



BUCKLEY CITY COUNCIL MEETING AGENDA
March 26, 2019
Multi-Purpose Center, 811 Main Street
City Council Meeting
Opening 7:00 P.M.

Call to Order
Pledge of Allegiance
Roll Call of Council Members

Next Ordinance #06-19
Next Resolution #19-03
Next Agenda Bill #AB19-031

A. Citizen Participation

1. Marvin Sundstrom – Decorum Pg. 6

Time Limit of Three Minutes (Citizens wishing to speak are encouraged to sign up at City Hall by Wednesday prior to the Council Meeting)

B. Staff Reports

C. Main Agenda

1. Public Hearing: Interim Land Use Regulations Pg. 9
2. ORD No. ____-19, Adopting 2019 Stormwater Management Program Pg. 10
3. ORD No. ____-19, Comcast Franchise Agreement Extension Pg. 28
4. Lease Agreement – Buckley Log Show Pg. 53
5. Administrator Contract Addendum #3 Pg. 65
6. Interlocal Agreement – City of Buckley and Washington State DSHS Pg. 67

D. Consent Agenda

7. A. Approve Minutes of March 12, 2019 Pg. 80
B. Claims
C. Transfer Voucher
D. Payroll

E. Committee Reports

8. Mayor's Report Johnson
9. Administration, Finance & Public Safety Tremblay
10. Transportation & Utilities B. Burkett
11. Community Services S. Burkett
12. 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

March 2019

March 21	1:00 PM	Community Services (City Hall)
March 26	9:30 AM	Admin, Finance, & PS (City Hall)
March 26	7:00 PM	City Council

April 2019

April 1	7:00 PM	Planning Commission
April 2	7:00 PM	City Council Study Session
April 8	10:30 AM	Buckley Hall Board (City Hall)
April 9	9:30 AM	Admin, Finance, & PS (City Hall)
April 9	7:00 PM	City Council
April 15	7:00 PM	Planning Commission
April 16	7:00 PM	Transportation & Utilities (City Hall)
April 18	1:00 PM	Community Services
April 23	9:30 AM	Admin, Finance, & PS (City Hall)
April 23	7:00 PM	City Council

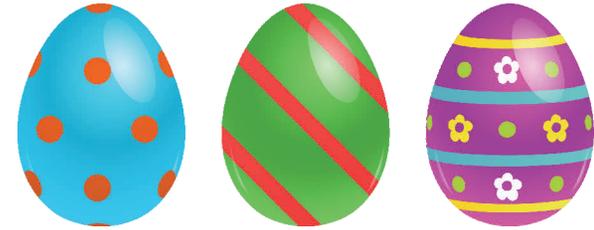
The above meetings will be held in the Multi-Purpose Center located at 811 Main Street unless otherwise noted.
Last Revised March 20, 2019

March 2019



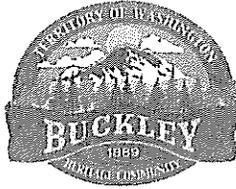
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4 7 Planning Commission	5 7 City Council Study Session	6	7	8	9
10 	11 10:30 Buckley Hall Board	12 9:30 A/F/PS 7 City Council	13	14	15	16
17 	18 7 Planning Commission	19 7 Transp. & Utilities	20 	21 1 Comm. Services	22	23
24	25	26 9:30 A/F/PS 7 City St. PCouncil	27	28	29	30
31						

April 2019



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

A. CITIZEN PARTICIPATION



RECEIVED

MAR 18 2019

City of Buckley
Office of Administration -- Mayor Patricia Johnson

Citizen Participation Form

City Council Meeting Date: 3-26-2019

Name: MARVIN SUNDSTROM Organization: _____

Phone: 360-829-5249 Email: _____

Address: PO Box 2080 City: BUCKLEY

I WISH TO SPEAK ON THE FOLLOWING SUBJECT(S):

DEGORDUM

PLEASE NOTE:

This form must be submitted to City Hall (933 Main Street), Attn: City Clerk, by 5:00 PM on the Wednesday prior to the Council meeting you wish to attend.

Please include with your form **16 copies** of any written information you wish to have distributed at the Council meeting. You may wish to have additional copies available for the public audience.

As Council agendas are very full, you are asked to limit your talk/presentation to three (3) minutes.

Last Update: September 9, 2014

B. STAFF REPORTS

C. MAIN AGENDA



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Public Hearing: Interim Land Use Regulations Regulating Small Wireless Communications Facilities	Agenda Date: March 26, 2019 AB19-031		
	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 – Treva Percival	X	X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Kevin Caviezel		
	Planning Dept – Kathy James		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
	PW/Utilities – Chris Banks		X
Attachments:			
<p>SUMMARY STATEMENT: On January 22, 2019, the City Council adopted and established interim permitting and aesthetic requirements and revisions to the City’s wireless communications facilities code provisions in response to the enactment of regulations by the FCC Order regarding small wireless facilities for a period of six (6) months, or until such earlier time as permanent regulations may be adopted.</p> <p>The purpose of this Public Hearing is to solicit input and comment from interested individuals or groups on the interim requirements.</p>			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: No Action....Public Hearing Only			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: ORD No. ____-19 - Adopting New 2019 Stormwater Management Program	Agenda Date: March 26, 2019		AB19-032
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		X
	City Clerk – Treva Percival	X	X
	Finance Dept – Sheila Bazzar		
Cost Impact: N/A	Building Official – Mike Deadmond		
Fund Source: N/A	Fire Dept – Chief Predmore		
Timeline: N/A	Parks & Rec Dept – Kevin Caviezel		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
	PW/Utilities – Chris Banks		X
Attachments: Ordinance & SWMP			
<p>SUMMARY STATEMENT: In 2013 staff and the engineer’s simplified the SWMP to identify #1) what the permit requirements are and #2) provide a table with the activities the City will do to meet the requirements. This was done so that when we have to annually update the SWMP, all we have to do is delete the rows in the table that don’t apply anymore. This has been done for this new 2019 version being presented for consideration. The updated SWMP has to be attached to the annual report due on March 31st.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: T/U 3/19/2019			
RECOMMENDED ACTION: MOTION to Approve ORD No. ____-19 Adopting an updated 2019 Stormwater Management Program.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

ORDINANCE NO. ___ - 19

**AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE COUNTY,
WASHINGTON, ADOPTING A NEW 2019 CITY OF BUCKLEY PHASE
II NPDES STORMWATER MANAGEMENT PROGRAM.**

WHEREAS, the Federal Environmental Protection Agencies phase II regulations went into effect in early 2003 and apply to all regulated small municipal separate storm sewer systems; and

WHEREAS, on January 17, 2007 Washington State Department of Ecology (Ecology) issued two phase II municipal stormwater permits, one for western Washington and one for eastern Washington. The Phase II permit for western Washington covers at least 80 cities and five counties; and

WHEREAS, DOE determined that the City of Buckley was to be included under this Stormwater Phase II NPDES Permit coverage; and

WHEREAS, DOE modified the Phase II Permit in 2009. Ecology reissued it unmodified on August 1, 2012 at legislative direction to be effective through July 31, 2013. After an extensive public process, Ecology also reissued the updated 2013 to 2018 permit on August 1, 2012. This permit was then extended by Ecology to July 31, 2019.

WHEREAS, the newly reissued Phase II permit requires that each municipality meet the requirements of their NPDES permit. Each municipality's permit for discharging stormwater is designed to reduce the discharge of pollutants, protect water quality, and meet the requirements of the Clean Water Act.

WHEREAS, the newly reissued Phase II permits requires stormwater managers to develop a new “revised” *Stormwater Management Plan (SWMP)* that is a “forward only” looking document that describes what the City will do (not what was done in the past) during the next permit phase.

WHEREAS, the Phase II municipal permits require that permittees develop—and annually update—a Stormwater Management Program (SWMP) document to submit with the annual report; and

WHEREAS, City staff with assistance from engineer’s from Gray & Osborne have modified the City’s previously adopted SWMP to meet the criteria established by Ecology and ensure compliance with the Phase II NPDES; and

WHEREAS, the City Council desires to adopt the newly revised 2019 Stormwater Management Program to comply with the Ecology Phase II NPDES Stormwater Permit requirements;

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

Section 1. The City of Buckley 2018 Stormwater Management Program is hereby repealed and replaced with the Phase II NPDES 2019 Stormwater Management Program, attached as Exhibit A and incorporated by this reference as if set forth in full.

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. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

Passed by the City Council on the 26th day of March, 2019.

Mayor Pat Johnson

Attest:

Treva Percival, City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

PUBLISHED: _____
EFFECTIVE: _____

Exhibit A

City of Buckley



Stormwater Management Program



March 2019

1.0 INTRODUCTION

This document has been prepared to meet the Western Washington Phase II Municipal Stormwater Permit (Permit) requirement for the continued development and updating of a Stormwater Management Program (SWMP). The purpose of the SWMP is to reduce the discharge of pollutants from the municipal stormwater system to the maximum extent practicable and to protect water quality.

The National Pollutant Discharge Elimination System (NPDES) Permit is a federal permit that regulates stormwater and wastewater discharges to waters of the State. While it is a federal permit, the regulatory authority was passed on to the Washington State Department of Ecology (Ecology). In response, Ecology developed and issued the Western Washington Phase II Municipal Stormwater Permit. The Permit was issued by Ecology on January 17, 2007 and was modified on June 17, 2009. A new permit was issued August 1, 2013 and extended until July 31, 2018. Due to the need for additional time to prepare for the next permit cycle, Ecology extended this permit to July 31, 2019. It is the intent of this SWMP to recognize and to plan for these requirements where appropriate.

All municipalities affected by the permit must create and implement a SWMP which addresses the following required program elements:

- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Controlling Run-Off from New Development, Redevelopment and Construction Sites
- Municipal Operations and Maintenance
- Total Maximum Daily Loads (TMDLs), if applicable to the jurisdiction

The City of Buckley SWMP will be updated annually and submitted with the City's Annual Report to Ecology. The City of Buckley is posting this document on the City web site, <http://www.cityofbuckley.com/>, so it can be viewed by the public. Comments on the City's SWMP can be made by submitting comments in writing to City of Buckley. Comments can be delivered or mailed to City of Buckley, PO Box 1960, 933 Main Street, Buckley, WA 98321 ATTN: Dave Schmidt, City Administrator. Email comments may be sent to: dschmidt@cityofbuckley.com.

