 Admin, Fin & PS</p> <p>7 Council Budget Workshop</p>	<p>2 7 Council Budget Workshop</p>	3	4	5
<p>6</p> 	<p>7</p> <p>7 Planning Commission</p>	<p>8 7 City Council - Pub. Hearings: Budget & Levy, Certify Prop. Tax, EMS & Fire Station Levies</p>	9	10	<p>11</p> 	12
13	<p>14</p> <p>10:30 Buckley Hall Board</p>	<p>15 9:30 Admin, Fin & PS</p> <p>7 Transportation & Utilities</p>	16	<p>17</p> <p>4 Community Services</p>	18	19
20	<p>21</p> <p>7 Planning Commission</p>	<p>22</p> <p>7 City Council— Adopt 2017 Budget</p>	23	<p>24</p> 	25	26
27	28	<p>29</p> <p>3 Joint Community Coordinating Committee</p>	30			

A. CITIZEN PARTICIPATION

B. STAFF REPORTS

C. MAIN AGENDA



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No. __-16: Granting exclusive solid waste franchise to DM Disposal Inc. – 1st Reading Cost Impact: N/A Fund Source: N/A Timeline: N/A	Agenda Date: October 11, 2016		AB16-120
	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		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: Ordinance with Franchise Agreement, Exhibit A & Summary Change Sheet			
<p>SUMMARY STATEMENT: For City Council approval of a grant of an exclusive solid waste collection and disposal franchise to DM Disposal Inc., to provide solid waste, recyclable, and yard waste collection services for the City and its citizens and arrange for disposal of such solid waste, recyclables, and yard waste upon the terms and conditions set forth in the agreement. DM Disposal has been providing solid waste collection services to the City for many years and this “new” agreement will replace the current one which was granted by the City in 1999.</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: Full Council			
RECOMMENDED ACTION: 1st reading for presentation pursuant to RCW 35A.47.040 NO MOTION OR ACTION			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. __-16

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, GRANTING D.M. DISPOSAL CO., INC., A WASHINGTON CORPORATION, AN EXCLUSIVE RIGHT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE, RECYCLABLES AND YARD WASTE IN THE CITY OF BUCKLEY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 35.21.152 grants the City the authority by ordinance, to “provide for the establishment of a system or systems of solid waste handling for the entire city or town or for portions thereof. A city or town may provide for solid waste handling by or under the direction of officials and employees of the city or town or may award contracts for any service related to solid waste handling including contracts entered into under RCW 35.21.152”; and

WHEREAS, RCW 35.21.152 grants the City authority to “enter into agreements with public or private parties to: (1) Construct, lease, purchase, acquire, manage, maintain, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites, or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (3) designate particular publicly or privately owned or operated systems, plants, sites, or other facilities as disposal sites; and (4) sell the materials or products of those systems, plants, or other facilities”; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Buckley community to enter into agreement with D.M. Disposal Co., Inc. granting an exclusive right for the collection and disposal of solid waste, recyclables and yard waste in the City of Buckley;

WHEREAS, as required by RCW 35A.47.040, this ordinance went through two readings on October 11, 2016 and October 25, 2016; and

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

Section 1. That the attached Comprehensive Garbage, Recyclables, and Yard Debris Collection Contract between the City of Buckley and D.M. Disposal Co., Inc. shall be adopted and by reference incorporated herein.

Section 2. 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 3. 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.

Introduced, passed, and approved this ____th day of _____, 2016

Mayor Pat Johnson

Attest:

Joanne Starr, City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

AGREEMENT BETWEEN CITY OF BUCKLEY AND D.M. DISPOSAL CO., INC. FOR THE
COLLECTION AND DISPOSAL OF SOLID WASTE, RECYCLABLES AND YARD WASTE
IN THE CITY OF BUCKLEY

1. Date and Parties

This Agreement is made as of this 1st day of November 2016, by and between the City of Buckley, a municipal corporation, hereinafter referred to as the “City” and D.M. Disposal Co., Inc. (also known as D.M. Recycling) a Washington corporation, hereinafter referred to as the “Contractor.”

2. Purpose

The purpose of this Agreement is to provide for the collection and proper disposition of solid waste, recyclables, and yard waste throughout the City. The Contractor does hereby agree to provide solid waste, recyclable, and yard waste collection services for the City and its citizens and arrange for disposal of such solid waste, recyclables, and yard waste upon the terms and conditions set forth herein. All references to “recycling” and/or “recycling services” herein shall include the collection of recyclables and yard waste.

3. Term/Implementation of New Term and Conditions

The term of this Agreement shall commence on November 1, 2016 and shall expire on October 31, 2024 (“Agreement Term”). Upon expiration of the Initial Term, this Agreement shall automatically renew for one (1) additional two (2) year period under the same terms and conditions hereof, unless the City determines, in its reasonable discretion, that Franchisee is providing inadequate or insufficient services to customers, in breach of the terms and conditions hereof; provided that Franchisee shall have thirty (30) days to cure said breach after receiving written notice from the City. Additionally, this Franchise may, upon the mutual written consent of the City and Franchisee be extended for a mutually agreed upon term, in order to facilitate changes associated with the implementation of new technology not required by this Franchise, or changes in service level or frequency that improve the efficiencies and levels of service provided herein, or any other improvements desired by the City.

4. Exclusive Rights to Solid Waste and Recyclables Collection

a) The Contractor shall have the exclusive right and the obligation to collect all solid waste, recyclables, and residential curbside yard waste within the City limits as of the date of this Agreement. The parties agree to cooperate in the enforcement of the provisions of this Agreement and the City’s authority to regulate a system for solid waste handling. The Contractor’s rights under this Agreement maybe subject to the rights of third parties in annexed areas and those rights shall not be abridged by this Agreement.

b) The City and Contractor hereby acknowledge, pursuant to section 4(a) of the Agreement above, Contractor’s exclusive right to the collection and transportation of construction and demolition debris and other drop box services from solid waste generated in the City. To that

end, the parties agree to work towards strengthening enforcement of and amending City codes and ordinances which uphold the City's jurisdiction over solid waste collected and transported within the City of Buckley.

c) Notwithstanding any other term contained herein, Contractor shall have no obligation to collect any waste which is, or which Contractor reasonably believes to be radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Title to and liability for any Excluded Waste shall remain with resident/generator of such Excluded Waste, even if Contractor inadvertently collects and disposes of such Excluded Waste. If Contractor finds what reasonably appears to be discarded Excluded Waste, Contractor shall notify the resident/business/generator, if such can be determined, that Contractor may not lawfully collect such Excluded Waste and leave a tag specifying the nearest location available for appropriate disposal.

5. Future Annexations of Territory by the City

If, during the term of this Agreement, additional territory is added to the City through annexation or other means within which the Contractor or its affiliate has an existing WUTC certificate or other franchise for solid waste collection at the time of annexation, the Contractor shall make collection in such annexed area in accordance with the provision of this Agreement at the prices set forth in the Agreement upon written notice by the City.

6. Definitions

The meaning to be given words as used herein shall be their normal definition, except as to those words specifically defined in the Buckley Municipal Code Section 8.12.030, or specifically outlined in Section 12.

7. Billing

The Contractor shall report to the City Administrator the total number of customers serviced during the preceding monthly period, including the type of service and the charges thereof and shall advise the City Administrator of any changes in service, deletions, temporary terminations or requirements for additional service. The City shall immediately advise the Contractor of any change in service request. The City shall enter the information into its billing system and shall send monthly billings to each customer. The City shall be responsible for the collections and payments from individual customers. The City shall remit a single payment to the Contractor within thirty days of receipt and approved invoice from the Contractor.

8. Revision of Rates

The rates for Contractor's services as set forth in Exhibit "A" attached hereto shall remain the same until March 1, 2017.

a) Annual CPI Adjustment. Beginning March 1, 2017 and for every year thereafter, the rates set forth in Exhibit "A" shall be adjusted by eighty percent (80%) of the annual change in the Consumer Price Index as maintained by U.S. Department of Labor, "Seattle-Tacoma-

Bremerton Average” for all Urban Consumers or Successors Index, for the period October to October of the previous year.

The Contractor shall provide the City with notice of any proposed rate increase, in any event, not less than forty-five (45) days prior to the requested effective date of the proposed rate adjustment.

The Consumer Price Index adjustment shall not exceed a maximum of five dollars (\$5.00) per month for each residential account and twenty-five (\$25.00) per month for each commercial account.

b) Tipping Fees/Rate Increases. During the term of this Agreement, Contractor is authorized to pass through to its customers all increases in landfill/disposal costs which are set by Pierce County and/or increased costs associated with higher solid waste/recycling duties imposed by local, state or federal laws and regulations.

c) Notice of Rate Increases/Decreases. The Contractor shall provide the City with notice of any such proposed rate increase or decrease upon Contractor being notified of an increase or decrease, but in any event not less than forty-five (45) days prior to the effective date of such increase or decrease. In connection therewith, the Contractor shall provide the City with all reasonable information requested by the City related to such rate adjustments.

d) Rate Increases/Unforeseen Costs. Contractor may apply to the City for rate adjustments to reflect unforeseen costs arising during the term of this Agreement such as fuel, tax charges, governmental fees and surcharges, approval for which adjustments shall not be reasonably withheld by the City.

9. Spring Clean-Up Day, Special Events, and Other Special Programs

(a) The Contractor shall provide one annual cleanup program each Spring at no additional cost to the City or ratepayers and up to two special events to be designated by the City. The Spring programs will include curbside collection of extra residential solid waste, yard waste, recyclables and white goods as specified by the City and the Contractor. Customers shall be allowed to set out three extra cans of garbage, three bags or containers of yard waste and one major appliance during the annual cleanup/pickup. The Contractor will coordinate with the City to provide information to residents for Spring cleanup on a mailer which will be paid by the Contractor.

(b) The Contractor shall provide curbside Christmas tree collection to all city residents who are receiving cart service for garbage. Collection for Christmas trees will occur during the first yard waste collection week in each calendar year.

(d) The Contractor, in cooperation with the City, shall provide up to two glass recycling drop stations for City residents to drop off glass recyclables only.

(e) City customers shall also be entitled to drop off all household hazardous waste at the Hidden Valley Transfer and Recycling Station d/b/a LRI at 17925 Meridian Street East, Buckley, WA 98373, during normal receiving hours at no charge to the customer.

(f) In addition, the contractor shall supply, at no additional cost to the city, pickup, disposal, and recycling of the Public Works waste and City Hall Waste.

10. Taxes

The Contractor shall be responsible for any and all state taxes on invoices paid by the City. The City shall be responsible for any and all state and city taxes on charges collected from customers.

11. Definition of Terms

(a) The term “*Cart*” shall mean a Contractor provided receptacle which is made of durable, corrosion-resistant, non-absorbent material with a close-fitting cover and wheels. For the collection and storage of solid waste, Contractor shall provide the following sizes of Carts: ten (10) gallon, twenty (20) gallon, thirty-two (32) gallon, sixty-four (64) gallon, and ninety-five (95) gallon. For the collection and storage of source-separated or commingled recyclables, and yard waste, Contractor shall provide either ninety-five (95) gallon Carts or ninety-six (96) gallon Carts.

(b) The term “*Curbside*” shall mean at the curb or up to five (5) feet from the edge of the public road.

(c) The term “*Walk-In*” shall mean the charge for carryout of over five (5) feet from the edge of the public road, but not over fifty (50) feet.

(d) The term “*Drive-in*” shall mean the charge for leaving the public road to provide service. There shall be no obstruction from overhanging branches and/or wires and adequate room for the collection vehicle to turn around. If the customer requests drive-in service, the road surface shall be of such material as to withstand the weight of the collection vehicle; all maintenance and repairs shall be the customer’s responsibility.

(e) The term “*curbside*” shall mean at the curb or up to five (5) feet from the edge of the public road.

(f) The term “*recyclables*” shall mean those recyclable items defined in RCW 70.95.030(14) designated by the City to be picked up in the curbside recycling program which items are limited to: aluminum, metal containers, mixed paper, cardboard and newspaper. Additional recycling materials included for collection in this Agreement are plastics and yard waste.

(g) The term “*aluminum*” shall mean cans and containers composed solely of aluminum.

(h) The term “*metal containers*” shall mean cans and containers composed of metals, such as tin or steel cans, which are attracted by a magnet.

(i) The term “*mixed paper*” shall mean paper (except newspaper), including magazines, mail, phone books, photocopy or printer paper, and envelopes that are not contaminated by food, plastic wrap or other contaminants.

(j) The term “*cardboard*” shall mean moderately thick paperboard not contaminated by glue, food, waxed coating or other similar contaminants

(j) The term “*newspaper*” shall mean any part of the newspaper that was included when it was delivered or purchased.

(k) The term “*plastic*” shall mean plastic bottles with a neck smaller than the body and plastic jars, tubs, and buckets

(l) The term “*yard waste*” shall mean any material which occurs naturally and is grown on residential, commercial or industrial property or is included in the landscaping of such property.

(m) The term “*commercial wood waste*” shall mean natural wood or wood bi-products including, but not limited to, pallets, stumps, and shavings, which are not treated with chemicals, paint or other contaminants.

12. Recycle Carts, Containers/Cages and Toters

For residential, single dwelling(s), duplex(s), triplex(s) and four-plex(s), the Contractor shall provide solid-waste receptacles and recycling carts of the same type as specified in the Pierce County Recycling Ordinance and 11(a) above. For larger multi-family complexes and commercial establishments, the Contractor shall provide container/cage(s) and/or toter(s) for collection of recyclable materials guided by space availability and volume of materials generated. The Contractor shall also provide ninety-five (95) or ninety-six (96) gallon, covered toter(s) on wheels for yard waste collection. The recycling carts, container/cage(s) and toter(s) shall be provided, maintained and/or replaced by the Contractor at the Contractor’s expense and shall remain the property of the Contractor.

a) For any account requesting recycling and/or yard waste service(s), the Contractor shall provide a ninety-five (95) or ninety-six (96) gallon recycling and/or yard waste toter. All recycling carts/toters remain the property of the Contractor.

b) All recycling materials and yard waste must be free of contaminants. If any recyclables contain contaminants, such as garbage, the Contractor shall not pick it up. In the event that some recyclables are not collected, the Contractor shall notify the property resident of the reason so that the problem can be corrected.

c) Upon mutual agreement, on terms, conditions and rates satisfactory to the parties, the City and the Contractor may include additional items for recycling under this Agreement.

13. Preparation of Recyclables

All recycling material and yard waste must be tendered for collection free of contaminants. If any recyclables contain contaminants, such as solid waste, the Contractor shall not pick it up. In the event that some recyclables are not collectible, the Contractor shall give the property resident notice in writing of the reason so that the problem can be corrected. The following categories of recyclables shall be readied by the customers as follows:

(a) Aluminum and Metal Containers – All containers should be rinsed out and if possible flattened.

- (b) Cardboard – All cardboard must be flattened and placed inside the cart.
- (c) Mixed Paper and Newspaper – Material shall be placed in cart loose (not in plastic bags) and be clean, dry and free of food, plastic wrap and other contamination.
- (d) Plastic – Plastic Containers must have lids removed and must be rinsed out.
- (e) Yard Waste – Yard waste must be placed into the ninety-five (95) or ninety-six (96) gallon toter furnished by the Contractor. Branches shall be no larger than four (4) inches in diameter and shall not exceed the length of three (3) feet. In addition, branches must fit in the yard waste toter with the lid closed. Christmas trees that are not flocked and cut into appropriate length are acceptable. Customers who are signed up for the yard waste program and who wish to put out more yard waste than the toter can hold, may set out additional material in Kraft or other approved compostable bags.

14. Collection Related Services

- a) The Contractor becomes the owner of the recyclable materials, including yard waste following collection and can market them in any manner the Contractor deems to be economically feasible. Recyclable materials, which are collected by the Contractor shall not be disposed of in a landfill unless the Contractor has considered other alternatives and, after good faith efforts to locate a market, has determined that such disposal is the most economical way to handle them.
- b) All recyclables collected within the City by the Contractor shall be properly disposed of or marketed by the Contractor in accordance with the laws and regulations of the State of Washington and Pierce County governing such recycling.
- c) Weight Restrictions. The Contractor is responsible for collection of all containers which do not exceed the weight limits, described below:

10-gallon Cart	15 lbs
20-gallon Cart	30 lbs
32-gallon Cart	45 lbs
64-gallon Cart	90 lbs
95-gallon Cart	135 lbs

If a container exceeds these weight limits, the Contractor may refuse service and will tag the overweight container. The Contractor will work with the customer to provide alternatives so that service will not be disrupted in the future.

- d) Contractor Planning Assistance. The Contractor shall, upon request and without additional cost, make available either to the City or the property owner planning assistance on new construction or major remodeling of buildings and structures within city limits with respect

to the design and planning of garbage and recycling removal facilities and their location upon the site of the proposed construction or remodeling project.

15. Breach of Contract

a) If the Contractor shall abandon or breach this Agreement or fail to fully and promptly comply with any or all of its obligations or shall fail to give reasons satisfactory to the City for noncompliance, the City may then declare the Contractor to be in default of the Agreement and notify the Contractor to discontinue any further service hereunder, a copy of said notice to be sent to the Contractor. But when the breach of this Agreement is not of a magnitude to endanger the public health, safety or welfare, the City shall first give the Contractor thirty (30) days' written notice to cure the breach or the failure to comply.

b) Notwithstanding the provision of this section, a delay or interruption in the performance of all or any part of the Agreement, including labor disputes or strikes, resulting from causes beyond the Contractor's control shall not be deemed to be a default of the contract and the rights and remedies of the City provided for herein shall be inapplicable; Provided that the Contractor shall promptly arrange for emergency collections when requested by the City as required by Paragraph 25(e) to the extent necessary to remediate missed collection dates..

16. Hold Harmless

The Contractor shall indemnify/defend and save the City and its officers, agents, servants, and employees harmless from and against any and all loss, damage, action, claims, suits, judgments and liability in connection with loss of life, personal injury and/or to property arising from or out of any negligence or intentional act of or by the Contractor under this Agreement. The City shall indemnify/defend and save the Contractor and its officers, agents, servants and employees harmless from and against any and all loss, damage, action, claims, suits, judgments, and liability in connection with loss of life, personal injury and/or to property arising from or out of any negligence or intentional act of or by the City under this Agreement. The Contractor shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by the City in enforcing any and all terms and covenants of this Agreement.

17. Damage to property

a) If any property is damaged as a result of the Contractor's negligence or intentional act, the Contractor shall repair or replace the same after being notified of the damage. Subject to the foregoing, the City warrants that the City's pavement, curbing or other driving surface or any right of way reasonably necessary for Contractor to provide the services described herein are sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform such services. Contractor will not be responsible for damage to any such pavement, curbing, driving surface or right of way, which results from the weight of Contractor's vehicles providing service in the City.

b) The City shall not be liable to the Contractor for any loss or damage other than any loss or damage occurring as a result of the negligence or intentional act of the City, its employees and/or agents.

18. Liability Insurance

- a) The Contractor shall be responsible for paying any and all State Industrial insurance on persons collecting solid waste, recyclables and yard waste on its behalf.
- b) The Contractor shall provide and maintain in full force and effect during the term of this Agreement, a policy of public liability and automobile liability insurance, naming the City as an additional insured, providing for limits of not less than \$2,000,000 for all damages arising out of bodily injuries or death of one person, and subject to the limit of not less than \$2,000,000 for all damages arising out of bodily injuries to or death of two or more persons in any one incident; and regular property damage liability providing for a limit of not less than \$1,000,000 arising out of injury to or destruction of property in any once incident.
- c) The Contractor shall furnish the City a current Certificate of Insurance setting forth said insurance policy to be in full force and effect. The Contractor shall give the City thirty (30) days advance written notice of cancellation or lapse of such policy.

19. Performance Bond

No Performance Bond shall be required of the Contractor.

20. Compliance with Laws

The Contractor agrees and covenants to comply with all provisions of Federal, State, County and City laws and ordinances affecting, directly or indirectly, the subject matter of this Agreement.

21. Business Licenses

The Contractor shall obtain, at its own expense, all permits and licenses required by the City or any other governmental authority and maintain the same in full force and effect during the terms of this Agreement.

22. The Contractor's Office

The Contractor shall be required to maintain an office provided with telephones and such attendants as may be necessary to take care of requests, orders for special service or instruction from the City. This office shall be in operation between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays or as otherwise directed by the City in writing.

23. The Contractor's Employees

- a) The Contractor shall require all employees to be courteous at all times, not to use loud or profane language, and to do their work as quietly as possible. Specific questions as to rates or changes in existing service should be referred to the Contractor's office and not handled by any collection employee. Charges for additional services shall be billed and payment for these services shall not be accepted by Contractor employees.
- b) While collecting solid waste, recycling and yard waste, Contractor's employees shall follow the regular walks for pedestrians while on private property, returning to the street after

replacing the empty cans, recycling and yard waste containers. They shall also replace all receptacles and covers and close all gates opened by them.

- c) Employees shall not trespass or loiter or cross property to adjoining premises.
- d) All employees shall be competent and skilled in the performance of the work to which they may be assigned. Failure or delay in the performance of this Agreement due to the Contractor's inability to obtain employees of the number and skill required shall constitute a default in the Agreement unless the reason for the delay is a labor dispute.

24. Service to New Customers

The Contractor shall provide service to new customers within seven business days after a receipt of a request for service. In the case of container size, if the Contractor is unable to provide the size of container ordered by the customer within one week, then the Contractor may temporarily provide the customer with any size container; provided, however, the service provided to the customer and the rate charged shall be equivalent to the service and rate for the container ordered.

25. Collection

- a) Pick-up. The Contractor shall make collections of solid waste one time per week per customer. Residential pickup shall be made Monday through Friday after 7 a.m. to 6:30 p.m., on a regularly scheduled day of the week, unless otherwise approved by the City in writing. Collection shall not be made in alleys, unless the Contractor is directed in writing by the City for a specific location and the Contractor deems there is safe and adequate access for its regular collection vehicles. Commercial establishments may be serviced more than once per week when requested. Billing will be based on the number of pickups. A fee (as described in Exhibit "A") will be assessed if the Contractor must either connect or reconnect any cable/wires from a compactor being serviced.
- b) The contractor shall provide curbside collection of recycling material on a biweekly schedule year round on the same day as regular garbage collection service. Collection will be provided to all single and multi-family residences. Collection shall not be made in alleys, unless the Contractor is directed in writing by the City for a specific location and the Contractor deems there is safe and adequate access for its regular collection vehicles.
- c) The contractor shall provide curbside collection of yard waste material on a biweekly schedule year round on the same day as regular garbage collection service. Collection will be provided to all single family residences and multi-family residences in the City limits who have signed up for the yard waste service through the city and have received carts. Collection shall not be made in alleys, unless the Contractor is directed in writing by the City for a specific location and the Contractor deems there is safe and adequate access for its regular collection vehicles.
- d) Holidays. The Contractor shall observe Thanksgiving Day, Christmas Day and New Year's Day as the only holidays in each year of this Agreement. In addition, the contractor may have holidays on days that the transfer station is closed. Service that normally would have been

provided on these days will be provided on the first business day following each respective holiday with resulting delay of one day for the balance of the calendar week.

e) Emergency Collections. Adequate provisions shall be made by the Contractor to provide special collections when solid waste or recyclables have not been collected during the regularly scheduled trip as a result of the Contractor's failure to collect at required times. Special pickups for such missed collections shall be coordinated between the City and Contractor at no additional cost to the City or to the resident.

26. Hauling and Disposal

Care shall be taken in the loading and transportation of solid waste, recycling and yard waste so that any leaking or spilling is prevented. The Contractor shall immediately clean up any spills upon notice from the City. The Contractor shall be responsible for disposing of all solid waste collected to an authorized disposal site or transfer station and shall pay any and all disposal fees involved. The Contractor shall abide by all applicable rules and regulations that govern the authorized solid waste disposal facility.

27. Equipment

a) The Contractor shall furnish all vehicles which shall be specifically designed for collection and hauling of solid waste, recycling and yard waste. Each vehicle shall have a tight metal body design so as to prevent the scattering of solid waste when driven over the streets and highways.

b) The Contractor shall furnish solid waste collection containers for one yard or larger containers as requested by the customer.

c) The Contractor shall furnish recycling carts and yard waste toter(s) to all accounts requesting recycling services.

28. Maintenance

a) Collection vehicles shall be kept in good repair, appearance and sanitary condition at all times. Each vehicle shall have the Contractor's name and phone number and an identifying number clearly visible on the truck. No advertising shall be permitted other than the name and phone number of the Contractor. The Contractor shall not use a firm name containing the words "Buckley", "City" or any other words implying municipal ownership.

b) Any equipment found not to comply with the above standards shall be taken out of service and brought to standards before being placed back into service for the City.

29. Mandatory Participation by Citizens/City's Obligation to Enforce

a) The City shall maintain in full force and effect an ordinance requiring all residential, multi-family, commercial, government and institutional entities and establishments within the City to utilize the solid waste collection service. The City has provided for exemptions to solid waste service under specific limited circumstances. These circumstances are stated and each request for an exemption must be approved by the City. If an exemption to mandatory solid

waste service is approved, the Customer must dispose of all solid waste in an appropriate manner.

b) The contractor shall offer commercial recycling within the City to commercial customers. The collection of commercial recycling is not regulated by the City. The contractor shall mandatorily offer commercial recycling within the City and incorporates by reference WAC 480-70-030 (13 & 14).

c) Commercial businesses handling fresh/frozen foods and/or produce shall have a minimum of weekly solid waste service.

30. Reporting Records and Service Complaints

a) Reporting. The Contractor shall furnish to the city quarterly reports within thirty (30) days of the end of each quarter showing the number of tons of solid waste transported by the Contractor to the disposal site during the previous three (3) months. Separate records reflecting the tonnage of recyclable materials and yard waste transported to recyclable and yard waste processors shall be reported to the City monthly upon request.

b) Complaint Records. A weekly log of complaints on service shall be maintained by the Contractor, and a copy of the complaint log for complaints of the previous quarter shall be submitted to the City along with the required quarterly reports.

c) Disposal Receipts. The Contractor shall keep records of solid waste collected and charges therefore. Copies of dump receipts, recyclable receipts and yard waste receipts shall be maintained by the Contractor and provided to the City upon request. The original receipts shall remain in the contractor's office as part of its records for five (5) years after the termination of any Agreement between the city and the Contractor.

d) Schedules and Routes. Contractor shall, at all times, maintain current documentation of schedules and routes for the areas served pursuant to this Agreement, and shall make available for city review current copies of such schedules and routes, along with a map that details the routes of service.

f) City Access to Contractor Records. The Contractor agrees and covenants to comply with all provisions of Federal, State, County and City laws and ordinances affecting, directly or indirectly, the subject matter of this Agreement. The Contractor agrees to maintain records with respect to hauling routes, tonnage recycled or disposed of, and related documentation and any books, documents, papers and records that are directly pertinent to performance of work under this Agreement. The Contractor shall allow the City or any of its duly authorized representative's access to all such records during the term of the Agreement and for three years thereafter for inspection and copying.

31. Severability

Should any term, provision, condition or other portion of this Agreement or its application be held to be inoperative, invalid or unenforceable, and the remainder of this Agreement still fulfill

its purposes, the balance of this Agreement or its application or other circumstances shall not be affected thereby and shall continue in full force and effect.