2.0 PUBLIC EDUCATION AND OUTREACH PROGRAM

The following section describes the Permit requirements related to Public Education and Outreach and the planned activities the City intends to conduct to meet these requirements.

2.1 Permit Requirements

The 2013 Permit (Section S5.C.1) requires the City to:

- Include an education and outreach program designed to reduce or eliminate behaviors and practices that cause or contribute to adverse stormwater impacts and encourages public participation. The target audiences include the general public, engineers/contractors/developers/land use planners/, residents, landscapers and property managers/owners.
- Create stewardship opportunities to participate in such activities as stream teams, storm drain marking, volunteer monitoring, education, and riparian plantings.
- Measure the understanding and adoption of the targeted behaviors for at least one target audience no later than February 2, 2016.

2.2 Planned Activities

Future activities planned to meet the Public Education and Outreach requirement of the permit are listed in Table 2-1.

Table 2-1

Planned Activities for Public Education and Outreach Program

Task ID	Task Description	Schedule
EDUC-1	Engineers/Contractors/Developers/Land Use Planners – Stormwater treatment and flow control BMPs/facilities: Pamphlet passed out with permits	Ongoing
EDUC-2	General public – general impacts of stormwater: Utility bill insert on stormwater topics	Annually

3.0 PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM

The following section describes the Permit requirements related to Public Involvement and Participation and the planned activities the City intends to conduct to meet these requirements.

3.1 Permit Requirements

The 2013 Permit (Section S5.C.2) requires the City to:

- Provide ongoing opportunities for public involvement through advisory councils, public hearings, watershed committees, participation in developing rate structures or other similar activities.
- Provide the opportunity for the public to participate in the decision making processes involving the SWMP.
- The SWMP and Annual Report shall be posted to the City’s website no later than May 31st of each year.

3.2 Planned Activities

Future activities planned to meet the Public Involvement and Participation requirement of the permit are listed in Table 3-1.

Table 3-1

Planned Activities for Public Involvement and Participation

Task ID	Task Description	Schedule
PI-1	Hold public meeting on the current Stormwater Management Program via the City Council	Early March (each year)
PI-2	Post final SWMP and Annual Report to City Website	By April 30th (each year)
PI-3	Post final SWMP in local library	By April 30 th (each year)
PI-4	Post public opportunities to get involved on City website (i.e. storm drain stenciling, Adopt-a-Street and volunteer monitoring)	Ongoing

4.0 ILLICIT DISCHARGE DETECTION AND ELIMINATION

The following section describes the Permit requirements related to Illicit Discharge Detection and Elimination (IDDE) and the planned activities the City intends to conduct to meet these requirements.

4.1 Permit Requirements

The 2013 Permit (Section S5.C.3) requires the City to:

- Provide ongoing program designed to prevent, detect, characterize, trace and eliminate illicit connections and illicit discharges.
- Field assess at least one high priority waterbody in 2013 for IDDE purposes.
- Update City stormwater basemap which shall include all known outfalls, receiving waters, stormwater treatment and flow control facilities, conveyances where the outfall is 24-inches in diameter (or larger), and land use.
- Maintain an ordinance that effectively prohibits non-stormwater, illicit discharges into the storm system to the maximum extent allowable under state and federal law. The ordinance shall describe the allowable discharges and shall have an escalating enforcement procedure. This ordinance shall be reviewed and revised (if necessary) by February 2, 2018. The City shall have a compliance strategy to enforce the ordinance such as public education, technical assistance, source control and/or maintenance of stormwater facilities.
- Implement IDDE program that includes field screening of the system for illicit discharges/connections (40% of the system to be inspected no later than December 31, 2017 and then an average of 12% each year thereafter), procedures for detecting illicit discharges/connection and related enforcement, training for City staff, and informing businesses of hazards with illicit discharges,
- Publicize hotline for public reporting of spills and illicit discharges.

4.2 Planned Activities

Future activities planned to meet the Illicit Discharge and Detection and Elimination requirement of the permit are listed in Table 4-1.

Table 4-1

Planned Activities for Illicit Discharge Detection and Elimination

Task ID	Task Description	Schedule
IDDE-1 / EDUC-4	Provide general public with information related to IDDE on City website	Ongoing
IDDE-2	Maintain stormwater basemap	Ongoing
IDDE-5	Field Screen 10% of system for IDDE each year through 2017 and then 12% of the system each year thereafter (Maintain records of which areas have been field screened and date inspected). Prioritize discharges to Spiketon Creek higher (see Task TMDL-1, Section 7.0 of this Plan).	<ul style="list-style-type: none"> ▪ August 2019 (<i>Next 12%</i>)
IDDE-6	Renew IDDE training for field staff and public employees (Track each training session with names of employees and date)	<ul style="list-style-type: none"> ▪ June 2020
IDDE-7 / EDUC- 7	Provide businesses with brochures related to IDDE (track number of brochures and date delivered).	<ul style="list-style-type: none"> ▪ Light Industrial ▪ Construction: Ongoing with permit handouts

5.0 CONTROLLING RUNOFF FROM NEW DEVELOPMENT, REDEVELOPMENT, AND CONSTRUCTION SITES

The following section describes the Permit requirements related to controlling runoff from new development, redevelopment and construction sites. It also describes the planned activities the City intends to conduct to meet these requirements.

5.1 Permit Requirements

The 2013 Permit (Section S5.C.4) requires the City to:

- Implement and enforce a program to reduce pollutants in stormwater runoff from new development, redevelopment and construction site activities.
- Implement an ordinance to address runoff from these activities to be effective no later than December 31, 2016.
 - The ordinance addressing specific requirements in S5.C5.a(i) through (iii) shall apply to all applications submitted on or after January 1, 2017 and shall apply to projects approved prior to January 1, 2017 which have not started construction by January 1, 2022.
 - Include legal authority to inspect and enforce maintenance standards for private facilities for new development or redevelopment.
 - Include provision to verify adequate long-term operation and maintenance of stormwater treatment and flow control BMPs/facilities. The ordinance must:
 - Clearly identify the party responsible for maintenance
 - Establish maintenance standards as protective as Chapter 4, Volume V of the *Stormwater Management Manual for Western Washington*.
 - Address annual inspections of all permitted stormwater treatment and flow control BMPs/Facilities unless there are maintenance records to justify a different frequency.
 - Address inspections of all permitted stormwater treatment and flow control BMPs/Facilities and catch basins in new residential developments every six months until 90% of the lots are constructed (or when construction is stopped and the site is fully stabilized).
- At least 80% of scheduled inspections need to be completed to be in compliance with the permit.
- Adopt Minimum Requirements, thresholds and definitions in Appendix 1 of the Permit.
- Implement a site plan review process, inspection and enforcement to meet development standards for both private and public projects.
 - Review all stormwater site plans.

- Inspect all permitted sites that have a high potential for sediment transport.
 - Prior to clearing and construction
 - During construction (for erosion control)
 - After construction (permanent stormwater facilities; maintenance plan in place for treatment/flow control BMPs/facilities). If an inspection identifies an exceedence of the maintenance standard, then the following maintenance should be performed:
 - Inspections to be held within 1 year for typical maintenance, except catch basins
 - Within 6 months for catch basins
 - Within 2 years for maintenance that requires capital construction of less than \$25,000.
 - Maintain records of all inspections, warning letters, notices of violations, and other enforcement records.
- Make available the “Notice of Intent for Construction Activity” and “Notice of Intent for Industrial Activity” to developers.
- Train staff in the site plan review process, inspections, and enforcement. Maintain records of this training and names of staff trained.
- Implement low impact development (LID) code no later than December 31, 2016.
 - Conduct review of LID codes using Integrating LID into *Local Codes: A Guidebook for Local Governments* (Puget Sound Partnership).
 - Submit summary of the review with annual report by March 31, 2017. The summary is to include existing LID requirements, a list of participants (job title, brief job description, department represented), the codes, rules, standards, and revisions made which incorporate LID principles and LID BMPs. It shall be organized into a) measures to minimize impervious surfaces, (b) measures to minimize loss of native vegetation and c) other measures to minimize stormwater runoff.
- Watershed-scale stormwater planning (i.e. provide support to Pierce County if the County chooses a watershed that includes the City of Buckley).

5.2 Planned Activities

Future activities planned to meet the Control Runoff from New Development, Redevelopment and Construction Sites requirement of the permit are listed in Table 5-1.

Table 5-1

Planned Activities for Controlling Runoff from New Development, Redevelopment and Construction Sites

Task ID	Task Description	Schedule
CTRL-1	Review site plans for compliance with BCC 14.30 and 14.40 (Keep track of number of site plans reviewed)	Ongoing
CTRL-2	Provide post construction inspections prior to approval for compliance with BCC 14.30 and 14.40 (Maintain inspection records; see CTRL-4).	Ongoing
CTRL-3	Inspect constructions sites prior to and during construction for erosion control (Maintain inspection records; see CTRL-4).	Ongoing
CTRL-4	Maintain records of inspections (Include name of inspector, date, findings, warning letters, notices of violations, enforcement actions).	Ongoing <i>(Need to complete 80% of scheduled inspections)</i>
CTRL-5	Provide annual inspections of all stormwater treatment and flow control BMPs/facilities. <ul style="list-style-type: none"> ▪ Maintain inspection records; see CTRL-4. ▪ Document if a reduced inspection frequency is used. ▪ If inspection reveals that a maintenance standard is not being maintained, need to perform maintenance: <ul style="list-style-type: none"> ○ within 1 year (all facilities except catch basins) ○ within 6 months (catch basins) or ○ within 2 years (maintnenace that requires capital construction of less than \$25,000). 	Ongoing <i>(Need to complete 80% of scheduled inspections)</i>
CTRL-6	Train staff in the site plan review process, inspections, and enforcement. Maintain records of this training and names of staff trained.	Ongoing/New Hires <ul style="list-style-type: none"> ▪ June 2020
CTRL-7	Make available the “Notice of Intent for Construction Activity” and “Notice of Intent for Industrial Activity” to developers.	Ongoing

6.0 MUNICIPAL OPERATIONS AND MAINTENANCE

The following section describes the Permit requirements related to the City's stormwater operation and maintenance practices. It also describes the planned activities the City intends to conduct to meet these requirements.

6.1 Permit Requirements

The 2013 Permit (Section S5.C.5) requires the City to:

- Implement an operations and maintenance (O&M) program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.
- Establish maintenance standards as protective as Chapter 4, Volume V of the *Stormwater Management Manual for Western Washington*.
- If an inspection identifies an exceedence of the maintenance standard, then the following maintenance should be performed:
 - Inspections to be held within 1 year for typical maintenance, except catch basins
 - Within 6 months for catch basins
 - Within 2 years for maintenance that requires capital construction of less than \$25,000.
- Perform annual inspections and take appropriate maintenance actions of all permitted stormwater treatment and flow control BMPs/Facilities unless there are maintenance records to justify a different frequency.
- Spot check and if necessary, repair potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events (24 hour storm event with a 10 year or greater recurrence interval).
- Inspect (and clean if necessary) all catch basins and inlets owned by the City at least once no later than August 1, 2017 and every two years thereafter.

Alternatives to this schedule include:

- Revised inspection frequency allowed if maintenance records for double the length of the proposed inspection frequency warrant a reduced inspection frequency. If these records are not available, certified (per G19), written statements to document a specific, less frequent inspection schedule may be submitted and shall be based on actual inspection and maintenance experiences.
- Conduct inspections by "circuit basis" whereby 25% of catch basins and inlets within each circuit are inspected. Include an inspection of the catch basin immediately upstream of any system outfall if applicable. Clean all catch basins within a given circuit for which the inspection indicates cleaning is needed.
- Clean all pipes, ditches, catch basins and inlets within a circuit once during the permit term. Circuits selected for this alternative must drain to a single point.

- Implement practices, policies and procedures to reduce stormwater impacts associated with runoff from all lands owned by the City including streets, parking lots, roads highways, buildings, parks, open space, road right-of-ways, maintenance yards, and stormwater treatment and flow control BMPs/facilities.
 - The following activities are to be addressed: pipe cleaning, cleaning of culverts that convey stormwater in ditch systems, ditch maintenance, street cleaning, road repair and resurfacing (including pavement grinding), snow and ice control, utility installation, pavement striping maintenance, maintaining roadside areas, including vegetation management, dust control, applications of fertilizers/pesticides/herbicides (including reducing nutrients and pesticides using alternatives that minimize environmental impacts), sediment and erosion control, landscape maintenance and vegetation disposal, trash and pest waste management, and building exterior cleaning and maintenance.
- Implement training program for employees on O&M practices. Follow up training and documentation of training shall be conducted. A list of trained staff shall be maintained.
- Implement a Stormwater Pollution Prevention Plan (SWPPP) for all heavy equipment maintenance or storage yards and material storage facilities owned by the City. A schedule for implementation of structural BMPs and periodic visual observation of discharges from the facility to evaluate the effectiveness of the BMP shall be included in the SWPPP. Generic SWPPPs applicable to multiple sites may be used.
- Maintain records of inspection and maintenance or repair activities.

6.2 Planned Activities

Future activities planned to meet the Municipal Operations and Maintenance requirement of the permit are listed in Table 6-1.

Table 6-1

Planned Activities for Municipal Operations and Maintenance

Task ID	Task Description	Schedule
O&M-1	Maintain records of inspections and maintenance activities.	Ongoing
O&M-2	<p>Provide annual inspections of all stormwater treatment and flow control BMPs/facilities.</p> <ul style="list-style-type: none"> ▪ Maintain inspection records; see O&M-1. ▪ Document if a reduced inspection frequency is used. ▪ If inspection reveals that a maintenance standard is not being maintained, need to perform maintenance: <ul style="list-style-type: none"> ○ within 1 year (all facilities except catch basins) ○ within 6 months (catch basins) or ○ within 2 years (maintnenace that requires capital construction of less than \$25,000). 	Ongoing
O&M-3	Spot check treatment and flow control facilities/BMPs and repair if necessary.	After 24-hour/10-year storms (Ongoing)
O&M-4	Train staff in O&M operations, inspection procedures, reporting water quality concerns, and on efforts to reduce pollutants to runoff. Maintain records of this training and names of staff trained.	<p>Ongoing/New Hires</p> <ul style="list-style-type: none"> ▪ June 2020
O&M-9	Inspect catch basins and inlets	Inspect 50% annually (<i>all cbs to be inspected by Aug. 1, 2019</i>).

7.0 COMPLIANCE WITH TOTAL MAXIMUM DAILY LOAD (TMDL) REQUIREMENTS

The following section describes the Permit requirements related to the City's participation in the South Prairie Creek Action Plan and the Total Maximum Daily Load associated with it. It also describes the planned activities the City intends to conduct to meet these requirements.

7.1 Permit Requirements

The 2013 Permit (Appendix 2) requires the City to:

- Designate areas discharging via the MS4 to Spiketon Creek as the highest priority areas for illicit discharge detection and elimination routine field screening and implement the schedule and activities identified in S5.C.3.

7.2 Planned Activities

Future activities planned to meet the TMDL requirement of the permit are listed in Table 7-1.

Table 7-1

Planned Activities for TMDL Requirements

Task ID	Task Description	Schedule
TMDL-1	Prioritize IDDE inspections (Task IDDE-2) for discharges to Spiketon Creek higher than other locations throughout the City.	Ongoing <i>(Volunteer monitoring annually)</i>

8.0 MONITORING

The following section describes the Permit requirements related to monitoring. It also describes the planned activities the City intends to conduct to meet these requirements.

8.1 Permit Requirements

The 2013 Permit (Section S8) requires the City to:

- Describe any monitoring related studies conducted throughout the year in the Annual Report.
- Reporting involved with the Regional Stormwater Management Program is not necessary as part of the Annual Report. The regional program includes status and trends monitoring, stormwater management program effectiveness studies, and source identification/diagnostic monitoring.

8.2 Planned Activities

Future activities planned to meet the monitoring requirement of the permit are listed in Table 8-1.

Table 8-1

Planned Activities for TMDL Requirements

Task ID	Task Description	Schedule
MON-1	Opt into Regional Stormwater Management Program by paying the following fees: <ul style="list-style-type: none"> ▪ Status and Trends Monitoring: \$1,129 ▪ Stormwater Program Effectiveness: \$1,882 ▪ Source Identification and Diagnostic Monitoring: \$175 	Aug. 15 th , each year
MON-2	Describe any stormwater monitoring conducted for the year in the Annual Report	By March 31 st , each year

9.0 REPORTING REQUIREMENTS

The following section describes the Permit requirements related to reporting. It also describes the planned activities the City intends to conduct to meet these requirements.

9.1 Permit Requirements

The 2013 Permit (Section S9) requires the City to:

- Submit an Annual Report by March 31st of each year with the first reporting period being from January 1, 2014 to December 31, 2014. The report will include:
 - Copy of the current SWMP
 - Annual Report Form (per DOE)
 - Attachments (summaries, descriptions, reports, etc.)
 - Certification and signature
 - Notification of any annexations, incorporations or jurisdictional boundary changes
- Keep all records related to the permit and the SWMP for at least five years.
- All records related to the permit shall be available to the public at reasonable times during business hours.

9.2 Planned Activities

Future activities planned to meet the monitoring requirement of the permit are listed in Table 9-1.

Table 9-1

Planned Activities for Reporting Requirements

Task ID	Task Description	Schedule
REP-1	Submit Annual Report	March 31 st , each year



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION

SUBJECT: ORD No. ___-19: Authorizing a Five (5) Year Extension of the Franchise Agreement between Comcast of Washington IV, Inc. and the City of Buckley.	Agenda Date: March 26, 2019 AB19-033		
	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 – Treva Percival	X	X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Kevin Caviezel		
	Planning Dept – Kathy James		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
	PW/Utilities – Chris Banks		

Attachments: Ordinance with Franchise Agreement

SUMMARY STATEMENT: For City Council approval granting a five year extension to the Franchise Agreement with Comcast of Washington IV, Inc, and allowing them to provide services, facilities and equipment necessary to meet the future cable-related needs of the community.

Since the Ordinance is simply granting an extension of an existing Franchise and not granting new rights the City Council can adopt the extension outright without having to go through two readings as required by RCW 35A.47.040 when granting a new Franchise.

COMMITTEE REVIEW AND RECOMMENDATION: T/U 3-19-2019

RECOMMENDED ACTION: Move to Approve ORD No. ___-19 Authorizing a Five Year Extension of the Franchise Agreement between Comcast of Washington IV, Inc. and the City of Buckley.

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. ___-19

AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, AUTHORIZING A FIVE (5) YEAR EXTENSION OF THE FRANCHISE AGREEMENT BETWEEN COMCAST OF WASHINGTON IV, INC. AND THE CITY OF BUCKLEY.

WHEREAS, Comcast of Washington IV, Inc. currently holds a franchise to make use of City streets and rights-of way for the purposes of construction, operation, maintenance and reconstruction of a Cable Communication System in the City of Buckley, (the “City”), granted by Ordinance No. 20-13 (the “Franchise”); and

WHEREAS, pursuant to terms of the agreement the current Franchise expired on September 11, 2018; and

WHEREAS, Section 2.2 of the Franchise allows a five (5) extension of the Franchise if mutually agreed to by both parties; and

WHEREAS, the City and Comcast went through extensive negotiation in drafting the existing Franchise and it took nearly two years to come to agreement and finalize terms outlined in the Franchise; and

WHEREAS, City staff have reviewed the terms and conditions of the Franchise and believe that the terms and conditions continue to be applicable and there are no changes that need to be made to the existing Franchise at this time and are therefore recommending that the City Council extend the Franchise by five (5) years; and

WHEREAS, Comcast has reviewed the Franchise and is satisfied with the current terms and conditions and is in agreement with extending the Franchise for another five (5) years; and

WHEREAS, the City Council concurs with the staff recommendation and desires to extend the current Franchise for five (5) years under the same terms and conditions; and

WHEREAS, the rights of all parties will remain unchanged during an extension of the Franchise, and neither party waives any right which it enjoys under law as a result of agreeing to this extension.