32. Notices

Any Notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and deposited into any post office as first-class, postage prepaid, certified mail, return receipt requested, and addressed to D.M. Disposal Company, Inc., to the attention of Division Vice President at PO Box 532, Buckley, Washington, 98371, and to the City to the attention of the City Administrator, Buckley City Hall, 1104 Maple Street, Buckley, WA 98390. Either party shall give written notice of change of address.

33. Entirety

This Agreement and exhibits attached hereto and incorporated herein by this reference represent the entire Agreement between the City and the Contractor. Any prior written or oral statement or proposal or representation, not incorporated herein, shall be excluded, and shall not alter any term or provision of this Agreement. This Agreement may be modified or amended only in writing by any authorized representatives of the Contractor and the City.

34. Alternative Dispute Resolution

Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding breach, termination or invalidity thereof, shall be resolved by arbitration in Tacoma or Seattle, Washington in accordance with the American Arbitration Association, or Judicial Dispute Resolution rules which are deemed to be incorporated by reference into this clause. The maximum number of arbitrators shall be one in any claim, suit, action or other proceeding relating in any way to this agreement or any claims arising out of this agreement, except as otherwise ordered or agreed by the parties. All arbitration fees shall be borne equally by the parties and the parties shall pay their own attorney's fees and costs.

35. Applicable Law and Jurisdiction

This Agreement shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method is arbitration as set forth above, in the event any claim, dispute or action arising from or relating to this agreement cannot be submitted to arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. The prevailing party in any such action before the courts shall be entitled to recover its costs of suit and reasonable attorneys' fees.

36. Assignment and Control

a) Contractor shall not assign or subcontract any of the work or delegate any of its duties under this Agreement without the prior written approval of the City.

b) When requested, approval by the City of a subcontract or assignment of this Agreement or a part thereof shall not be unreasonably withheld.

c) In the event of an assignment, subcontracting or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Agreement and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to complete fully and faithfully the work or responsibility undertaken or other security acceptable to the City.

DATED this ___ day of _____, 2016.

D.M. DISPOSAL COMPANY, INC.

CITY OF BUCKLEY, WASHINGTON

By: Dan Schooler
Division Vice President

By: Mayor Pat Johnson

ATTEST:

By: Joanne Starr, City Clerk

Approved as to form:

Phil Olbrechts, City Attorney

Exhibit “A” Rates



D.M. DISPOSAL CO., INC.

POST OFFICE BOX 532
PUYALLUP, WASHINGTON 98371
(253) 414-0347



November 12, 2015

City of Buckley
Dave Schmidt, City Administrator
933 Main Street
Buckley, WA 98321

Re: Contract between D.M. Disposal Company and the City of Buckley

Dear Mr. Schmidt:

We have been notified that on March 1, 2016 the landfill rate in Pierce County will increase from \$144.97 per ton to \$145.84 per ton. It is our understanding that the full Pierce County Council has reviewed and approved the increase.

Effective March 1, 2008, Section 3 of Amendment 3 to Agreement for Solid Waste and Disposal Between the City of Buckley and D.M. Disposal Co., Inc., provides for an annual CPI adjustment equal to 80% of the change in the Consumer Price Index for All Urban Consumers, U.S. Department of Labor, U.S. city average, not to exceed 2.5%. Eighty percent of the CPI change for this period is .98%.

Attached is the exhibit, which reflects the dump fee and CPI increase by type of service.

We appreciate the opportunity to provide you comprehensive waste collection, disposal and recycling services. If I can answer any questions, please contact me by telephone at (253) 896-3293 or by email at MarkGi@wasteconnections.com.

Sincerely,
D.M. Disposal Company

Mark Gingrich
District Manager

cc: Devon Boyle, City of Buckley
Ryan Guild, D.M. Disposal Company
Derek Dague, D.M. Disposal Company
Bryan Coming, D.M. Disposal Company
Candelaria Sevcik, D.M. Disposal Company

City of Buckley
PO Box 1960
Buckley WA 98321

Exhibit A

Effective 3/1/16

Type of Service:

Can Service:	Rate
Micro Can	12.71 per month
Mini Can	16.53 per month
One can curb collection	19.13 per month
Two cans curb collection	27.10 per month
Three cans curb collection	34.87 per month
Four cans curb collection	44.69 per month
One can oversize can curb collection	24.13 per month
Two can oversize can curb collection	38.59 per month
Each additional can curb collection	12.63 per month
One can 50' maximum walk-in	23.07 per month
Two cans 50' maximum walk-in	33.35 per month
Each additional 50' max walk-in	15.27 per unit
Occasional extra	3.66 per unit
Container Service:	
1 yard once a week	85.67 per month
1 yard twice a week	183.45 per month
1-1/2 yard once a week	118.81 per month
1-1/2 yard twice a week	237.63 per month
2 yard once a week	158.94 per month
2 yard twice a week	308.20 per month
2 yard three times a week	457.46 per month
4 yard once a week	316.12 per month
4 yard twice a week	682.05 per month
4 yard three times a week	1,023.07 per month
6 yard once a week	484.12 per month
6 yard twice a week	968.25 per month
6 yard three times a week	1,452.37 per month
4 yard compactor, customer owned	1,352.46 per pickup
1 yard extra pickup on regular route	24.22 per pickup
1-1/2 yard extra pickup on regular route	31.49 per pickup
2 yard extra pickup on regular route	38.30 per pickup
4 yard extra pickup on regular route	75.58 per pickup
6 yard extra pickup on regular route	108.69 per pickup
Special Services:	
Special pickups (minimum 1 hr) plus dump fee of \$145.84 per ton	73.34 per hour
Bulk Pickup (minimum 1 yard)	23.74 per pickup
Connect/Reconnect fee on customer owned compactor per pickup	12.10 per pickup
Yard Waste 90-gal toter	6.34 per unit
Re-delivery fee - toter	16.28 per unit
Multi-Family Recycling:	
90-gallon cart	9.49 per month
2 yard once a week	42.10 per month



A  WASTE CONNECTIONS INC. COMPANY

City of Buckley Garbage Cart Meeting 7/7/2016

What are our Goals?

- Partner with Buckley to provide wheeled garbage carts
 - Deliver carts for first collection November 2, 2016
 - Cart sizes 10-gallon, 20-gallon, 32-gallon, 64-gallon, and 95-gallon
 - DM to coordinate and pay for notifications to Customers
 - Promote 20-gallon cart to 32-gallon customers during roll-out
 - Very minor rate change for new carts, with continued low yard waste cost.

What will we provide?

- New Trucks used for automated garbage collection
 - Garbage carts will be collected by new trucks received in 2014 and 2015
- New wheeled carts with attached lids that come in a variety of sizes
 - Improved customer satisfaction, and eliminates issue of wind-blown lids
- Waste Reduction incentive with availability of smaller wheeled cart (20-gallon)
 - Goal of increasing 20-gallon customer level from approx 4% to 15%
- Recycle old-garbage cans for no charge
 - Customers receive sticker which signifies they want to recycle their old can
- Thorough and professional notification process to assure successful transition
 - Cart information and transition details clearly communicated, multiple times

What are the Benefits to Customers and the City of Buckley?

- Aesthetics
 - Sturdy, wheeled carts no longer blow over and are uniform in color
- Customers Save on Overweight and 'Extra Unit' Charges
 - Automated truck arm can pick up heavier cans safely, and more customers tend to 'cram' waste into these sturdy carts, resulting in 65% less extra unit charges.
- More Modern and Customer Friendly Program
 - Customer satisfaction levels for service increase due to convenience of program.
- No more oversize can charges or subscriptions (more than 100 benefit)



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No. __-16: Adopting Emergency Moratorium- Marijuana (Prod & Process - GC Zone) Cost Impact: N/A Fund Source: N/A Timeline: N/A	Agenda Date: October 11, 2016		AB16-121
	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		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: Ordinance			
<p>SUMMARY STATEMENT: As directed by the City Council the City attorney has prepared this ordinance establishing an emergency moratorium on the production and processing of marijuana in the City’s General Commercial (GC) Zone.</p> <p>As indicated in the ordinance findings, due to prohibitions and bans in surrounding areas the City is receiving an inordinate amount of interest from parties desiring to locate production and/or processing facilities in the City’s commercial zones. These types of facilities do not have to pay any retail sales tax that is disbursed to the City as opposed to other establishments authorized in commercial zones. The City has very limited amount of commercial land available for development and the loss of potential commercial space can have a direct impact on the City’s ability to generate sufficient tax revenues to provide public services to its commercial areas.</p> <p>A six-month moratorium will allow the City’s Planning Commission time to evaluate this impact and determine whether or not changes to the City’s zoning regulations are warranted.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Full Council			
RECOMMENDED ACTION: Motion to Approve ORD No __-16 Adopting an Emergency Moratorium on Marijuana Production & Processing in the City’s GC Zone.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. __-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING AND PERMITTING OF MARIJUANA PROCESS AND PRODUCTION FACILITIES IN THE GENERAL COMMERCIAL ZONE.

WHEREAS, due to historical growth patterns and current zoning, the City of Buckley has very limited areas for commercial development, and

WHEREAS, the City of Buckley has authorized marijuana process and production facilities in all areas zoned for commercial development to the extent consistent with state law while surrounding communities have extensively limited or banned marijuana facilities within their jurisdictions, and

WHEREAS, due to these conditions marijuana process and production facilities have been established in the City's commercial areas and the City anticipates additional applications, and

WHEREAS, the City has 361.46 acres of property zoned for commercial development and only approximately 34 percent of this property is available for new commercial development, and

WHEREAS, the introduction of these facilities is particularly problematical to the City because they do not have to pay any retail sales tax that is disbursed to the City as opposed to other establishments authorized in commercial zones, and

WHEREAS, in order to ensure that the City has sufficient space to provide for a diversity of commercial uses and also to ensure that such uses provide sufficient tax revenues for the City to provide public services its commercial areas, the City needs to adopt an immediate moratorium to prevent new marijuana processor and producer applications from vesting while the City considers new zoning regulations, and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City may adopt an immediate moratorium for a period of six months, provided that the City holds a public hearing on and adopts findings of fact related to the proposed moratorium within 60 days of adoption; NOW THEREFORE THE CITY OF BUCKLEY, PIERCE COUNTY, DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are hereby adopted by reference as the City Council's findings of fact in support of this ordinance. The City Council may, in its discretion, modify

and/or adopt additional findings of fact at the conclusion of the public hearing set by this ordinance.

Section 2. Pursuant to the provisions of RCW 35A.63.220, a moratorium is hereby enacted to prohibit within the City of Buckley for the establishment, location, operation, licensing and permitting of any facilities for marijuana processors or marijuana producers as defined by RCW 69.50.101 and 69.51A.010 in the General Commercial zone. No building permit, occupancy permit or other development permit or approval or business license shall be issued for any of the purposes, facilities, structures or activities associated with marijuana processors and marijuana producers, provided that this moratorium shall not apply to pre-existing marijuana processors or marijuana producers so long as any new development activity is limited to the parcel upon which the processor or producers is located at the time this moratorium is adopted, with parcel boundaries in place at the time of the adoption of this moratorium. Any land use permits, business licenses or any other permit for any of these prohibited operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force and effect.

Section 3. The City Council deems it to be in the public interest to establish an emergency moratorium pending consideration of changes to regulations to address marijuana processors and marijuana producers in order to preserve the public health, safety and welfare.

Section 4. Nothing in this ordinance, by negative implication or otherwise, shall be construed as authorizing any drug related activities or land uses that are prohibited by state or federal law.

Section 5. As required by RCW 35A.63.220, the City Council hereby refers this moratorium to the Planning Commission to make a recommendation for permanent zoning regulations, if any, regulating marijuana processors and marijuana producers.

Section 6. That as required by RCW 35A.63.220, a public hearing is set for **November 22, 2016** for a public hearing in order to take public testimony and to consider adopting further findings to justifying the imposition of the moratorium adopted by this ordinance.

Section 7. That this ordinance shall be transmitted to the Washington State Department of Commerce, pursuant to RCW 36.70A.106.

Section 8. Declaration of Emergency and Immediate Effective Date. That notice of and hearing on this ordinance, in the normal course, would undermine effective City planning by allowing the establishment of, or the submittal of permit applications between the time notice was published and the time the ordinance was passed to vest to City regulations which may be inadequate to protect the public health, safety and general welfare. Therefore, for this reason, the City Council hereby finds and declares that an emergency exists and that the 180-day moratorium imposed by this ordinance shall become effective immediately upon passage of this ordinance and that an immediate effective date and this declaration of emergency is necessary for the protection of the public health, public safety, public property and public peace. The findings adopted by this ordinance are further adopted in support of this declaration of emergency.

Section 9. If any provision of this ordinance is held invalid, such invalidity shall not affect any other provision, or the applications thereof, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are to be declared severable.

Introduced, passed, and approved by at least five members of the Buckley City Council on October 11, 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: Adopting Emergency Moratorium – Contractor & Outdoor Storage Yds - GC Zone	Agenda Date: October 11, 2016		AB16-122
	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		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson	X	X
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: Ordinance			
<p>SUMMARY STATEMENT: As directed by the City Council the City attorney has prepared this ordinance establishing an emergency moratorium on construction/contractor and outdoor storage yards in the City’s General Commercial (GC) Zone.</p> <p>As indicated in the ordinance findings, the City is receiving an inordinate amount of interest from parties desiring to locate construction/contractor and outdoor storage yards in the City’s commercial zones. These types of facilities do not have to pay any retail sales tax that is disbursed to the City as opposed to other establishments authorized in commercial zones. The City has a very limited amount of commercial land available for development and the loss of potential commercial space can have a direct impact on the City’s ability to generate sufficient tax revenues to provide public services to its commercial areas.</p> <p>A six-month moratorium will allow the City’s Planning Commission time to evaluate this impact and determine whether or not changes to the City’s zoning regulations are warranted.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Full Council			
RECOMMENDED ACTION: Motion to Approve ORD No __-16 Adopting an Emergency Moratorium on Contractor/Construction & Outdoor Storage Yds in the City’s GC Zone.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. __-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING AND PERMITTING OF CONSTRUCTION/CONTRACTOR AND/OR OUTDOOR STORAGE YARDS IN THE GENERAL COMMERCIAL ZONE.