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

Section 1. The franchise agreement between Comcast of Washington IV, Inc. and the City of Buckley will be extended for a period of five (5) years until September 11, 2023, unless renewed prior to the expiration date or terminated under the terms of the franchise agreement.

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.

APPROVED by the Buckley City Council this 9th day of April, 2019.

Pat Johnson, Mayor

ATTEST:

Trevia Percival, City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

EXHIBIT A

COMCAST FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Buckley (hereinafter, “City”) and Comcast of Washington IV, Inc. (hereinafter, “Operator”).

The City, having determined that the financial, legal, and technical ability of the Operator is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Operator for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

1.1. “Bad Debt” means amounts lawfully billed to a Customer and owed by the Customer for Cable Service and accrued as revenues on the books of the Operator, but not collected after reasonable efforts have been made by the Operator to collect the charges.

1.2. “Basic Service” means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

1.3. “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

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

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

1.6. “Cable Service” means the one-way transmission to Customers of video programming or other programming service, and Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.7. “Cable System” has the meaning specified in Section 602 of the Cable Act. When used herein, the term “Cable System” shall refer to the Operator’s Cable System in the Franchise Area.

1.8. “City” is the City of Buckley, a city of the State of Washington, existing pursuant to the Washington State Constitution, and the laws of the State of Washington.

1.9. “Council” means the Council of the City of Buckley or any future board constituting the legislative body of the City of Buckley.

1.10. “Customer” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by the Operator by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from the Operator’s Cable System.

1.11. “Effective Date” means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Length of Franchise” section herein.

1.12. “Emergency” means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

1.13. “Expanded Basic Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Customers above Basic Service, and does not include Premium Services.

1.14. “Facilities” means the component parts of the Cable System, including but not limited to coaxial cable, fiber-optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics located in the Rights-of-Way.

1.15. “FCC” means the Federal Communications Commission, or successor governmental entity thereto.

1.16. “Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.17. "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

1.18. "Franchise Area" means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.19. "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City or other government entity on the Operator or Customer, or both, solely because of their status as such. Franchise Fees shall not include any tax, fee or assessment of general applicability, capital costs required by this Franchise to be incurred by the Operator for public, educational or governmental access and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.

1.20. "Gross Revenue" means any and all revenues derived by the Operator or an Affiliate from the operation of the Cable System to provide Cable Services in the City, other than revenue from transactions related to real property, the Capital Contribution in support of PEG Access Channels, bad debt and any taxes on services furnished by the Operator, imposed on the Operator or any Customer or sued by any governmental unit, agency or instrumentality and collected by the Operator for such entity, and accounted for in accordance with generally accepted accounting principals (GAAP). However, Gross Revenues shall include Franchise Fee revenue and revenues received by the Operator or an Affiliate from local and national advertising sales, home shopping channels, and similar sources. When the revenue of the Operator include Gross Revenues from sources outside of the City, the Operator shall allocated all appropriate percentage of Gross Revenues by multiplying the revenues received by a fraction the numerator of which is the number of Operator's Customers in the City and the denominator of which is the total number of all Customers.

1.21. "Installation" means the connection of the Cable System by means of a cable drop from feeder cable to Subscriber's terminals.

1.22. "Operator" means Comcast of Washington IV, Inc., or its lawful successor, transferee or assignee.

1.23. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

1.24. "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Customers on a per-Channel, per-program or per-event basis.

1.25. “Public, Education and Government (PEG) Access Channels” means channel capacity designated by the Operator for the transmission of public, educational, or government access use in accordance with this Franchise and 47 U.S.C. §521.

1.26. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which shall entitle the City and the Operator to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Operator to the use thereof for the purposes of installing, operating, and maintaining the Operator’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

SECTION 2 - Grant of Authority

2.1. The City hereby grants to the Operator under the Cable Act a nonexclusive Franchise authorizing the Operator to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Operator from offering any service over its Cable System that is not prohibited by federal or state law.

2.1.1. Other Ordinances. This Franchise and all rights and privileges granted hereunder are subject to, and the Operator must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City’s exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern. This Franchise does not confer rights or immunities upon the Operator other than as expressly provided herein. The Operator reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its rights to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

2.1.2. Police Powers. In accepting the Franchise, the Operator acknowledges that its rights hereunder are subject to the legitimate rights of the police powers of the City to enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power. Additionally the Council expressly reserves unto itself all its police powers to adopt additional ordinances necessary to protect the health, safety, and welfare of the general public in relation to the rights granted under this Franchise. The City reserves the right to use, occupy and enjoy any Public Rights-of-Way or other public places for any purpose, including without limitation, the construction of any natural gas, water, sewer or storm drainage system, Installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The City Council reserves the right to delegate its authority for Franchise administration to a designated agent.

2.2. Length of Franchise. The length of this Franchise shall be for a term of five (5) years with a possible five (5) year extension, mutually agreeable to both the City and Operator.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.5. Competitive Equity.

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

2.5.2. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon the Operator by registered or certified mail or via nationally recognized overnight courier service.

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

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Permits and General Obligations. The Operator shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Operator for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2 Construction Standards. The Operator shall not commence construction, within the City without a valid permit issued in accordance with City codes and regulations, except as provided in this Franchise.

3.2.1 Right-of-Way permit. The Operator shall submit an application for, pay the permit fee, and obtain a Right-of-Way permit to perform construction work in any Public Rights-of-Way in accordance with applicable local regulations. No work, other than Emergency repairs, routine aerial maintenance, or standard aerial Installation, shall commence without such a permit. Emergency repairs may be made immediately as provided for in Section 3.4 of this Agreement.

3.2.2 Issuance of Right-of-Way permit. Construction permits shall be approved by the City within forty-five (45) days of receipt of a completed permit application, so long as the permit request complies with the requirements of this

Franchise, subject to further conditions, restrictions or regulations affecting the time, place and manner of performing the work. A permit application shall be considered complete when accompanied by all required information, plans and fees.

3.2.3 Display of Right-of-Way permit. The Operator shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Administrator or designee at all times when construction work is occurring.

3.2.4 Construction Schedule. The Operator shall comply fully with construction timelines outlined in an approved construction permit issued by the City.

3.2.5 Locator service compliance. The Operator, before commencing any construction in the Public Right-of-Way, shall call for location in accordance with RCW 19.122.

3.2.6 Placement. All transmission lines, equipment, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All Facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Operator shall be placed in such manner as not to interfere with the usual travel on such Public Right-of-Way. Exact placement within the Right-of-Way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

3.2.7 Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Operator shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in "as good as" or "better than" as it was prior to performance by the Operator of such work.

3.2.8 Completion of construction. The Operator shall promptly complete all construction activities so as to minimize disruption of the Right-of-Ways and other public and private property. All construction work authorized by a permit within Right-of-Ways, including restoration, must be completed within 90 days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

3.2.9 Non-complying Work. Upon order of the City Administrator or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

3.3. Conditions on Street Occupancy.

3.3.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Operator shall, upon reasonable advance written notice from the City (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the City shall upon written request of the Operator make application for such funds on behalf of the Operator.

3.3.2. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Operator disturbs, alters, or damages any Public Way, the Operator agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition “as good as” or “like” the condition of the Public Way existing immediately prior to the disturbance.

3.3.3. Landscape Restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Cable System, which is done pursuant to a Franchise, shall be replaced or restored in “as good as” or “like” the condition existing prior to performance of the work.

3.3.4. Trimming of Trees and Shrubbery. Operator shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Operator’s wires, cables, or other equipment. All such trimming shall be done at the Operator’s sole cost and expense. The Operator shall be responsible for any damage caused by such trimming. The Operator shall call the City to inform about trimming as a matter of courtesy.

3.3.5 Aerial and Underground Construction.

3.3.5.1 Facilities Placement. If all of the transmission and distribution facilities of all of the respective wireline service providers in any given area within the Franchise Area are underground, the Operator shall place its Cable Systems’ distribution cables underground; provided that such underground locations are actually capable of accommodating the Operator’s cable and other equipment without technical degradation of the Cable System’s signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of any of the respective wireline service providers are both aerial and underground, the Operator shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aurally or underground. In areas where a wireline service providers wiring is aerial, the Operator may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. The Operator shall utilize existing poles and conduit wherever possible.

Nothing in this Section shall be construed to require the Operator to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

3.3.5.2 City Driven Relocation Projects. In the event of a City driven facilities relocation projects that require conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes, sidewalk installation, or beautification, Operator agrees to bear the costs of converting Operator's cable system from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering -- To ensure proper space and availability in the supplied joint trench, Operator shall only pay for the direct work hours and/or proportionate share of work hours base on the percentage of conduit volume, necessary to complete cable system related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement -- Operator shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench as follows:

1. If the City's contractor is completing the task of conduit and vault/pedestal placement, Operator shall only pay the direct costs in accordance with Operator's approved labor and materials exhibits at the time of the project.

2. If the direct costs of Operator's approved labor and materials exhibits are not agreeable to the City or its contractor, Operator shall have the option to hire its own contractor(s) to complete the work in accordance with Operator's approved labor and materials exhibits at the time of the project.

3. If Operator chooses option (2), the City and its contractor(s) are responsible to coordinate with Operator's contractor(s) to provide reasonable notice and time to complete the placement of Operators conduits and vaults/pedestals in the supplied joint trench.

C. Within the conversion area, Operator shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench, or work conducted by the Operator outside of the City's construction schedule.

3.3.5.3 Request For Relocation By Third Party. The Operator shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Operator may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be

required to be paid in advance of the relocation of its wires or cables, and (ii) Operator is granted a permit for such work by the City.