WHEREAS, due to historical growth patterns and current zoning, the City of Buckley has very limited areas for commercial development, and

WHEREAS, the City has 361.46 acres of property zoned for commercial development and only approximately 34 percent of this property is available for new commercial development, and

WHEREAS, the City has seen a proliferation of construction/contractor and outdoor storage yards that take up an inordinate amount of space, create an unappealing aesthetic to the major entry points of the City and detract from City goals to create thriving retail commercial areas, and

WHEREAS, the introduction of these facilities is particularly problematical to the City because they do not have to pay any retail sales tax that is disbursed to the City as opposed to other establishments authorized in commercial zones, and

WHEREAS, in order to ensure that the City has sufficient space to provide for a diversity of commercial uses and to effectively address the adverse impacts associated with construction/contractor yards and also to ensure that such uses provide sufficient tax revenues for the City to provide public services its commercial areas, the City needs to adopt an immediate moratorium to prevent new construction/contractor and/or outdoor yards from vesting while the City considers new zoning regulations, and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City may adopt an immediate moratorium for a period of six months, provided that the City holds a public hearing on and adopts findings of fact related to the proposed moratorium within 60 days of adoption; NOW THEREFORE THE CITY OF BUCKLEY, PIERCE COUNTY, DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are hereby adopted by reference as the City Council's findings of fact in support of this ordinance. The City Council may, in its discretion, modify and/or adopt additional findings of fact at the conclusion of the public hearing set by this ordinance.

Section 2. Pursuant to the provisions of RCW 35A.63.220, a moratorium is hereby enacted to prohibit within the City of Buckley the establishment, location, operation, licensing and permitting of any construction/contractor and/or outdoor yards as referenced in BMC 19.20.130 in the General Commercial zone. No building permit, occupancy permit or other development permit or approval or business license shall be issued for any of the purposes, uses, structures or activities associated with construction/contractor yards, provided that this moratorium shall not apply to expansions and modifications to construction/contractor yards that would be permitted if the yards qualified as a nonconforming use under Chapter 19.36 BMC. Any land use permits, business licenses or any other permit for any of these prohibited operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force and effect.

Section 3. The City Council deems it to be in the public interest to establish an emergency moratorium pending consideration of changes to regulations to address construction/contractor yards in order to preserve the public health, safety and welfare.

Section 4. Nothing in this ordinance, by negative implication or otherwise, shall be construed as authorizing any drug related activities or land uses that are prohibited by state or federal law.

Section 5. As required by RCW 35A.63.220, the City Council hereby refers this moratorium to the Planning Commission to make a recommendation for permanent zoning regulations, if any, regulating construction/contractor yards.

Section 6. That as required by RCW 35A.63.220, a public hearing is set for **November 22, 2016** for a public hearing in order to take public testimony and to consider adopting further findings to justifying the imposition of the moratorium adopted by this ordinance.

Section 7. That this ordinance shall be transmitted to the Washington State Department of Commerce, pursuant to RCW 36.70A.106.

Section 8. Declaration of Emergency and Immediate Effective Date. That notice of and hearing on this ordinance, in the normal course, would undermine effective City planning by

allowing the establishment of, or the submittal of permit applications between the time notice was published and the time the ordinance was passed to vest to City regulations which may be inadequate to protect the public health, safety and general welfare. Therefore, for this reason, the City Council hereby finds and declares that an emergency exists and that the 180-day moratorium imposed by this ordinance shall become effective immediately upon passage of this ordinance and that an immediate effective date and this declaration of emergency is necessary for the protection of the public health, public safety, public property and public peace. The findings adopted by this ordinance are further adopted in support of this declaration of emergency.

Section 9. If any provision of this ordinance is held invalid, such invalidity shall not affect any other provision, or the applications thereof, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are to be declared severable.

Introduced, passed, and approved by at least five members of the Buckley City Council on October 11, 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: Final Acceptance: Skate Park Reconstruction Project Cost Impact: N/A Fund Source: N/A Timeline: N/A	Agenda Date: October 11, 2016		AB16-123
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller	X	X
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		X
Muni Court – Jessica Cash			
Attachments: Engineer Recommendation			
SUMMARY STATEMENT: Staff is requesting and recommending that the City Council grant final acceptance to the Skate Park Reconstruction Project. Pursuant to the engineer’s certification the project has been constructed in conformity to the approved plans and specifications.			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to Approve Final Acceptance of the Skate Park Reconstruction Project.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	



September 30, 2016

Ms. Sheila Bazzar
Finance Officer
City of Buckley
P.O. Box 1960
Buckley, Washington 98321

SUBJECT: FINAL PROGRESS ESTIMATE NO. 6, PROJECT ACCEPTANCE,
SKATE PARK RECONSTRUCTION PROJECT
CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON
G&O #15204.02

Dear Ms. Bazzar:

This letter provides the City with guidance regarding the final progress estimate, accepting the project as complete, and release of the retainage.

1. Final Progress Estimate

We have enclosed the signed Final Contract Voucher and two copies of Progress Estimate No. 6, which is the final progress estimate for this project. One progress estimate is for the City files and the other copy should be forwarded to the contractor with the payment. The amount now due the contractor and the amount to be deposited in the retainage account are as follows:

<u>Amount Now Due</u>	<u>Amount to be Deposited in Retainage Account</u>	<u>Total Retainage Amount</u>
\$5,801.26	\$281.89	\$7,656.89

Please sign the enclosed “Final Contract Voucher” and forward a copy to the contractor and Gray & Osborne, Inc.

2. Project Completion Acceptance

The project has been completed in compliance with the Contract. We therefore recommend the City accept the project as complete. Attached for your use is a draft “Notice of Completion of Public Works Contract” form. We have also e-mailed this form to you for your use.

After the City has accepted the project as complete, the City needs to forward the “Notice of Completion of Public Works Contract” form to the Washington State Department of



Ms. Sheila Bazzar
September 30, 2016
Page 2

Revenue, the Washington State Department of Labor and Industries, and the Washington State Employment Security Department.

3. Release of Retainage

We have also enclosed two copies of the release of retainage progress estimate for this project. One progress estimate is for the City files and the other copy should be forwarded to the Contractor with the payment. The retainage should be released to the contractor contingent upon the following requirements being fulfilled:

1. Sixty days have elapsed since the date of project acceptance as indicated in the City meeting minutes.
2. The City receives the Washington State Department of Revenue "Certificate of Payment of State Excise Taxes by Public Works Contractor" (RCW 60.28).
3. The City receives the "Certificate of Payment of Contribution Penalties and Interest on Public Works Contract" from the Washington State Employment Security Department.
4. There are no claims or liens filed for labor and materials furnished on this Contract.
5. The City receives notification from the Washington State Department of Labor and Industries that the contractor and their subcontractors are current with payments of industrial insurance and medical aid premiums.

Please contact the undersigned if you have any questions or concerns regarding these matters.

Sincerely,

GRAY & OSBORNE, INC.

Dominic J. Miller, P.E.

DJM/sp
Encl.

cc: Mr. Dave Schmidt, City Administrator, City of Buckley
Ms. Emily Giaquinta, Grindline Skateparks, Inc.

Final Contract Voucher Certificate

Contractor Grindline Skateparks, Inc.			
Street Address 4619 14th Avenue SW			
City Seattle	State WA	Zip 98106	Date 9/20/16
Project Number (Owner) 15204.02			
Job Description (Title) Skate Park Reconstruction Project			
Date Work Physically Completed 9/16/16		Final Amount \$165,235.64	

Contractor's Certification

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Buckley (Owner) nor have I rented or purchased any equipment or materials from any employee of the City of Buckley (Owner); I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Buckley (Owner) for work performed and material furnished under this Contract; that I have carefully examined said final estimate and understand the same; have paid all labor, material, and other costs for this project; and that I hereby release the City of Buckley (Owner) from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.



X *[Signature]*
Contractor Authorized Signature Required

MATT FLUEGGE
Type Signature Name

Subscribed and sworn to before me this 21st day of September 202016

X *[Signature]* Notary Public in and for the State of Washington

Residing at 4420 54th Ave SW Seattle WA 98116

City of Buckley (Owner) Certification

I, certify the attached final estimate to be based upon actual measurements, and to be true and correct. Approved Date _____

X *[Signature]*
Project Engineer

X _____
City of Buckley (Owner)

This Final Contract Voucher Certification is to be prepared by the Engineer and the original forwarded to the City of Buckley (Owner) for acceptance and payment.

Contractors Claims, if any, must be included and the Contractors Certification must be labeled indicating a claim attached.

FINAL PROGRESS ESTIMATE NO. 6
SEPTEMBER 20, 2016

CITY OF BUCKLEY
 PIERCE COUNTY
 WASHINGTON

PROGRESS ESTIMATE PERIOD
 JULY 1, 2016 TO SEPTEMBER 16, 2016

PROJECT:
 CITY OF BUCKLEY
 SKATE PARK RECONSTRUCTION PROJECT
 G&O JOB NUMBER #15204.02

CONTRACTOR:
 GRINDLINE SKATEPARKS, INC.
 4619 14TH AVENUE SW
 SEATTLE, WA 98106

BID ITEMS				QUANTITIES		PROJECT COSTS		PERCENT OF CONTRACT QUANTITY
NO.	DESCRIPTION	QUANTITY UNIT	UNIT PRICE	TOTAL THIS PERIOD	TOTAL TO DATE	AMOUNT THIS PERIOD	AMOUNT TO DATE	
1	Mobilization and Demobilization	1 LS	\$10,000.00	25.00%	100.00%	\$2,500.00	\$10,000.00	100%
2	Concrete Skate Park	1 LS	\$140,000.00	0.00%	100.00%	\$0.00	\$140,000.00	100%
CHANGE ORDERS:								
CO1	Revise Dark Brown Concrete Color	72 CY	\$43.58	72	72	\$3,137.76	\$3,137.76	100%
CO2						\$0.00	\$0.00	
CO3						\$0.00	\$0.00	
CO4						\$0.00	\$0.00	

				PROJECT COSTS	
				AMOUNT THIS PERIOD	AMOUNT TO DATE
SUBTOTAL EARNED TO DATE				\$5,637.76	\$153,137.76
SALES TAX				7.90%	\$445.38
MATERIALS ON HAND				\$0.00	\$0.00
TOTAL				\$6,083.14	\$165,235.64
LESS 5% RETAINED (BEFORE TAX)				\$281.89	\$7,656.89
TOTAL EARNED TO DATE LESS RETAINAGE					\$157,578.76

LESS AMOUNTS PREVIOUSLY PAID

PROGRESS ESTIMATE NO. 1	\$4,422.64
PROGRESS ESTIMATE NO. 2	\$15,128.36
PROGRESS ESTIMATE NO. 3	\$46,819.50
PROGRESS ESTIMATE NO. 4	\$56,595.00
PROGRESS ESTIMATE NO. 5	\$28,812.00

TOTAL PAYMENT NOW DUE: \$5,801.26 \$5,801.26

ORIGINAL CONTRACT AMOUNT \$150,000.00
CONTRACT AMOUNT WITH CHANGE ORDER 1 \$153,137.76
CONTRACT PERCENTAGE TO DATE 100%

I HEREBY CERTIFY THE ABOVE ESTIMATE IS A TRUE AND CORRECT STATEMENT OF THE WORK PERFORMED UNDER THIS CONTRACT

I HEREBY CERTIFY THAT THE WAGES HAVE BEEN PAID IN ACCORDANCE WITH RCW 39.12 (PREVAILING WAGES).

GRAY & OSBORNE, INC

GRINDLINE SKATEPARKS, INC.


 DOMINIC J. MILLER, P.E.


 CONTRACTOR'S REPRESENTATIVE

**FINAL PROGRESS ESTIMATE NO. 6
SEPTEMBER 20, 2016**

CITY OF BUCKLEY
PIERCE COUNTY
WASHINGTON

PROGRESS ESTIMATE PERIOD
JULY 1, 2016 TO SEPTEMBER 16, 2016

PROJECT:
CITY OF BUCKLEY
SKATE PARK RECONSTRUCTION PROJECT
G&O JOB NUMBER #15204.02

CONTRACTOR:
GRINDLINE SKATEPARKS, INC.
4619 14TH AVENUE SW
SEATTLE, WA 98106

SUMMARY AND DISTRIBUTION OF PAYMENTS

PAY EST NO.	PROGRESS ESTIMATE PERIOD DATES	TOTAL		SALES		MATERIALS ON HAND	RETAINAGE (5%)	TOTAL PAYMENT
		EARNED PER PERIOD	SALES TAX RATE	TAX AMOUNT				
1	NOVEMBER 18, 2015 TO DECEMBER 18, 2015	\$4,298.00	7.90%	\$339.54		\$0.00	\$214.90	\$4,422.64
2	DECEMBER 19, 2015 TO MARCH 26, 2016	\$14,702.00	7.90%	\$1,161.46		\$0.00	\$735.10	\$15,128.36
3	MARCH 27, 2016 TO APRIL 27, 2016	\$45,500.00	7.90%	\$3,594.50		\$0.00	\$2,275.00	\$46,819.50
4	APRIL 28, 2016 TO MAY 25, 2016	\$55,000.00	7.90%	\$4,345.00		\$0.00	\$2,750.00	\$56,595.00
5	MAY 26, 2016 TO JUNE 30, 2016	\$28,000.00	7.90%	\$2,212.00		\$0.00	\$1,400.00	\$28,812.00
6	JULY 1, 2016 TO SEPTEMBER 16, 2016	\$5,637.76	7.90%	\$445.38		\$0.00	\$281.89	\$5,801.26
TOTAL:		\$153,137.76		\$12,097.88		\$0.00	\$7,656.89	\$157,578.76



Original
 Revised # _____

NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Date: _____ Contractor's UBI Number: 601605667

Name & Mailing Address of Public Agency	Department Use Only
City of Buckley 933 Main Street, PO Box 1960 Buckley, Washington 98321 UBI Number: 270 000 333	Assigned to: _____ Date Assigned: _____

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

Project Name Skate Park Reconstruction Project		Contract Number 15204.02	Job Order Contracting <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Description of Work Done/Include Jobsite Address(es) Furnish and install complete reconstruction of the existing White River Multi-Use Skate Park located along River Avenue to the northwest of Jefferson Street. Work includes installation of concrete skate bowl, concrete skate ramps & obstacles on existing 110' by 120' slab.			
Federally funded transportation project? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (if yes, provide Contract Bond Statement below)			
Contractor's Name Grindline Skateparks, Inc.		E-mail Address emily@grindline.com	Affidavit ID* 666887
Contractor Address 4619 14th Avenue SW, Seattle, WA 98106			Telephone # (206) 932-6414
If Retainage is not withheld, please select one of the following and List Surety's Name & Bond Number.			
<input type="checkbox"/> Retainage Bond <input type="checkbox"/> Contract/Payment bond (valid for federally funded transportation projects)			
Name: _____		Bond Number: _____	
Date Contract Awarded 9/8/2015	Date Work Commenced 3/21/16	Date Work Completed 9/6/2016	Date Work Accepted
Were Subcontractors used on this project? If so, please complete Addendum A.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Affidavit ID* - No L&I release will be granted until all affidavits are listed.			

Contract Amount	\$ 150,000.00		
Additions (+)	\$ 3,137.76	Liquidated Damages \$	0.00
Reductions (-)	\$ _____	Amount Disbursed \$	157,578.76
Sub-Total	\$ 153,137.76	Amount Retained \$	7,656.88
Amount of Sales Tax <u>7.9</u>			
(If various rates apply, please send a breakdown)	\$ 12097.88		
TOTAL	\$ 165,235.64	TOTAL \$	165,235.64

NOTE: These two totals must be equal

Comments:

Note: The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract.
 NO PAYMENT SHALL BE MADE FROM RETAINED FUNDS until receipt of all release certificates.
Submitting Form: Please submit the completed form by email to all three agencies below.

Contact Name: Sheila Bazzar Title: Finance Director
 Email Address: sbazzar@cityofbuckley.com Phone Number: (360) 829 - 1921



**RELEASE OF RETAINAGE PROGRESS ESTIMATE NO. 7
SEPTEMBER 30, 2016**

CITY OF BUCKLEY
PIERCE COUNTY
WASHINGTON

PROJECT:
CITY OF BUCKLEY
SKATE PARK RECONSTRUCTION PROJECT
G&O JOB NUMBER #15204.02

CONTRACTOR:
GRINDLINE SKATEPARKS, INC.
4619 14TH AVENUE SW
SEATTLE, WA 98106

BID ITEMS				QUANTITIES		PROJECT COSTS		PERCENT OF CONTRACT QUANTITY
NO.	DESCRIPTION	QUANTITY UNIT	UNIT PRICE	TOTAL THIS PERIOD	TOTAL TO DATE	AMOUNT THIS PERIOD	AMOUNT TO DATE	
1	Mobilization and Demobilization	1 LS	\$10,000.00	0.00%	100.00%	\$0.00	\$10,000.00	100%
2	Concrete Skate Park	1 LS	\$140,000.00	0.00%	100.00%	\$0.00	\$140,000.00	100%
CHANGE ORDERS:								
CO1	Revise Dark Brown Concrete Color	72 CY	\$43.58	0	72	\$0.00	\$3,137.76	100%
CO2						\$0.00	\$0.00	
CO3						\$0.00	\$0.00	
CO4						\$0.00	\$0.00	
						PROJECT COSTS		
						AMOUNT THIS PERIOD	AMOUNT TO DATE	
SUBTOTAL EARNED TO DATE						\$0.00	\$153,137.76	
SALES TAX						7.90%	\$0.00	\$12,097.88
MATERIALS ON HAND						\$0.00	\$0.00	
TOTAL						\$0.00	\$165,235.65	
LESS 5% RETAINED (BEFORE TAX)						(\$7,656.89)	\$0.00	
TOTAL EARNED TO DATE LESS RETAINAGE							\$165,235.65	
LESS AMOUNTS PREVIOUSLY PAID								
PROGRESS ESTIMATE NO. 1							\$4,422.64	
PROGRESS ESTIMATE NO. 2							\$15,128.36	
PROGRESS ESTIMATE NO. 3							\$46,819.50	
PROGRESS ESTIMATE NO. 4							\$56,595.00	
PROGRESS ESTIMATE NO. 5							\$28,812.00	
PROGRESS ESTIMATE NO. 6							\$5,801.26	
TOTAL PAYMENT NOW DUE:						\$7,656.89	\$7,656.89	
ORIGINAL CONTRACT AMOUNT						\$150,000.00		
CONTRACT AMOUNT WITH CHANGE ORDER 1						\$153,137.76		
CONTRACT PERCENTAGE TO DATE						100%		

I HEREBY CERTIFY THE ABOVE ESTIMATE IS A TRUE AND CORRECT STATEMENT OF THE WORK PERFORMED UNDER THIS CONTRACT.

GRAY & OSBORNE, INC.


DOMINIC J. MILLER, P.E.

**RELEASE OF RETAINAGE PROGRESS ESTIMATE NO. 7
SEPTEMBER 30, 2016**

CITY OF BUCKLEY
PIERCE COUNTY
WASHINGTON

PROJECT:
CITY OF BUCKLEY
SKATE PARK RECONSTRUCTION PROJECT
G&O JOB NUMBER #15204.02

CONTRACTOR:
GRINDLINE SKATEPARKS, INC.
4619 14TH AVENUE SW
SEATTLE, WA 98106

SUMMARY AND DISTRIBUTION OF PAYMENTS

PAY EST NO.	PROGRESS ESTIMATE PERIOD DATES	TOTAL		SALES		MATERIALS ON HAND	RETAINAGE (5%)	TOTAL PAYMENT
		EARNED PER PERIOD	SALES TAX RATE	TAX AMOUNT				
1	NOVEMBER 18, 2015 TO DECEMBER 18, 2015	\$4,298.00	7.90%	\$339.54		\$0.00	\$214.90	\$4,422.64
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4	APRIL 28, 2016 TO MAY 25, 2016	\$55,000.00	7.90%	\$4,345.00		\$0.00	\$2,750.00	\$56,595.00
5	MAY 26, 2016 TO JUNE 30, 2016	\$28,000.00	7.90%	\$2,212.00		\$0.00	\$1,400.00	\$28,812.00
6	JULY 1, 2016 TO SEPTEMBER 16, 2016	\$5,637.76	7.90%	\$445.38		\$0.00	\$281.89	\$5,801.26
7	SEPTEMBER 30, 2016	\$0.00	7.90%	\$0.00		\$0.00	-\$7,656.89	\$7,656.89
TOTAL:		\$153,137.76		\$12,097.88		\$0.00	\$0.00	\$165,235.65



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Lease/Purchase Agreement: Feed Supply Store Property Lease & Building Purchase (former Del's Farm Supply) by Burbank Bros.	Agenda Date: October 11, 2016		AB16-124
	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		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: Lease/Purchase Agreement			
<p>SUMMARY STATEMENT: As directed by the City Council on September 13, 2016, the City attorney has prepared a “new” draft lease agreement for the City Council’s consideration. The new draft modifies the existing agreement to provide Burbank Bros. to purchase the building for the appraised market value less the cost of structural repairs which results in a purchase price of \$20,000. The new lease also reduces the monthly rent to reflect lease of the property “only” since the tenant will now own the building.</p> <p>The draft language also contains provisions whereby if the lease is terminated the City has the ability to purchase the building back so that there’s no conflict of ownership between property and building.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to Approve the Lease/Purchase Agreement Between the City and Burbank Bros. for Lease of the Property at 117 N. River Ave and Purchase of the Del’s Farm Supply Building.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

LEASE AGREEMENT

PARTIES

This agreement dated the 1st day of October, 2016, by and between the City of Buckley, (hereinafter known as “Landlord”) and Don and Kelly Burbank, (hereinafter known as “Tenant”).

WITNESSETH

1. Premises. Landlord is the owner of the real property situated in the City of Buckley, Pierce County, Washington, physically located at 117 N. River Avenue, Buckley, Washington, and legally described in Exhibit A (“the Premises”).

2. Use of Premises. There exists a building upon said Premises (separately identified as the “Building” and described in Exhibit B). Landlord makes no representation or warranty regarding physical condition of the Building or the Premises both of which are taken by Tenant “as is”. Premises shall be used for farm supply retail business, including all other related activities. Tenant shall not use the Premises for any other purpose without Landlord’s prior written consent, which may be withheld for any reason in Landlord’s sole discretion. Tenant shall comply with all local, state, or federal laws, statutes, ordinances governmental rules, orders, regulations or requirements relating to the use and occupancy of the Premises. Tenant shall not use, store or dispose of any hazardous or toxic waste or materials on the Premises at any time, except to the extent necessary in the normal course of Tenant’s business and then only in compliance with all applicable laws and regulations. In any event, Tenant shall not dispose of any hazardous waste or materials upon the Building or premises , and shall defend, indemnify and hold Landlord harmless from any and all damages and/or cost of clean-up of any toxic or hazardous waste or materials found upon the Premises or Builidng or within the soils related to operations of Tenant’s business, including cost and damages assessed pursuant to Chapter 70.105D RCW.

3. Term. This Lease shall be for a term of 10 years, commencing on the 1st day of October, 2016. This Lease shall be subject to earlier termination as provided in Section 20 herein.

a). Renewal Options. Provided Tenant is not in default of any provision of the Lease at the time that Tenant exercises the right to extend the Lease or at the time the new term begins, Tenant shall have one option to extend the term of the Lease for 10 years. The term of the Lease shall be extended on the same terms, conditions and covenants set forth in the Lease, except that (i) the amount of the Base Rent stated in the Lease shall be adjusted as set forth below in Section 5 (provided, however, that Base Rent shall not be decreased); (ii) there shall be no free or abated rent periods, tenant improvement allowances or other concessions that may have been granted to Tenant at the beginning of the initial term hereof.

b). Option Notice. To extend the Lease, Tenant shall deliver written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the then-current Lease term. Time is of the essence of this Option.

4. Rental. Tenant agrees to pay Landlord, at Landlord's address set forth in Section 17 hereof, or at such other place as Landlord may designate in writing, monthly rent in the amount of One Thousand Dollars (\$1,000.00) per month commencing the 1st day of October, 2016. This shall be known as the "basic rental."

Rent shall be due and paid to Landlord in advance of the first day of each and every month during the term thereof. Any payment hereunder not made by the 10th day of the month following its due date shall result in the imposition of a late fee in the amount of 5% of the payment missed, which late fee shall become immediately due and payable.

5. Rent Adjustments. Commencing with the second year of the Lease term, and each and every year thereafter, the basic rental shall be increased or decreased (but not by more than 5% per year) by the percentage increase or decrease in the Consumer Price Index published by the Department of Labor, for all items, all urban consumers in the Seattle-Tacoma area over the previous 12 months. As an example, if the Lease term commences on October 1, 2016, then the percentage increase or decrease on October 1, 2017 shall be the percentage difference in the Consumer Price Index as of September 1, 2016 and the Consumer Price Index as of September 1, 2017. The rent amounts shall never fall below the amount fixed in paragraph 4 as the original basic rental.

6. Construction upon Premises. Tenant acknowledges that the Premises described herein are a part of the former Burlington Northern Right-of-Way now owned by the City of Buckley. Tenant further acknowledges that the Landlord has disclosed its intention to maintain architectural and landscaping integrity upon this property as a part of a community theme relating to the Railway property. Tenant, therefore, agrees that it shall obtain the Landlord's written consent prior to the remodeling or addition of any buildings, structures or landscaping upon the Premises or Building, except as to minor alterations and upkeep of the Building which do not necessitate a building permit from the City. Landlord has no duty to alter or improve the Building. Tenant also agrees to obtain, at their expense, any and/or all permits and/or licenses required in order to complete any improvement and shall hold Landlord harmless from any and all liability, costs, damages, expenses (including attorneys' fees), and any and all liens resulting therefrom. Any alterations, additions, or improvements shall be made at Tenant's sole cost and expense; provided, that Tenant shall be solely responsible for ascertaining and paying any prevailing wages applicable therefor to the extent required by Chapter 39.12 RCW. Excluding improvements to the Building (covered by Paragraph 23), upon the expiration or termination of the Lease Term, Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith remove any alterations, additions or improvement made by Tenant, designated by Landlord to be removed, and Tenant shall forthwith at its sole cost and expense, repair any damage to the Leased Premises caused by such removal; provided, that Tenant shall not be responsible for removal or repair of any alterations, additions or improvements to which Landlord has acknowledged

in writing prior to construction as not requiring removal or repair upon termination of this Lease.

7. Utilities and Other Services. Tenant shall be responsible for payment of all utilities and services utilized upon and provided to the Premises prior to delinquency.