3.3.5.4 Relocation Due To Development. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable facilities. The Operator and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

3.3.5.5 Damage to Cable System. The City shall be liable for any damage caused to Operator's Cable System as a result of any public works, public improvements, construction, excavation, grading, filling, or work of any kind by or on behalf of the City. This provision is not applicable in instances wherein City must cut or remove Cable System facilities due to an emergency.

3.4. Repair and Emergency Work. In the event of an unexpected repair or Emergency, the Operator may commence such repair and Emergency response work as required under the circumstances, provided the Operator shall notify the City Administrator as promptly as possible, before such repair or Emergency work or as soon thereafter as possible if advance notice is not practicable.

SECTION 4 - Service Obligations

4.1. General Service Obligation. The Operator shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per street mile in areas served by underground facilities. Subject to the density requirement, Operator shall offer Cable Service to all new homes or previously unserved homes located within 125 feet per an aerial service drop and 60 feet per an underground service drop of the Operator's distribution cable at the prevailing published Installation rate.

The Operator may elect to provide Cable Service to areas not meeting the above density and distance standards. The Operator may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. Programming. The Operator shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination. Neither the Operator nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall

discriminate or permit discrimination in accordance with State law between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Operator are satisfied. Nothing contained herein shall prohibit the Operator from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments. The City shall make all attempt to provide the Operator with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The City agrees to require the developer to give the Operator access to open trenches for deployment of cable facilities and at least ten (10) business days notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Operator shall be responsible for engineering and deployment of labor applicable to its cable facilities.

4.5. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Operator, any Cable Service, program or signal transmitted over the Cable System by the Operator.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Operator or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Operator shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

6.1. Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Operator shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Operator may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection. The Operator shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.4. Refunds for Outages. After notification from a Customer of an outage, the Operator will credit the Customer's account, provided request by the Customer for such refund is made within thirty (30) days of the reported outage and the length of the outage was in excess of six (6) hours.

6.5 Discounts. The Operator shall endeavor to continue its voluntary initiative to offer a discount of thirty (30%) percent from the normal charge for basic service to those individuals age sixty-two (62) or older or handicapped who are the legal owner or lessee/tenant of their resident provided that their combined disposable income from all sources does not exceed income levels used by the City for other utility discounts. The City or its designee shall be responsible for certifying to the Operator that such applicants conform to the specific criteria.

SECTION 7 - Oversight and Regulation by City

7.1. Franchise Fees. The Operator shall pay to the City quarterly, on or before the thirtieth (30th) day after the end of each quarter (March, June, September, December), a franchise fee in a sum equal to five percent (5%) of Gross Revenues as is defined in this Franchise, for the preceding three calendar months. Revenues that are derived as a portion of a national or regional service shall be computed on a per Customer basis if such determination cannot be achieved by other means.

The City may modify the Franchise fee if so permitted by federal and state law. Prior to implementation of any modification in Franchise fees the Operator may request a public hearing by the City Council to discuss said modification. Following such a hearing the City Council may require the implementation of such modification in accordance with the provisions of this Franchise, subject to applicable law.

7.1.1. Late Payment. Any quarterly Franchise fee not paid by the Operator within thirty (30) days of the end of a quarter shall bear interest at the maximum rate allowed under State law, from the date due until paid.

7.1.2 Financial Reports. Each franchise fee payment shall be accompanied by a financial report showing the basis for the Operator's computation, including, revenues received by the Operator within the City from such items as Basic Service, Expanded Basic Service, pay TV service, and other applicable sources of revenue.

7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice, during normal business hours, at Operator's principal business office, the City shall have the right to inspect the Operator's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the City receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the City, the City shall provide to the Operator a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Operator shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Operator as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Operator within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Operator, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Operator's books and records, unless the final results of the audit determine an underpayment of ten (10) percent or more in which case the Operator shall bear the expense.

7.3. Oversight of Franchise. In accordance with applicable law, the City shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Operator's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Operator's compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards. The Operator shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Operator shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Operator agrees that the City, upon reasonable prior written notice to the Operator, may review such of the Operator's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Operator's compliance with the provisions of this Franchise Agreement at the Operator's business office, during normal business hours, and without unreasonably interfering with Operator's business operations. Such books and records shall include any records required to be kept in a public file by the Operator pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Operator for a minimum period of three (3) years.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Operator shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Operator shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, except in the case of an audit by the City under Section 7.2. During any such audit the City shall be provided with all reasonable records and/or information to verify calculation of the City's franchise fees. The City agrees to treat any information disclosed by the Operator as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information, unless compelled by law, and then, only on prior notice to the Operator so that an injunction can be sought, if desired. The Operator shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Operator to competitively sensitive. In the event that the City receives a request under a state "sunshine," public records or similar law for the disclosure of information the Operator has designated as confidential, trade secret or proprietary, the City shall notify Operator of such request and cooperate with Operator in opposing such request.

7.6 Non-Waiver. Acceptance of any Franchise fee payment by the City shall not be construed as an agreement by the City that the Franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of the Ordinance.

7.7 Taxes. Nothing in this Section shall limit the Operator's obligation to pay applicable local, state, or federal taxes.

SECTION 8 – Transfer or Change of Control of Cable System or Franchise

8.1. Neither the Operator nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Operator, defined as an acquisition of 50% or greater ownership interest in Operator, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Operator in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Operator in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Operator's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

SECTION 9 - Insurance and Indemnity

9.1. Insurance. Throughout the term of this Franchise Agreement, the Operator shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insured's and demonstrating that the Operator has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and up to Two Million Dollars (\$2,000,000) for a single occurrence and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Operator shall provide workers' compensation coverage in accordance with applicable law. The Operator shall indemnify and hold harmless the City from any workers compensation claims to which the Operator may become subject during the term of this Franchise Agreement

9.2. Indemnification. The Operator shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Operator's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Operator written notice of its obligation to indemnify and defend

the City within fifteen (15) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

SECTION 10 - System Description and Service

10.1. System Capacity. During the term of this Agreement the Operator's Cable System shall be capable of providing a minimum of 85 channels of video programming with satisfactory reception available to its customers in the Franchise Area.

10.2. Complimentary Cable Service for Public Buildings. The Operator, upon request, shall provide without charge, a standard Installation and one outlet of "Basic" and "Expanded Basic" Cable Service to those "Municipal" administrative buildings owned, leased, or built by the City during the contract term, and which are occupied by the City, as well as fire station(s), police station(s), K-12 public school(s), public school administration building(s) and public school transportation building(s) that are passed by its Cable System; Provided, however, that the City shall have first obtained any necessary written right of entry agreement. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Operator. The Cable Service provided shall not be used for commercial purposes and limited to administrative offices which are not open to the public. The City shall hold the Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Operator shall not be required to provide an outlet to such buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installations.

10.3 Cable Internet and Alternative. If the City elects to obtain access to the Internet to accomplish its communications objectives in accordance with any future Institutional Network request, the Operator, upon request and subject to standard Installation, shall provide without charge, one cable modem and one Ethernet card and any software necessary for access to such service per eleven (11) City sites. There shall be no charge for unrestricted usage at the computer utilizing one complimentary modem, in accordance with the City's Internet usage policies. The using facility shall be responsible for the provisions, maintenance, updating and replacement as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Operator shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the City, to take reasonable precautions to prevent any inappropriate or illegal use of such service, and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind of nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs. The City may contract with the Operator for additional cable modem service.

SECTION 11 - Enforcement and Termination of Franchise

11.1. Notice of Violation or Default. In the event the City believes that the Operator has not complied with the terms of the Franchise, it shall notify the Operator in writing by certified mail. The notice shall state the specific details regarding the exact nature of the alleged noncompliance or default with the material conditions of the Franchise.

11.2. Operator's Right to Cure or Respond. The Operator shall have forty-five (45) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, the Operator will, after notifying the City of the steps being taken and the projected date that they will be completed, commence corrections promptly and diligently pursue corrections until they are complete.

11.3. Public Hearings. In the event the Operator fails to respond to the City's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Operator, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City Council that is scheduled at a time that is no less than fifteen (15) business days there from. The City shall notify the Operator in writing of the time and place of such meeting and provide the Operator with a reasonable opportunity to be heard.

11.4 Enforcement. Subject to state and federal law, in the event the City Council, after such public hearing, determines that the Operator is in default of any provision of the Franchise, the City may elect to:

11.4.1 Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages; or

11.4.2 Impose Liquidated damages. In case of a material default, the Operator agrees that liquidated damages in the sum of One Hundred Dollars (\$100) per day for a maximum period of ninety (90) days is reasonable.

11.4.3 Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise.

11.5 Revocation Notice and Duty to Cure. This Franchise may be revoked for a substantial default of a material provision by the Operator. In the event that the City believes that grounds exist for revocation of the Franchise, the City shall informally discuss the matter with the Operator. If these discussions do not lead to resolution of the problem, the Operator shall be given written notice of the apparent violation or noncompliance, including a short and concise statement of the nature and general facts of the violation or noncompliance, and be given forty-five (45) days to furnish evidence:

- (A) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (B) That rebuts the alleged violation or noncompliance.
- (C) That it would be in the public interest to impose some liquidated damages or sanction less than revocation.

11.5.1 Hearing. In the event that the Operator fails to provide evidence reasonably satisfactory to the City as provided hereunder, the City Council may seek revocation of the Franchise at a legislative hearing. The City shall give written notice of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance and specify the time and place of the hearing. The Operator shall be afforded at least ninety (90) days prior written notice of the hearing.

At the legislative hearing, the Operator shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of the legislative hearing and the cost shall be shared equally between the parties. The City Council shall hear any Person interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter.

11.5.2 Standards for Revocation or Lesser Sanctions. Within ninety (90) days after the legislative hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation, based upon the record of the legislative hearing.

If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Operator. The Operator shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within thirty (30) days. The Operator shall be entitled to such relief as the Court may deem appropriate.

11.6. Technical Violation. The City agrees that it is not its intention to subject the Operator to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.6.1. In instances or for matters where a violation or a breach of the Franchise by the Operator was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.6.2. Where there existed circumstances reasonably beyond the control of the Operator and which precipitated a violation by the Operator of the Franchise, or which were deemed to have prevented the Operator from complying with a term or condition of the Franchise.

SECTION 12 - Miscellaneous Provisions

12.1. Force Majeure. The Operator shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, volcanic eruption, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Operator's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Operator's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

12.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of Buckley
PO Box 1960
933 Main Street
Buckley, WA 98321
Attn: City Clerk

To the Operator:

Comcast of Washington IV, Inc.
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attn: General Manager

with a copy to:

Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, PA 19102
Attn.: Government Affairs Department

12.3. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the City and the Operator with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that

are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

12.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

12.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Operator, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

12.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

12.8. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Operator may have under federal or state law unless such waiver is expressly stated herein.

SECTION 13 – Educational and Governmental Access

13.1 Provision of Educational and Governmental Channel. Use of channel capacity for educational and governmental (“PEG”) access shall be provided on the most basic tier of service offered by Operator in accordance with the Cable Act, Section 611, applicable law and as further set forth below. Operator does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Operator shall not exercise editorial control over any educational, or governmental use of channel capacity, except Operator may refuse to transmit any access program or portion of an access program that contains obscenity, or other content prohibited by Federal law.

13.2. Educational And Government Access. “Educational Access Capacity” is a capacity designated for noncommercial use by educational institutions such as public or private schools, but not “home schools,” community colleges, and universities. “Governmental Access Capacity” is a capacity designated for noncommercial use by the City for the purpose of showing the public local government at work. Within sixty (60) days of written request from the City, the Operator shall designate capacity on one (1) channel for education and government video programming provided by the City.

13.3. Additional PEG Capacity. The City may request additional PEG capacity, not to exceed a total of two (2) channels, so long as a threshold use requirement is met for the PEG access channel designated above. In order to request additional PEG capacity, the existing PEG Access Channel must be programmed at least eight (8) hours a day with non-repetitive, locally-produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The City must provide Operator with written, detailed documentation evidencing the usage meets the threshold requirement for the channel. Operator shall have 120 days to provide the requested additional capacity. Once the threshold is met and the additional capacity given, the initial PEG channel must maintain the threshold requirement. If the initial PEG channel fails to meet the threshold for four (4) consecutive months, the additional PEG capacity may be reclaimed by Operator upon sixty (60) calendar day’s written notice. Under no circumstances shall the City lose the right to its initial PEG capacity.

13.4. Indemnification. The City shall indemnify Operator for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on any PEG channel and from claims arising out of the City’s rules for or administration of access.

13.5. PEG Funding.

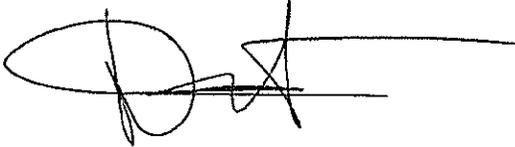
13.5.1. Capital Funding. Effective sixty (60) days after a written request by the City, the Operator shall pay to the City an amount requested by the City up to twenty five cents (\$0.25) per Customer per month as a capital contribution for PEG access. The City shall allocate such amount to PEG capital uses exclusively. All such payments shall be made at the same time as the Operator pays the franchise fee to the City. The City agrees that 47 C.F.R. 76.922 permits Operator to add the cost of the capital contribution to the price of cable services and to collect the capital contribution from Customers. In addition, as permitted in 47 C.F.R. 76.985, all amounts paid as the capital contribution may be separately stated on Customer’s bills as a PEG Access capital equipment fee.

13.5.2. PEG Funding Audit. Upon receiving a written request from the Operator, and within forty-five (45) days of the end of the fiscal year, the City shall provide Operator with an annual report documenting the use of the previous year’s PEG funding and showing the budgeted use of the current year’s PEG funding. In the event the City cannot demonstrate that PEG funding was used for PEG capital needs,

Operator's PEG funding obligations going forward shall be reduced by an equivalent amount.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

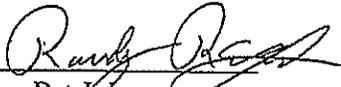
Attest:

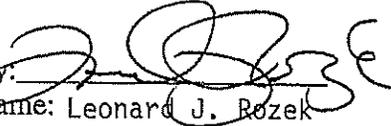


Attest:


Ann Svensson

City of Buckley:

By:  Mayor Pro Tem
Name: Pat Johnson
Title: Mayor
Date: 9-11-2008
Comcast of Washington IV, Inc.

By: 
Name: Leonard J. Rozek
Title: Senior Vice President
Date: October 8, 2008



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Lease Agreement Between the City of Buckley and Buckley Log Show, LLC 2019-2044	Agenda Date: March 26, 2019 AB19-034		
	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 – Treva Percival	X	X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Kevin Caviezel		
	Planning Dept – Kathy James		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
	PW/Utilities – Chris Banks		
Attachments: Agreement			
<p>SUMMARY STATEMENT: We are asking the Council to approve renewal of the lease agreement with Buckley Log Show, LLC for the Log Show Grounds at the rate of \$10 per year. The renewal will be for a longer 25 year period giving the Log Show Association the assurance it needs to invest in improvements needed for the facilities and grounds. The renewal term will commence on April 1, 2019, and terminate on March 31, 2044, unless terminated earlier as permitted in the Agreement. The agreement grants the Log Show, LLC exclusive right to use the grounds for 8 weeks per year, which includes 6 weeks prior to the annual Log Show to 2 weeks after the event. During the term of the agreement, Buckley Log Show, LLC shall at all times at its sole cost and expense and in a neat and workmanlike manner, keep and maintain improvements on the property, including damage from burglary or attempted burglary of the property or improvements located thereon. In addition, Buckley Log Show, LLC shall be responsible for year round maintenance of the Log Show grounds including, but not limited to, mowing/trimming, weeding, fertilization, chemical applications, pruning and maintaining planting beds (bark mulch). The City will be responsible for the payment of all utilities, year round, but will invoice the Log Show, LLC for the months of May/June of each year.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: A/F/PS 3-26-2019			
<p>RECOMMENDED ACTION: MOVE to Approve the Lease Agreement between the City of Buckley and Buckley Log Show, LLC for the term of 2019-2044.</p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

**LEASE AGREEMENT BETWEEN THE
CITY OF BUCKLEY AND BUCKLEY LOG SHOW, LLC
2019 - 2044**

THIS LEASE AGREEMENT is made and entered into this _____ day of _____, 2019, by and between the City of Buckley [hereinafter the “Lessor”], a municipal corporation, and the Buckley Log Show [hereinafter the “Lessee”], a Washington non-profit corporation.

RECITALS:

A. The Lessor owns certain real property situated in the City of Buckley, Pierce County, Washington [hereinafter the “Property”], legally described on Exhibit “A” attached hereto and incorporated herein by this reference; and

B. The Property is improved with a parking lot and picnic facilities, as well as an area in which the Lessee stages an annual log show known as the Buckley Log Show. Within said area [hereinafter “Buckley Log Show”], the Lessee has constructed bleachers and fencing to enclose the grounds which are used for the various log show events. The Buckley Log Show is more particularly described on Exhibit “B” attached hereto and incorporated herein by this reference; and

C. The Lessor wishes to lease the Property to the Lessee, and the Lessee wishes to lease the Property from the Lessor for the term and under the terms and conditions set forth in this Lease Agreement.

NOW THEREFORE, for and in consideration of the mutual promises made herein, the parties do hereby agree as follows:

1. DEMISE. The Lessor hereby leases to the Lessee the Property, and the Lessee hereby leases the Property from the Lessor, on the terms and conditions and subject to the exceptions and reservations set forth in this Agreement.

2. LEASE TERM.

2.1 Term. The term of this Lease Agreement [hereinafter the “Lease Term”] shall be for a period of twenty-five (25) years commencing on April 1, 2019, and terminating on March 31, 2044, unless earlier terminated as permitted in this Agreement.

2.2 Surrender. At the expiration of the Lease Term, or upon the earlier termination of this Lease, the Lessee shall vacate the Property to the Lessor peaceably and quietly and in as good order and condition as exists as of the date of this Lease, except for reasonable use and wear and damage not caused by any act or omission of the Lessee, its employees, agents, invitees, volunteers or licensees. The Lessor’s obligation to perform this covenant shall survive the expiration or earlier termination of this Lease.

3. RENT.

3.1 Rent. During the term of this Lease, the Lessee shall pay to the Lessor, as rent for the Property, the sum of Ten Dollars (\$10.00) per year. Said rent shall be due each year on or before the 1st day of August. Unless otherwise directed by the Lessor, the Lessee shall pay all rent due under this Lease to the order of the Lessor at P.O. Box 1960, 933 Main Street, Buckley, Washington.

4. USE OF PROPERTY.

4.1 Use. The Lessee's activities on the Property shall comply with all applicable zoning codes and other applicable statutes, ordinances, regulations, covenants and restrictions of record. The Lessee shall use the Property for staging the annual Buckley Log Show in the month of June and shall not use or permit or suffer the use of the Property for any other business or purpose without the prior written consent of the Lessor, which consent may be withheld or conditioned as the Lessor deems appropriate.

4.2 Limited Exclusive Use. During the eight (8) week period which commences six (6) weeks immediately prior to the Buckley Log Show and terminates two (2) weeks after the conclusion of the Buckley Log Show, the Lessee shall have the exclusive use of the Property.

4.3 Lessor's Use. Except for the eight week period described in Section 4.2 above, the Lessor, its agents, representatives, licensees and invitees shall be entitled to use the Property, including the Buckley Log Show Area, at all times and without the payment of rent to the Lessee. Lessor agrees to coordinate and notify with the Lessee's contact person prior to any scheduled use of the Property by the Lessor, its agents, representatives, licensees and invitees. The Lessor agrees to coordinate and notify the Lessee at least 60 days in advance of any scheduled use and when at all possible, Lessor shall make every effort to give more advanced notice to Lessee. The Lessee's contact person for coordination and notice is:

Buckley Log Show, LLC
Jeff Fetter, President
P.O. Box 1480
Orting, WA 98360
(253) 222-5354

4.4 Legal and Safety Compliance. The Lessee shall not: (a) make or allow any unlawful, improper or offensive use of the Property; (b) violate any federal, state or municipal licensing or permit requirements, ordinances, rules, regulations or laws of other governmental authorities applicable to the Lessee's use of the Property, including but not limited to health laws, fire codes, building codes, zoning laws, worker safety laws and laws related to the storage, use and disposal of hazardous substances; (c) make or allow use of the Property in any manner that will obstruct streets, alleys or publicly owned parking areas, create a nuisance or unduly disturb occupants of neighboring properties; or (d) do anything which will create an unreasonable risk of injury to persons or of damage to property or, as a result of which, any insurance policy covering

any or all of the Property or any liability of the Lessor may be voided or suspended or subjected to a higher premium.