8. Maintenance. Tenant shall maintain the Premises at its own expense and in a good sanitary condition and repair allowing no consolidation or accumulation of junk, trash or other refuse materials. If Tenant fails to keep and preserve the Premises as set forth in this Section, Landlord may, at its option, put or cause the same to be put in the condition and state of repair agreed upon, and in such case upon receipt of written statements from Landlord, Tenant shall promptly pay the entire cost thereof as additional rent. Landlord shall have the right, without liability, to enter the Premises for the purpose of making such repairs upon the failure of Tenant to do so, upon five (5) days written notice, except in emergencies when no notice shall be required. At the expiration or termination of this Lease, Tenant shall return the Premises to Landlord in the same condition in which received (or, if altered by Landlord or by Tenant with the Landlord's consent, then the Leased Premises shall be returned in such altered condition), reasonable wear and tear excepted. Tenant shall remove all trade fixtures, appliances, and equipment which do not become a part of the Premises and alterations which Landlord designates to be removed and shall restore the Premises to the condition extant prior to the installation of such items. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease.

9. Licenses and Taxes. Tenant shall be liable for, and shall pay before delinquency throughout the Lease Term, all applicable license fees, regulatory charges, excise fees, and occupation taxes covering Tenant's use of and business conducted on the Premises. In addition to the rental payments as referenced in paragraph 4 hereinabove, the Tenant shall further be responsible for the payment to Landlord of a leasehold excise tax as required by RCW 82.29A.030 on a monthly basis. At the time of the execution of this agreement, said leasehold excise taxes are 12.84% of the basic rental above.

10. Signs. Tenant acknowledges that no display of any sign, notice or advertising matter is allowed on or about the Premises except in accordance with Buckley City Ordinances. Tenant shall keep all signs in good condition and repair. Tenant will remove signs upon expiration of the term of lease. Landlord can remove unauthorized signs at Tenant's expense.

11. Liability Insurance. Tenant shall, at Tenant's sole expense, maintain public liability insurance insuring against any and all claims for injury to or death of persons, and occurring upon, in, or about the Premises and Building.. Tenant shall obtain insurance of the types described below:

a) Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. Landlord shall be named as an insured under such policy using ISO

Additional Insured - Managers or Lessors of Premises Form CG 20 11, or substitute endorsement providing equivalent coverage. Commercial General Liability insurance shall be written with limits no less than \$1,000,000.00 each occurrence, and \$2,000,000.00 general aggregate.

b) Property Insurance shall be written on an all risk basis. Property insurance shall be written covering the full value of the Premises and Building with no coinsurance provisions.

Tenant's insurance coverage shall be primary insurance as respect Landlord. Any insurance, self-insurance or insurance pool coverage maintained by Landlord shall be excess of Tenant's coverage and shall not contribute with it. Tenant's insurance shall be endorsed to state that coverage shall not be canceled by either party except upon not less than 30 days' prior written notice to Landlord, sent via certified mail, return receipt requested. Insurance shall be placed with insurers with a current A.M. Best rating of not less than A:VII. Prior to commencement of the Lease Term, Tenant shall furnish Landlord with copies of the policies of insurance or certificates thereof, including without limitation any amendatory endorsements. If Tenant fails to maintain such insurance, Landlord may, without prejudice to any other remedy, procure and maintain the same on behalf of Tenant. Any such premiums paid by Landlord shall be deemed additional rent and shall be due on the payment date of the next installment of rent hereunder. Landlord and Tenant hereby mutually release each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance or in connection with the Leased Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance. Tenant's maintenance of insurance as required by this Lease shall not be construed to limit the liability of Tenant as to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. Tenant exclusively assumes all risk of loss in storing, using or operating any personal property upon the Premises, and Landlord shall have no responsibility whatsoever for the safety, protection, integrity or preservation thereof.

12. Assignment and Subletting. Neither this Lease nor any rights hereunder may be assigned, transferred, encumbered or sublet in whole or in part by Tenant, by operation of law or otherwise, without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant may not sell or lease Building to any third party without prior consent of the Landlord and any resulting purchaser or lessee must be made a party to this Agreement. No liens or any other transfers of interest in the Building may be authorized by Tenant without the prior consent of the Landlord.

13. Liens. Tenant shall not suffer or permit any lien to be filed against the Premises or Building by reason of work, labor, services or materials performed or supplied to Tenant or anyone holding the Premises or any part thereof under Tenant. If any such lien is filed against the Premises, the Tenant shall cause the same to be discharged of record within 30 days after the date of filing the same. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's sole cost and expense, payment and performance bonds in an amount equal to one and one-half (1

1/2) times the estimated cost of any improvements, additions, or alterations in the Premises which the Tenant desires to make, in order to insure Landlord against any liability for mechanics' and materialmen's liens and the completion of such work. Nothing in this section shall be construed as an acknowledgment or concession that the Premises or the Property are subject to any lien or encumbrance.

14. Indemnity by Tenant. Tenant shall protect, indemnify, defend and hold Landlord, its officers, officials, and employees harmless from and against any and all claims, suits, actions, or liabilities for death or injury to persons or damages to or destruction of property arising out of Tenant's use or occupation of the Premises or Building, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant in or about the Premises or Building, including, without limiting the generality of the foregoing, any claims caused by or arising from the condition or maintenance of any part of the Premises, except only such damage or injury as shall have been occasioned by the sole negligence or intentional misconduct of Landlord. With respect to the obligations to hold harmless, indemnify and defend provided for herein, as they relate to claims against the Landlord, its officers, agents and employees, Tenant hereby waives Tenant's immunity under industrial insurance, Title 51 RCW, for any injury or death suffered by Tenant's employees which is caused by or arises out of Tenant's performance of services or work under this Lease. The provisions of this Section shall survive the expiration or termination of this Lease.

15. Default. The occurrence of any one or more of the following events shall be deemed a breach of this Lease by the Tenant:

- A) If Tenant shall fail to perform any obligation or otherwise breaches any of the covenants or agreements contained herein, including but not limited to failure by Tenant to make any payment of rent or adjusted rent, or any other payment required to be made by Tenant hereunder, as and when due, or use of the Premises for any purpose not authorized by this Lease.
- B) If Tenant shall make an assignment for the benefit of creditors or shall file a voluntary petition under any bankruptcy act or under any other law for the relief of debtors or if an involuntary petition is filed against Tenant under any such law and is not dismissed within 30 days after filing.
- C) If a receiver is appointed for the property of Tenant and is not discharged or removed within 30 days.
- D) If any department of any government or any officer thereof shall take possession of the business or property of the Tenant.

Upon any such occurrence, except as provided in Section 20, Landlord, at its option, in addition to any other remedies at or in equity, may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have be reason of such default or breach:

Terminate Lease. Terminate this Lease by notice to the Tenant on 10 days' notice and upon such termination Tenant shall forthwith quit and surrender the Premises to the Landlord, but Tenant shall remain liable as hereinafter provided. If this Lease shall be terminated as herein provided, Landlord may immediately, or at any time thereafter, reenter the Premises and remove any and all persons and property there from by any suitable proceeding at law or otherwise, without liability therefore, and reenter the Premises, without such reentry diminishing the Tenant's obligation to pay rental for the full term hereof, and Tenant agrees to pay Landlord (i) all past due rents, and other charges; (ii) the expenses of removing fixtures installed by Tenant and restoring the Premises to pre-possession status, ordinary wear and tear excepted; (iii) Landlord's reasonable attorneys' fees, if applicable; and (iv) any deficiency arising from reentry and reletting of the Premises at a lesser rental than provided herein through the remaining term of the lease. Landlord shall apply the proceeds of any reletting first to the payment of such reasonable expenses as Landlord may have incurred in recovering the possession of the Premises and removing persons and property there from, and placing the same into good order or condition, or preparing or altering the same for reletting, and all other expenses incurred by Landlord for reletting the Premises; and then to Tenant's obligation to pay rental. Any such reletting may be for the remainder for the term of the Lease or for a longer or shorter period. In any such case, whether or not the Premises or any part thereof be relet, Tenant shall pay to Landlord the rent and all other charges required to be paid by Tenant up to the time of such termination of this Lease, and thereafter, Tenant agrees to pay the equivalent of the amount of all rent reserved herein and all other charges required to be paid by Tenant, less the net proceeds of reletting, if any, and the same shall be due and payable by Tenant monthly in amount as ascertained by Landlord, and Landlord may bring an action, as such monthly deficiencies arise.

In any of the circumstances hereinabove mentioned, Landlord shall have the option, instead of holding Tenant liable for the amount of all rent and other charges required to be paid by Tenant less the proceeds of reletting, if any, to forthwith recover from Tenant an aggregate sum representing at the time of such termination of this Lease, the then present worth of the excess, if any, of the aggregate of the rent and all other charges payable by Tenant hereunder that would have accrued until the end of the Lease term over the aggregate rental value of the Premises during such term.

Continue the Lease. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover rent and any other charges as may become due hereunder; or

Other Remedies. Pursue any other remedy now or hereafter available to Landlord under the laws of the State of Washington.

16. Condemnation. If all of the Premises are taken by any public authority under the power of eminent domain, this Lease shall terminate as of the date possession is taken.

17. Notices. All notices, demands, and requests to be given by either party to the other shall be in writing. All notices, demands and requests by Landlord to Tenant shall be sent by United States registered or certified mail, postage prepaid (or by private overnight courier) addressed to Tenant at the following address:

Attn: Don and Kelly Burbank
P.O. Box 1354
Buckley, WA 98321

All notices, demands and requests by Tenant to Landlord shall be sent by United States registered or certified mail, postage prepaid (or by private overnight courier) addressed to Tenant at the following address:

c/o City Administrator
City of Buckley
P.O. Box 1960
Buckley, WA 98321

Notices, demands, and requests served upon Landlord or Tenant as provided in this section in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be so mailed or deposited with a private courier.

18. Subordination. This Lease is and shall be subordinate to any encumbrance now of record or any encumbrance hereafter recorded affecting the Premises. Tenant shall execute any documents required by any such holder to accomplish the purposes of this section, and failure to execute such documents shall be default under this Lease.

19. Access and Use by Landlord - Right of Entry. Upon 48 hours written notice to Tenant, Landlord or Landlord's employees, agents, and contractors shall have the right, but no obligation, to enter the Premises at any time to examine the same and/or to make such inspections, repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary in Landlord's reasonable discretion, Landlord may in case of emergency forcibly enter the same, without rendering Landlord liable therefor. Nothing contained herein shall be construed to impose upon Landlord any duty of repair with respect to the Premises except as otherwise specifically provided for herein.

20. Early Termination. In the event that Tenant goes out of business for financial reasons during the initial ten-year term of this Lease, the Tenant shall have the right to terminate this Lease before the expiration of the initial ten-year term set forth in Section 3 above, by giving 60 days prior notice to the Landlord in writing of the date of termination

of the Lease. Upon the effective date of early termination, Tenant shall not be responsible for future Lease payments or any deficiency arising from reentry and reletting of the Premises at a lesser rental than provided herein, but shall continue to be responsible for all past due rents, fees, or other charges, including but not limited to, costs the Landlord incurs in making necessary repairs or removing any alterations, additions or improvements made by Tenant not acknowledged in writing prior to construction as not requiring such removal or repair.

21. Surrender of Premises. Tenant, at the expiration or sooner termination of this Lease, shall quit and surrender the Premises in good, neat, clean and sanitary condition. Tenant shall have the right to remove all of its furniture, equipment, signs and fixtures except for the Building and associated fixtures identified in Paragraph 23. If Tenant remains in possession of the Premises after expiration or termination of the Term, or after the date in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall be deemed a month-to-month tenancy terminable by either party upon thirty (30) days' written notice to the other party. During any such month-to-month tenancy, rent shall accrue at the then-current rate per month, payable in advance by the tenth day of each month. All other provisions of this Lease shall apply with respect to any month-to-month tenancy created under this section. Should Tenant vacate or abandon the Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be deemed a breach of this Lease, and, in addition to any other rights which Landlord may have, Landlord may remove any personal property belonging to Tenant which remains on the Premises and store or dispose of the same to the fullest extent legally permissible, the cost of such removal, storage and/or disposal to be charged to Tenant.

22. First Right of Refusal.

Notwithstanding any other termination provisions to the contrary, Landlord may terminate this lease with one year prior written notice in order to sell the Premises to a third party. Such sale shall be subject to a Tenant right of refusal as follows:

a) The Landlord shall not at any time during the lease term sell or otherwise convey an ownership interest in any or all of the subject Premises property unless Landlord shall first have given written notice to Tenant, in accordance with the terms of this paragraph of Landlord's intent to do so.

b) Landlord shall mail to Tenant a written notice specifying: I) the property in which an ownership interest is to be conveyed. II) the name and the address of the person to whom it is to be conveyed. III) the nature of the interest being conveyed; and IV) the price, payment and other terms of conveyance.

c) The Tenant shall have thirty (30) days from the date of the Landlord's written notice to notify the Landlord in writing that the Tenant will purchase the offered property. Terms of the sale shall be the same as those set forth in the notice mailed to the Tenant.

22. Building. Landlord has agreed to convey title to the building, described in Ex. A, to Tenant by quit claim deed for \$20,000 plus half of all transaction costs, defined to include any applicable real estate excise taxes and recording costs. Tenant agrees to purchase the building “as is” and recognizes that a number of repairs are necessary to maintain structural integrity. Landlord makes no warranties or assurances as to habitability. To Landlord’s knowledge there are no clouds on title, but it is Tenant’s responsibility to research title and bear any costs therewith to determine if the condition of title is acceptable for transfer. Tenant shall pay Landlord for the \$20,000 plus half of transaction costs prior to the commencement of this Lease. Failure to pay this amount by October 31, 2016 shall be considered a material breach subject to the remedies identified in Paragraph 15.