4.5 Waste. The Lessee shall not commit or allow to be committed any waste, damage to or destruction of the Property or the improvements located thereon.

4.6 Event Security. Lessee hosts a Beer Garden on-site during the Logger's Rodeo where alcohol is served. Lessee shall be required, at Lessee's expense, to provide for security within the Beer Garden during periods of operation by hiring at least two off-duty commissioned police officers to oversee the activity to include verifying ID and age requirements.

5. ALTERATIONS AND LEASEHOLD IMPROVEMENTS.

5.1 Improvements.

(a) The Lessor shall have no duty or responsibility for the construction of any alterations or improvements to the Property.

(b) The Lessee shall have the right at any time during the Lease Term to make alterations, additions, replacements and repairs to any improvements now or hereafter placed upon the Property, so long as the total value of the Property is not diminished thereby and subject to the Lessor's reservation of the right to approve or reject all such proposed actions, which approval shall not be unreasonably withheld. Subject to the conditions of this section, the Lessee shall have the sole responsibility to construct and pay for any alterations and leasehold improvements and to install all fixtures and equipment necessary for the proper operation of the Lessee's activities or which are required by any municipal, state or federal government, any and all of which work shall be done by and for the Lessee in its own right and not as the Lessor's agent.

5.2 Construction. Any alterations performed or improvements constructed by the Lessee on the Property shall be approved in advance by the Lessor in writing, which approval shall not be unreasonably withheld. As a condition of the Lessor's approval, the Lessor may require the Lessee or the Lessee's contractor to provide a performance bond or payment bond in a form reasonably acceptable to the Lessor.

5.3 Manner of Work. All work done by the Lessee in connection with the construction, alteration or improvement of the Property shall be in accordance with all applicable building codes and regulations and shall be done in a good and workmanlike manner.

5.4 Protection Against Claims and Liens. The Lessee shall not permit the Property to become or remain subject to any liens on account of labor performed on, or materials or supplies furnished to or in connection with the Property by or at the direction or forbearance of the Lessee, its employees or agents. The Lessee shall obtain lien releases upon the payment of any claims for such labor, materials or supplies.

5.5 Reversion Upon Expiration of Lease Term. Upon the expiration of the Lease Term or earlier termination of this Lease, all leasehold improvements and alterations

currently on the Property and constructed by the Lessee or the Lessor during the Lease Term, including but not limited to all improvements located in the Buckley Log Show Area, shall remain a part of the Property and shall revert to the Lessor.

6. MAINTENANCE AND REPAIR.

6.1 Acceptance of Condition. The Lessee has had an opportunity to inspect the Property and accepts the Property and all the improvements located thereon “as is.” The Lessor makes no representation or warranty about the physical condition of the Property or the improvements located thereon or the suitability of the Property for the Lessee’s intended purpose.

6.2 Lessee’s Obligations. During the term of this Lease, the Lessee shall at all times, at its sole cost and expense and in a neat and workmanlike manner, keep and maintain improvements on the Property, including all improvements located thereon (without limitation, the bleachers, fencing, Buckley Log Show Area, picnic tables, sidewalks, pedestrian walkways, driveways, parking areas, service areas, parking-lot lighting, storm drains, sewers, and restrooms serving the public) in good order, condition and repair, including damage from burglary or attempted burglary of the Property or improvements located thereon. In addition Lessee shall be responsible for year round maintenance of the Log Show grounds including, but not limited to, mowing/trimming, weeding, fertilization, chemical applications, pruning and maintaining planting beds (bark mulch).

6.3 Lessee’s Obligation re: Buckley Log Show. Within two (2) weeks after the conclusion of the Buckley Log Show each year, the Lessee shall cause the Property and all improvements located thereon to be returned to as good a condition as they were in prior to the Buckley Log Show, reasonable wear and tear excepted. The Lessee’s obligation under this section includes, but is not limited to, removing and properly disposing of all trash and refuse, repairing damaged picnic tables, repairing the grass and landscaped areas, and removing all temporary structures or enclosures erected for the Buckley Log Show.

6.4 Lessor’s Obligations. Lessor shall be responsible for the maintenance of the Property including, but not limited to, removing and properly disposing of all trash and refuse, repairing damaged picnic tables, repairing the grass and landscaped areas, and removing all temporary structures or enclosures erected during and after any scheduled use of the Property by the Lessor, its agents, representatives, licensees and invitees. With the exception of the period(s) during which the annual Buckley Log Show Event is being held and/or any other event scheduled by the Buckley Log Show throughout the year, the Lessor shall be responsible for removing and properly disposing of all trash and refuse from the Property.

6.5 Lessee’s Failure to Repair. If the Lessee fails or refuses to make timely repairs or to perform maintenance as required under this Agreement, then, after twenty (20) days written notice to the Lessee and a reasonable opportunity for the Lessee to comply, in addition to all other rights and remedies available to the Lessor, the Lessor may, but is not required to, make such repairs or perform such maintenance for the Lessee’s account, and the cost thereof shall be reimbursed to the Lessor from the Lessee within five (5) days of invoicing the Lessee therefor; provided, that the Lessor shall not be obligated to give the Lessee notice and an

opportunity to comply if there is a danger to persons or property or if an emergency exists. The Lessee's additional failure to pay the invoiced amount within said five day period will constitute grounds for termination of the Lease under Section 11 below.

6.6 Examination of Property. The Lessor, or its agents or representatives, may at any or all reasonable times, upon written notice given three (3) days in advance, enter into or upon the Property or any part thereof for the purpose of examining the condition thereof. Lessee shall ensure that the Lessor is provided keys to all facilities so that the Property may be accessed.

7. UTILITIES. Utilities to and for the Property shall be distributed between the parties as follows.

7.1 Lessor's Obligation: Except as provided in Paragraph 7.2 below, the Lessor shall be responsible for payment of all electric/power, water, natural gas, sewer and other utility service(s) supplied to or charged to the Property, including garbage services.

7.2 Lessee's Obligation: Lessee shall be responsible for payment of all utility services provided to the property for the period of May through June of each year. Lessor will invoice the Lessee for the cost of these utility services by July 15 of each year. Payment for utility services will be due each year on or before the 1st day of August.

8. INDEMNIFICATION.

8.1 Indemnification by Lessee. The Lessee shall indemnify, defend and hold the Lessor harmless and the Lessor's officers, directors, employees, agents and representatives harmless from and against any and all claims, actions, damages, suits, losses, costs, liens, judgments, penalties and liabilities, including environmental remediation costs, defense costs and reasonable attorney's fees which may be brought or made against the Lessor or which the Lessor may pay or incur based upon or arising from: (a) the use, occupancy, conduct, operation or management of the Property or of the activities conducted on the Property by the Lessee, its agents, volunteers, contractors, employees, officers or representatives during the Lease Term, or from any activity, work or thing done, permitted or suffered by the Lessee in or about the Property; (b) any failure, breach or default by the Lessee in the payment of any sum or performance of any obligation of the Lessee under this Lease or applicable law; (c) any negligent act or omission of the Lessee or any of its agents, volunteers, contractors, employees, officers or representatives; (d) the presence of any hazardous substance on the Property at the expiration of the Lease Term and any release, leaking or infiltration of any oil, solvent, fuel, chemicals or any type of toxic, dangerous or hazardous substance on or from the Property occurring during the Lease Term, other than a hazardous substance that can be shown by the Lessee by a preponderance of the evidence to have been present on the Property prior to the Lessee's original occupancy thereof.

8.2 Indemnification by Lessor. The Lessor shall indemnify, defend and hold the Lessee harmless from and against any and all claims, actions, damages, suits, losses, costs, liens, judgments, penalties and liabilities, including defense costs and reasonable attorney's fees, which may be brought or made against the Lessee or which the Lessee may pay or incur, because of the Lessor's act(s) or omission(s), negligence or failure to perform any of its obligations under

this Agreement, incurred or arising or by reason of the use, operation, management, or operation of the Property by the Lessor, its employees, agents and representatives.

8.3 Concurrent Negligence. Notwithstanding the provisions of subsections 8.1 and 8.2 above, in the event of the concurrent negligence or intentional misconduct of the Lessee, its agents, employees, representatives, invitees, volunteers, licensees or contractors, on the one hand, and that of the Lessor, its officers, officials, agents, volunteers, employees, contractors or representatives, on the other hand, which concurrent negligence or intentional misconduct results in injury or damage to persons or property, the Lessee's obligation to indemnify the Lessor and the Lessor's obligation to indemnify the Lessee, as set forth in this section, shall be limited to the extent of the Lessee's or the Lessor's respective negligence and/or intentional misconduct, and that of its agents, employees, volunteers, invitees, licensee, contractors, representatives, officers and officials, including the Lessee's and the Lessor's proportionate share of the costs, attorney's fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

8.4 Waiver of Immunity. The indemnification obligations contained in this Agreement shall not be limited by any worker's compensation, benefit or disability laws, and each indemnitor hereby waives any immunity that such indemnitor may have under the industrial Insurance Act, Title 51 RCW. This waiver is for the exclusive benefit of the indemnified party, shall not accrue to the benefit of any employee of any indemnitor hereunder and is not intended as a waiver of the Lessee's rights of immunity under said industrial insurance for any other person.