Upon termination or expiration of this Agreement, unless Landlord and Tenant agree to a sale of the Premises to Tenant, Tenant shall re-convey the Building described in Exhibit B to Landlord by quit claim deed, free of any encumbrances or liens attributable to Tenant. Landlord shall pay Tenant the lesser of either (1) the fair market value of the Building based upon an appraisal prepared by an appraiser mutually agreed upon by Tenant and Landlord, or (2) \$20,000 plus the construction costs (including reasonable labor) of any improvements or repairs made to the Building by the Tenant. Only the costs of improvements that can be generically used by future purchasers (as opposed to those specifically adapted to Tenant’s business) shall count towards the maximum purchase price. Landlord may require Tenant to remove improvements specifically adapted to Tenant’s business at Tenant’s expense. Landlord shall have 180 days from final termination or expiration to pay the required amount and Tenant shall execute the necessary quit claim deed within 30 days thereafter.

23. Non-Waiver. No failure of Landlord to insist upon the strict performance of any provision of this Lease shall be construed as depriving Landlord of their right to insist on strict performance of such provision or any other provision in the future. No waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. No acceptance of rent or of any other payment by Landlord from Tenant after any default by Tenant shall constitute a waiver of any such default or any other default. Consent by Landlord in any one instance shall not dispense with necessity of consent by Landlord in any other instance.

24. Attorney’s Fees. If any action to be commenced to enforce any of the provisions of this Lease, the prevailing party shall, in addition to other remedies, be entitled to recover its reasonable attorney’s fees, including incurred in seeking relief in the Bankruptcy Court. If Landlord consults with an attorney as a result of a default by Tenant hereunder, Tenant agrees to pay any such attorney’s fees incurred by Landlord, and such attorney’s fees shall constitute additional sums due by Tenant hereunder.

25. Captions and Construction. The captions in this Lease are for the convenience of the reader and are not to be considered in the interpretation of its terms.

26. Entire Agreement. This document contains the entire and integrated agreement of the parties and may not be modified except in writing, signed and acknowledged by both parties.

27. Interpretation. This Lease has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

28. Time. Time is of the essence to this Lease.

29. Successors and Assigns. Subject to the provisions of Paragraph 12 above, this Agreement shall inure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, personal representatives, successors and assigns.

30. Governing Law. This agreement shall be interpreted in accordance with the laws of the State of Washington.

31. Venue. The venue for any cause of action arising out of this Agreement shall be Pierce County, Washington.

32. Severability. Each and every provision of this Agreement shall be deemed to be severable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were not a part of this Agreement.

33. Recording. This Agreement shall not be recorded except by agreement of both parties. A Memorandum of Lease shall be recorded, and the recording fees, costs, taxes and other fees, if any, shall be shared equally by the parties hereto.

34. Independent Counsel. The Tenant acknowledges that the drafter of this Agreement is the Landlord's legal representative to whom the Tenant does not look for any legal counseling or legal advice with regard to this transaction.

35. Regulatory Authority Preserved. Tenant acknowledges that Landlord has executed this Lease in Landlord's proprietary capacity as owner of the Property. Nothing herein shall be construed as a waiver, abridgement or limitation of the City of Buckley's regulatory authority, which the City hereby reserves in full.

36. Public Records Disclosure. Tenant expressly acknowledges that Landlord is an "agency" as defined by Chapter 42.56 RCW, and is fully subject to the provisions governing the disclosure of public records codified at Chapter 42.56 RCW. To the extent required or otherwise authorized by said statutes or other applicable law:

Any public records submitted to or generated by Landlord in connection with this Lease are potentially subject to public inspection and copying upon request. Tenant expressly waives any claim or cause of action against Landlord arising out of such disclosure.

Tenant shall fully cooperate with and assist Landlord with respect to any request for public records received by Landlord and related to any public records generated, produced, created and/or possessed by Tenant and related to this Lease. Upon written demand by Landlord, the Tenant shall furnish Landlord with full and complete copies of any such records within five business days. Tenant's failure to timely provide such records upon demand shall be deemed a breach of this Lease. To the extent that Landlord incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Tenant shall fully indemnify and hold harmless Landlord.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.56 RCW, as said chapter has been construed by Washington courts.

THE TENANT ACKNOWLEDGES THAT THE TENANT HAS BEEN ADVISED TO CONSULT WITH INDEPENDENT LEGAL COUNSEL OF ITS CHOICE AND HAS HAD AN OPPORTUNITY TO DO SO. BY SIGNING THIS AGREEMENT, THE TENANT ACKNOWLEDGES THAT IT HAS CONSULTED WITH INDEPENDENT LEGAL COUNSEL OF ITS CHOICE OR HAS KNOWINGLY WAIVED THE RIGHT TO DO SO. THERE SHALL BE NO PRESUMPTION OF DRAFTSMANSHIP IN FAVOR OF OR IMPLIED AGAINST ANY PART.

37. Termination of Existing Lease. Upon commencement of the term of the lease subject to this Agreement, the lease between Don and Kelly Burbank and the City of Buckley dated _____ shall be deemed terminated, with any outstanding rents to be prorated and still due and owing to the City of Buckley."

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth below.

(Remainder of page intentionally left blank.)

Tenant(s)

City of Buckley

By: Don Burbank

By: Pat Johnson, Mayor

Tenant(s)

By: Kelly Burbank

By: David Schmidt, City Administrator

APPROVED AS TO FORM:

By: Phil Olbrechts, City Attorney

EXHIBIT A
Legal Description

Tax Parcel No 8000050120, and the description (abbreviations are the county's): Section 03 Township 19 Range 06 Quarter 31 City of Buckley Amended BS) 96-1; City of Buckley Amended BSP-1 NE of SW 3-19-06E L 12 Ease of Record Approx 30,069 SQ FT out of 06-19-03-3-032 SEG E-0691JU 05-20-93CL.

EXHIBIT B

Building Description

The improvement is a one-story freestanding wood-framed building which was constructed circa 1919. In addition to the 5,472± square foot structure, there is a 2,085± square foot three sided storage shed at the northeastern portion of the improvement.



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Agreement – American Medical Response	Agenda Date: June 28, 2016		AB 16-125
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart –		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore	X	
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
Police Depart – Chief Arsanto			
	Other –		
Attachments: Pending Agreement with AMR			
SUMMARY STATEMENT:			
<p>At this year's operational review with American Medical Response (AMR), it was verbally agreed to move forward in 2017 by renewing the agreement reached in 2016 with no change in cost.</p> <p>We did offer to AMR a proposal to renew the agreement for a 2-year term rather than the 1-year term, but we have not yet heard a response from them.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
- FAPS Committee recommends approval			
RECOMMENDED ACTION: A MOTION authorizing the proposed agreement with American Medical Response for a term of not less than one, nor more than two years.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	



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 or a volunteer with the fire departments of BUCKLEY or the Communities 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. All applicants for open paramedic positions that will be filled after January 1, 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 the services provided by AMR personnel shall be under the reasonable direction of the

EMERGENCY MEDICAL SERVICES AGREEMENT

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 September of 2017 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. Each party has warranted that it is an independent contractor, and the Parties agree to defend, indemnify and hold harmless the other from employment based claims of that Party's employees. 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.** To, but only to, the full extent necessary to provide indemnification from the claims of an employee pursuant to Section 21 with regard 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 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

EMERGENCY MEDICAL SERVICES AGREEMENT

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 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.

EMERGENCY MEDICAL SERVICES AGREEMENT

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 law 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:

By: _____

W. Scott Snyder, Attorney for the City of Buckley

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 I or Type III 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, 2017.

**SCHEDULE "B"
RATES**

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

INSERT CURRENT RATE SCHEDULE

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: Short plat amendment for a short plat recorded in 1980 when the parcel was under county jurisdiction.	Agenda Date: October 11, 2016		AB16-126
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson	X	X
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: Staff Memo dated October 6, 2016.			
<p>SUMMARY STATEMENT: The short plat was recorded under Pierce County jurisdiction under Auditor’s File Number (AFN) 8012290114. The original parcel extended from SR 410 to Hinkelman. The short plat created three lots that were to be residential with building setbacks 30 feet from property lines.</p> <p>The land was annexed into the city under Ordinance 1057 on October 31, 1983, and rezoned to commercial.</p> <p>A commercial development was proposed on the parcels in early 2016 and application of the restrictions on the short plat was erroneously determined to not apply.</p> <p>The hearing examiner noted that in 2011 case law changed practices and previous understandings, and a revision to the short plat was required. Please see attached memo.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: Motion to Approve the Short Plat Amendment.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	



Master Landuse - SPT Amendment

File Number: _____
 Zone: _____
 Parcel Number(s): _____
 Amount Received: _____
 Date amount received: _____
 TR# _____

Decision: Approved
 By (Initials): _____ Approved with conditions
 Date: _____ Denied

Receipt stamp

NO WORK OR ACTIVITY MAY BE STARTED WITHOUT APPROVAL AND ISSUANCE OF A PERMIT.

I. General information. This section of the permit application or pre-application request is to provide basic information about the applicant and the proposal, billing information, and the proposal's location.

Please check billing address

A. **Applicant:** Phone # 253-431-6188
 Name: CARBOM PROPERTIES, LLC
 Address: 10010 18182 AV CT E
 City, state, zip: BONNEY LAKE WA 98499
 E-mail address: BCGRIMM1@MSN.COM

B. **Project Address and/or Location:**
28485 SR 410 E BUCKLEY WA 98321

Parcel ID Number: 1619047006

C. **Property Owner:** Phone # _____
 Name: SAME AS A
 Address: _____
 City, state, zip: _____
 E-mail address: _____

D. **Contractor/Agent:** Phone # 253-576-7328
 Name: CASEMENT LAND SURVEYORS
 Address: Contractor Lic. # or consultant business name: _____
 City, state, zip: SAME AS E
 E-mail address: " " "

E. **Contact Person:** Phone # 253-576-7328
 Name: DOUGLAS CASEMENT, PLS
 Address: 1411 33 AV CT SW
 City, state, zip: PUYALLUP WA 98373
 E-mail address: _____

F. **Project Description/Activity:**

AMEND ORIGINAL PIERCE COUNTY SHORT PLAT

G. **Within 200 feet of the subject property, do you know or suspect the existence of the following:**

Streams Y N drainage course Y N wetlands Y N
If yes, please describe:

H. **Will the project will affect the flow of storm water across the property?** Y N

If yes, please show on the site plan the current drainage pattern and how the project will effect the flow and describe here:

I. **At a minimum, please provide the following:**

(for staff only)

- a. Pre-application sketch or site plan (minimum scale 1"=200', 1"=50' preferred), whichever is appropriate Included
- b. Project design specifications Included
- c. Provide a complete environmental checklist for SEPA review, if required by the City Included Not applicable

J. **Required reviews/permits for this project:**

Title 12, Environment

- State Environmental Policy Act (SEPA) Exempt Not exempt
- Critical area permit (see application for list)
- Shoreline permit

Title 16, Buildings and Construction

- Land disturbing activity permit

Title 17, Design and Construction Standards, and Development Guidelines and Public Works Standards (DGS)

- Frontage improvement exceptions
- Right-of-way use permits

Title 18, Subdivisions

- Boundary line adjustment
- Binding site plan
- Short subdivisions (short plats)
- Subdivisions (long plats)

Title 19, Zoning

- Commercial height modification
- Conditional use permits, zoning code
- Design review
- Mobile home parks
- Sign permit
- Sign code variance
- Site plan reviews (commercial / industrial / multifamily)
- Rezoning, site-specific
- Telecommunication facility
- Variations, zoning

Choose the next permit sheets from the above list.



City of Buckley

P.O. Box 1960 ♦ Buckley, WA 98321 ♦ (360) 829-1921 ext. 7801

To: Mayor Pat Johnson
Members of the Buckley City Council
From: City Planner Kathy Thompson
Date: October 6, 2016
Re: Request to amend short plat recorded under AFN 8012290114

Background.

In 1980 the subject parcels were under Pierce County jurisdiction.

On December 29, 1980, the 3-lot short plat was recorded with the following language:

1. No building permits for the new construction of any building requiring storm or surface water drainage control facilities of any kind, with drainage plan on file with the Pierce County public works department, shall be issued to any applicant until approved by the Pierce County public works department. A copy of such approval shall be transmitted to the building department prior to the issuance of a building permit. Also see notes 2, 3, 4, 5, 6 below description.
2. All roads are private from S.R. 410
3. Access to lots 2 & 3 shall be by one and only one private road easement with its entrance as shown. Said entrance being constructed in accordance with WSDOT approach control regulations.
4. Future subdivision of lot 1 shall be by way of one and only one private road easement for a common access to the county roadway in accordance with Pierce County approach control regulations
5. All lot ownerships shall include their adjoining portions of property for the private road easement as shown on the plat. Said developer and/or adjoining landowners and the successors shall bear the expense of constructing and maintaining all private roads and easements on this plat. Before consideration of any proposal to dedicate such roads to Pierce County such roads must meet the standards of Pierce County
6. The subject property is adjacent to an established portion of SR 410 such that noise levels above the maximum allowed for the proposed type of land use may occur. If this occurs, the department of highways will not be responsible for noise attenuation.

Below these conditions, it is stated:

All structures will be a minimum of 30 feet from property lines and building separations will be a minimum of 60 feet.

The use of each subdivision of land is limited by county regulations or plat covenant to a family dwelling or a use which is not commercial or industrial.

In 1983, the city annexed this area of land.

In 1989, the parcel was shown to be zoned B-2, a commercial zone.

In 2005 the zoning of the parcel was General Commercial (GC).

The 2015 zoning revisions map shows the parcel to be GC.

In 2016, a boundary line amendment (BLA) was executed to remove the lot line between lots 2 and 3.

Issue.

In 2011, case law indicated that notes written on short plats are to be adhered to; therefore, a plat alteration is required to dissolve requirements stated in the 1980 short plat.

Information.

The issue was identified by the hearing examiner and verified by the city attorney that a plat alteration was needed.

The city attorney further researched the issue and determined that the procedure to be followed was found in 18.32.100, is a C-3 process (council review and decision), and no public notice is required.

D. CONSENT AGENDA

**City Council
September 27, 2016**

Mayor Johnson called the regularly scheduled meeting to order at 7:03 PM.

Upon roll call the following members were present: Sundstrom, Rose, B. Burkett, S. Burkett, Leggett, Tremblay and Boyle Barrett. Also in attendance were City Administrator Schmidt, Police Chief Arsanto, Assistant Police Chief Northam, Detective Garrett, Court Administrator Cash, and City Planner Thompson.

Mayor Johnson asked if there were any additions, deletions, or changes to the agenda. There were none.

Council member Tremblay moved to approve the agenda as presented. Council member Leggett seconded the motion. Motion carried.

CITIZEN PARTICIPATION

There were no speakers.

STAFF REPORTS

City Administrator Schmidt stated that the Realignment Project is going to begin night paving tonight, and the project is on schedule. The Elk Heights Project was awarded to the lowest bidder and will begin next Tuesday. That project is expected to be complete by mid-November, weather permitting.

MAIN AGENDA

Presentation: Mark Lindquist, Pierce County Prosecuting Attorney's Office:

Mark Lindquist gave a presentation to the Council on programs they are using in regards to Elder Abuse and the High Priority Offender Program. Both programs should help cut down on crime significantly.

Change Order No. 3 – Realignment Project Phase 2:

Council member Boyle Barrett moved to approve the Phase II SR410 Realignment Project – Change Order #3. Council member Tremblay seconded the motion. Motion carried.

Amendment to Agreement for Inmate Housing - SCORE:

Council member Boyle Barrett moved to Approve the Amendment to the Inmate Housing Agreement between the City and SCORE. Council member Tremblay seconded the motion. Motion carried.

Bid Award: 2016 Sidewalk Replacement Project:

Council member Boyle Barrett moved to Authorize Combined Construction to replace 2016 Sidewalk Project for \$20,350.00. Council member Rose seconded the motion. Motion carried.

Bid – ERS to Relocate Generator: 151 So. Cedar to 146 So. Cedar:

Council member Boyle Barrett moved to Authorize ERS Electric to Remove and Relocate the Emergency Generator located at 151 Cedar Street for a cost \$28,863.25. Council member B. Burkett seconded the motion. Motion carried.

Council retreated into Executive Session at 7:35 PM for approximately 10 minutes, to discuss Real Estate Negotiations, with no action to follow. At 7:45 City Administrator Schmidt requested 10 more minutes. At 8:00 PM City Administrator Schmidt requested 5 more minutes. At 8:05 City Administrator Schmidt requested 5 more minutes.

Council returned from Executive Session and reconvened the City Council meeting at 8:10 PM.

CONSENT AGENDA

Council Member Boyle Barrett moved to approve the Consent Agenda. Council member Rose seconded the motion. Motion carried.

Approve Minutes of September 13, 2016 City Council Meeting

Claim check numbers 55765 through 55848, in the amount of \$583,987.98, for the period of August 24, 2016 through September 13, 2016; Payroll check numbers 35957 through 36008, in the amount of \$95,832.65 and ACH payroll in the amount of \$260,962.98 for a total August monthly payroll in the amount of \$356,795.63; and Treasurer ACH payments in the amount of \$9,371.54 for the month of August 2016 are hereby ratified. Claim check numbers 55849 through 55879, in the amount of \$124,592.12, for the period September 14, 2016 through September 27, 2016 are hereby approved and ordered paid this 27th day of September 2016.

COMMITTEE REPORTS

Mayor's Report: Mayor Johnson stated that she had a great vacation but it's nice to be back in town. Thursday night is the Pierce County Trails Conference and Council member Tremblay is leading a walk at 3:00 PM. Kay Skogen, a recent member on the Salary Commission, had to be replaced due to having a relative that works for the City of Buckley Fire Department. Dave Wytko was interested and has agreed to be a member of the Salary Commission. **Council member Tremblay moved to appoint Dave Wytko to the Salary Commission. Council member Boyle Barrett seconded the motion.**

Motion carried. The Youth Center will be hosting an Open House on Thursday at 6:00 PM, and next Saturday the Museum will be hosting their Night At The Museum Dinner Auction and all information can be found on the museum's website.

Administration, Finance & Public Safety:

Council member Boyle Barrett stated that they held two meetings this month, the first meeting was on budget and at the second meeting they discussed the SCORE Contract. Fire Chief Predmore stated at the meeting that a revision to the In Attention Driving Ordinance needs to exclude emergency personnel. City Clerk Starr stated that the first big shred of records took place last week and the part time Records Assistant has been doing a great job. Finance Director Bazzar stated the 2014-2015 audit starts next week.

Transportation & Utilities:

Council member Tremblay stated they discussed the raw water line, as well as the budget. Their next meeting will be October 18th.

Community Services:

Council member Rose stated they discussed the potential of having a temporary BMX bike track and we will be discussing this more at the October 4th Study Session. Their next meeting will be October 24th.

Council Member Comments & Good of the Order:

Council member Sundstrom stated that he would like to have more information on topics that are being presented to the Council for approval, before the meeting is being conducted.

Council member Rose moved to adjourn. Council member Boyle Barrett seconded the motion. Motion carried.

With nothing further the meeting was adjourned at 8:34 PM.

Mayor

City Administrator

CITY COUNCIL STUDY SESSION

OCTOBER 4, 2016

ATTENDEES: Council members Sundstrom, Boyle Barrett, Rose, Leggett, S. Burkett, B. Burkett and Tremblay. Also in attendance were Mayor Johnson, City Administrator Schmidt and Mark McPhail.

Mayor Pro Tem Tremblay called the Study Session to order at 7:02 PM.

AGENDA

City-Wide Recreational Facility Development

Mayor Pro Tem Tremblay said the Council needs to look at everything regarding recreational facilities in Buckley. Over the course of the Study Session the Council discussed a Pump Bike Track in the designated park area of the Miller Property, a BMX Bike Track on the WSU property, and a Splash Park in the 410 corridor. Mark McPhail was attending to share his knowledge of pump tracks and BMX tracks, and answer any questions the Council had.

Mayor Pro Tem Tremblay shared his desire to see a Splash Park in Buckley, and Council member Sundstrom said he would like to see a Dog Park (like Earth Dog) as well as a family garden area.

The Council discussed the pros and cons, costs and feasibility for each type of facility. Mark McPhail said he will talk to people he knows who are pump track builders to see if they can design a plan for us. Mayor Pro Tem Tremblay said we will keep working on this, and evaluate noise issues, etc., and the City Administrator will bring back information from Mr. McPhail.

Miscellaneous

City Administrator Schmidt said he has been notified by the Army Corps of Engineers that when the diversion dam goes in the river water is going to rise and approximately 3.3 of the 15 acres we recently purchased will be under water. We will be getting an appraisal on the value of those 3.3 acres tomorrow morning. A short discussion followed.

Study Session adjourned at 8:18 PM.

Mayor

City Administrator

CITY OF BUCKLEY		Sep 30 2016	TRANSFER VOUCHER	
From Fund #	NAME	AMOUNT	To Fund #	NAME
	Bars Number			Bars Number
1	General Fund	\$ 238,881.91		Payroll Fund
		\$ 83,319.02		Claims Fund
	597.00.00.10		101	Street & Storm Drain Capital 397.00.00
	597.00.80		7	PD Equip & Maint 397.00.20 St Merge
	597.00.22		3	G F Contingency 397.00.40 St Merge
	597.00.40	\$ 41.67	430	Utility Equip Res 397.00.60
	597.00.65	\$ 1,141.09	2	Contingency Reserve Fund 397.00.10 St Merge
101	Street Operations	\$ 5,702.24		Payroll Fund
		\$ 7,882.49		Claims Fund
	597.00.00	\$ 83.34	430	Utility Equip Res 397.00.10
	597.00.50.30		1	General Fund Insurance Portion 397.60.70
	597.20.00	\$ 1,498.59	1	General Fund Admin 397.60.20
	597.30.00		102	Street Capital Improvements 397.00.10.50
	597.50.00.70		1	General Fund Dispatch 397.60.21
102	Street Capital Imp			Payroll Fund
		\$ 376,871.97		Claims Fund
	597.10.00.30	\$ 226.01	1	General Fund Invest Int 397.00.40
	597.10.00.31	\$ 4,070.34	1	General Fund Project Admin 397.60.95
4	Cemetery			Payroll Fund
		\$ 8.50		Claims Fund
	597.00.10		1	General Fund Admin 397.60.30 St Merge
	597.00.00		430	Utility Equip Res 397.00.20
	597.00.50.30		1	General Fund Insurance Portion 397.60.80 St Merge
105	EMS	\$ 6,380.54		Payroll Fund
		\$ 22,632.48		Claims Fund
	597.90.00	\$ 500.00	030/131	Fire Equip/EMS Res 131-397
	597.90.00.40	\$ 125.00	30	Fire/EMS Bunkers 397.10.10
7	PD Maint RES			Payroll Fund
		\$ 1,005.15		Claims Fund
	597.10.10.50		1	General Fund 397.10.10.50
8	Railroad ROW	\$ 1,587.94		Payroll Fund
				Claims Fund
	597.90.00.45		1	General Fund Park 397.50.15 St Merge
	597.00.50.30		1	General Fund Insurance Portion 397.60.81
	From Fund #			To Fund #

	Bars Number				Bars Number
402	Water Sewer Rev		\$ 68,476.96		Payroll Fund
			\$ 27,672.98		Claims Fund
	10.0 % Tax Water	534.10.54	\$ 8,524.63	1	General Fund Business Tax 316.42
	10.0 % Tax Sewer	535.10.54	\$ 15,577.97	1	General Fund Business Tax 316.44
		597.00.00.50	\$ 541.67	1	General Fund Dispatcher 397.00.60
		597.00.00.51	\$ 4,975.75	1	General Fund Admin Water 397.60.10
		597.00.00.52	\$ 4,897.75	1	General Fund Admin Sewer 397.60.10
	W	597.00.00.53		1	General Fund Insurance Portion 397.60.60
	S	597.00.00.55		1	General Fund Insurance Portion 397.60.60
		597.00.00.70	\$ 62,500.00	405	Sewer Improve Fund 397.00.00
		597.00.00.80	\$ 10,128.84	406	Water Improve Fund 397.00.00
		597.00.00.40	\$ 833.34	430	Utility Equip Res 397.00.40
		597.00.90		308	Comp Plan Cap Imp 397.10.60
		535.10.41		1	General Fund Planning 345.81.00
403	Solid Waste		\$ 60,572.02		Payroll Fund
			\$ 7,545.30		Claims Fund
	10.0 % Tax	537.10.54	\$ 7,545.30	1	General Fund Business Tax 316.45
		597.00.00.10	\$ 3,548.09	1	General Fund Admin 397.60.40
		597.00.00.55		1	General Fund Insurance Portion 397.60.83
405	Sewer Ext & Replace		\$ 2,894.97		Payroll Fund
			\$ 2,566.92		Claims Fund
		597.10.00.31	\$ 2,566.92	1	General Fund Project Admin 397.60.96
406	Water Ext & Replace		\$ 8,325.19		Payroll Fund
			\$ 2,984.00		Claims Fund
		597.10.00.31	\$ 2,984.00	1	General Fund Project Admin 397.60.97
407	Storm Drain Op & Maintenance		\$ 17,583.68		Payroll Fund
			\$ 8,584.47		Claims Fund
	10 % Tax	531.30.44.01	\$ 4,111.54	1	General Fund Business Tax 316.48
		597.00.00	\$ 250.00	430	Utility Equip Res 397.00.50
		597.00.00.10	\$ 7,415.34	408	Storm Drain Cap 397.00.30
		597.00.00.20	\$ 4,585.92	1	General Fund Admin 397.60.40.10
		597.00.00.53		1	General Fund Insurance Portion 397.60.71
		597.00.00.57	\$ 41.67	1	General Fund Dispatcher 397.60.21
		597.00.75		308	Comp Plan Cap Imp 397.10.70
430	Utility Equip Res		\$ 28,479.90		Payroll Fund
			\$ 11.95		Claims Fund
		597.10.00.10	\$ 11.95	1	General Fund Invest Int 397.00.40

202	Fire Stat Const Bond Debt Svcs			Claims Fund	
408	Stormwater Cap Project	\$ 8,416.28		Claims Fund	
	597.00.10		307	Capital Improvement	397.10.80.10
	597.10.00.31	\$ 2,964.34	1	General Fund Project Admin	397.60.98
632	TBD	\$ 42.50		Claims Fund	
	597.00.00		101	City Street	367.42
	595.30.48		101	City Street	367.20.10
3	General Fund Contingency				
	597.00.30.00	\$ 9,250.00	1	General Fund Invest Int	397.00.45 St Merge
	Total Investment Interest to 202	\$ 88.79			
	Total Investment Interest to 001	\$ 9,592.19			
	Total Payroll	\$ 343,107.02			
	Total Claims	\$ 708,580.10			
	Total Treasurer checks	\$ 15,063.62			
	Date Approve by Council Oct 11, 2016			Finance Director Sheila Bazzar, PFO/CMC	

E. COMMITTEE REPORTS

Community Services Committee
Meeting Notes for 9/15/16 and 9/22/16

9/15/16

Attending: Parks & Recreation Director Ellen Boyd, council members Cristi Boyle Barrett, Sandy Burkett, Lyn Rose, chair

- **Discussed present bicycle restriction at Skateboard Park**
- **Discussed possible development BMX bike park on Miller property**

9/22/16

Attending: Administrator Dave Schmidt, Parks & Recreation Director Ellen Boyd, council members Sandy Burkett, Cristi Boyle Barrett, Lyn Rose, chair

- **Budget Meeting**
- **Discussed Miller BMX Bike Park and agreed to present concept to council**