8.5 Waiver of Subrogation. If either the Lessor or the Lessee is paid any proceeds under any policy of insurance naming such party as an insured on account of any loss or damage, then the party receiving the proceeds hereby releases the other party hereto to and only to the extent of the amount of such proceeds, from any and all liability for such loss or damage, notwithstanding that such loss, damage or liability may be based upon or arise out of a negligent or intentionally tortious act or omission of the other party, its agents, officers or employees. Such release shall be effective, however, only as to a loss or damage occurring while the applicable policy of insurance of the releasing party provides that such release shall not impair the effectiveness of such policy or the insured's ability to recover thereunder. The Lessee and the Lessor shall each provide the other with proof of the right to waive the subrogated interests of their insurers.

8.6 Survival. The obligations of the Lessee and the Lessor under this section arising by reason of any occurrence taking place during the Lease Term shall survive the expiration or earlier termination of this Agreement.

9. INSURANCE.

9.1 Insurance Maintained by the Lessee. During the Lease Term and any period of holding over after the Lease Term, the Lessee shall keep and maintain, at its own cost and expense, a policy or policies of commercial general liability insurance, including liability related to special events and the service of liquor, and property damage insurance with respect to the Property, insuring against liability for personal injury, death and property damage, destruction or

loss occurring on or about the Property or based on or arising out of the condition or use of the Property or the acts or omissions of the Lessee, its agents, employees, volunteers and/or invitees. The policy limits shall be not less than: (a) \$1,000,000.00 for personal injury to, or death of, any one person during any one occurrence; and (b) \$1,000,000.00 for personal injury to, or death of, all persons in any one occurrence; and (c) \$50,000.00 for property damage or destruction during any one occurrence. At any time during this Lease, the described limits of liability may be adjusted to reflect current market insurance coverages, and said adjustments shall be as negotiated and agreed to by the Lessor and the Lessee. The Lessee's insurance coverage shall be primary insurance as respects the Lessor. Any insurance maintained by the Lessor shall be excess of the Lessee's insurance and shall not contribute with it.

9.2 Form of Insurance Policies. The insurance policies to be maintained by the Lessee under this Section 9 shall name the Lessor as an additional insured and loss payee and shall be with companies and with loss-payable clauses reasonably satisfactory to the Lessor. Copies of all policies or certificates evidencing such insurance shall be delivered to the Lessor upon request. No such policy shall be cancelable or amendable except after thirty (30) days' written notice to the Lessor.

10. **ASSIGNMENT AND SUBLETTING.** Without the prior written consent of the Lessor in each instance, which consent shall not be unreasonably withheld, the Lessee shall not: (a) assign, transfer, mortgage, pledge or otherwise encumber this Lease or any interest in the Lessee's leasehold interest in the Property in whole or in part, by operation of law or otherwise; or (b) sublet to or allow or acquiesce in the use or occupancy of all or any part of the Property by any person or party other than the Lessee and its employees, agents, vendors, volunteers and invitees in connection with the Lessee's activities.

11. **DEFAULT AND REMEDIES.**

11.1 Events of Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement [hereinafter "Event of Default"] by the Lessee: The breach or failure by the Lessee to observe or perform any of the covenants, conditions or terms of this Agreement to be observed or performed by the Lessee where such breach or failure continues for a period of ten (10) days after service of a written notice from the Lessor to the Lessee describing such breach or failure and demanding that it be cured.

11.2 Effect of Event of Default. Upon the occurrence of an Event of Default, the Lessor may, at any time thereafter, terminate the Lessee's lease of the Property and all of the Lessee's right, title and interest in and to said Property, including the improvements located thereon, in the manner provided by law. Such remedy shall be in addition to any other right or remedy available to the City at law or in equity on account of such Event of Default. Nothing contained in this section shall limit or prejudice the Lessor's right to prove and obtain as damages, by reason of the Event of Default, damages in the maximum amount allowed by any statute or rule of law in effect at the time when such damages are to be proved.

12. **TERMINATION.** In the event the City determines, in its sole discretion, to sell the Property or to use it for another public purpose, the City shall be entitled to terminate the Lessee's

lease of the Property and all of the Lessee's right, title and interest in and to said Property, including the improvements located thereon, by giving the Lessee written notice of the Lessor's intent to sell the Property at least one (1) year prior to the closing of said sale.

13. CONFIDENTIALITY. All information regarding the Lessor obtained by the Lessee in the performance of this Agreement shall be considered confidential and shall not be disclosed by the Lessee, its employees, volunteers, representatives or agents.

14. ENTIRE AGREEMENT. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. There are no promises, terms, condition, warranties, representations or obligations other than those contained herein, and this Agreement shall supersede all previous communications, negotiations, representations or agreements, either verbal or written, between the parties hereto concerning the subject matter of this Agreement.

15. AMENDMENT. This Agreement may not be modified or amended except by a writing signed by all parties hereto.

16. REPORTING. In order to demonstrate direct benefit to the community and assist the Lessor with satisfying any question concerning unconstitutional gifting of public funds, Lessee shall provide the Lessor with an annual report in December of each year, itemizing donations and contributions to the various local community organizations that the Logger's Rodeo helps to support.

17. WAIVER. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other further exercise thereof or the exercise of any other right, power or privilege hereunder.

18. SUCCESSORS. Subject to the provisions of Section 10 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.

19. 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.

20. TIME IS OF THE ESSENCE. Time is of the essence in the performance of all obligations and requirements of this Agreement.

21. RECORDING. This Lease Agreement shall not go into effect until recorded. A Memorandum of Lease shall be recorded, and the recording fees, costs, taxes and other recording fees shall be shared equally by the parties hereto.

22. NOTICES. All notices, payments and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, by certified mail, with postage prepaid,

22.1 if to the Lessor, to:

City of Buckley
David Schmidt, City Administrator
P.O. Box 1960
Buckley, WA 98321

or to such other person or place as the Lessor shall furnish to the Lessee in writing; and

22.2 if to the Lessee, to:

Buckley Log Show, LLC
Jeff Fetter, President
P.O. Box 1480
Orting, WA 98360

or to such other person or place as the Lessee shall furnish to the Lessor in writing. Notices and payments shall be deemed given upon personal delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

23. GOVERNING LAW. This Agreement shall be interpreted in accordance with the laws of the state of Washington.

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

25. ATTORNEY'S FEES. In the event of any default under this Agreement, the substantially defaulting party agrees to pay the substantially prevailing party's reasonable expenses which the latter incurs by reason thereto, including but not limited to reasonable attorney's fees, whether with respect to the investigation of such default or the determination of the application or the pursuit of remedies with respect thereto, or in legal proceedings, or otherwise. The term "legal proceedings" as used in this section shall include all litigation, arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom.

26. HEADINGS. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement.

27. INDEPENDENT COUNSEL. The Lessee acknowledges that the drafter of this Agreement is the Lessor's legal representative to whom the lessee does not look for any legal counseling or legal advice with regard to this transaction.

THE LESSEE ACKNOWLEDGES THAT IT HAS BEEN ADVISED TO CONSULT

WITH INDEPENDENT LEGAL COUNSEL AND HAS HAD AN OPPORTUNITY TO DO SO. BY SIGNING THIS AGREEMENT, THE LESSEE 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 PARTY HERETO.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the day and year first written above.

CITY OF BUCKLEY

BUCKLEY LOG SHOW

Pat Johnson, Mayor

Jeff Fetter, President

ATTEST:

Trevia Percival, City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

DATE: _____

STATE OF WASHINGTON)
) ss.
County of)

On this ____ day of _____, 2019, the individual known to me to be Jeff Fetter came before me and attested that he/she signed the within and foregoing instrument of his/her own free will, free from any coercion or duress.

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

STATE OF WASHINGTON)
) ss.
County of)

On this ____ day of _____, 2019, the individual known to me to be Patricia Johnson came before me and attested that he/she signed the within and foregoing instrument of his/her own free will, free from any coercion or duress.

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



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Third Addendum to Professional Services Agreement.	Agenda Date: March 26, 2019 AB19-035		
	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 – Treva Percival	X	X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Kevin Caviezel		
	Planning Dept – Kathy James		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
	PW/Utilities – Chris Banks		
Attachments: Third Addendum			
<p>SUMMARY STATEMENT: The current employment contract with the City Administrator expires on December 31, 2019, and since the salary for the position is set “only” by contract then the City cannot legally compensate for the position after this date. This third addendum amends the agreement to extend the term to March 31, 2020, or until Employee officially retires, or terminated as provided by law, or the provisions of the Agreement.</p> <p>This 90 day extension will give the City sufficient time to go through the recruitment and selection process to hire a new City Administrator with the pending retirement of the existing Administrator.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Full Council Study Session 3/5/2019			
RECOMMENDED ACTION: MOVE to Approve the Third Addendum to the Professional Services Agreement with City Administrator Schmidt.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

Third Addendum to Professional Services Agreement

THIS THIRD ADDENDUM to the Professional Services Agreement (“Addendum”) is in addition to (and incorporated therein by this reference) that certain Professional Services Agreement (Agreement) between the City of Buckley (the City), a Washington Municipal corporation, and David Schmidt, (the Administrator) dated March 8, 2011.

WHEREAS, the City and City Administrator jointly agree to amend the terms of the original agreement in order to extend the agreement by up to an additional three (3) months in order to select and hire a replacement to fill the position of City Administrator which the Employee is vacating due to retirement; and

NOW THEREFORE, FOR AND IN CONSIDERATION OF the mutual promises, terms and conditions set forth in the Agreement and contained herein, the Parties hereby agree as follows:

1. Amended Paragraph Two (2), Term. The Employee shall commence performing services as required under this Agreement on January 1, 2018, and shall continue for a period of not less than two (2) years and three (3) months (March 31, 2020) or until Employee officially retires, or terminated as provided by law, or by the provisions of this Agreement.
2. Effect of Addendum. This Third Addendum is in addition to the Agreement. The provisions of this Third Addendum modify the basic Agreement. Except as otherwise provided herein, each provision of the Agreement shall continue in full force and effect as if this addendum did not exist.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed and executed this ___th day of _____, 2019.

CITY OF BUCKLEY

CITY ADMINISTRATOR

By _____
Mayor Pat Johnson

By _____
David W. Schmidt

Attest/Authenticated

By _____
Treva Percival, City Clerk

Approved as to Form:

BY _____
Phil Olbrechts, City Attorney



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT:		Agenda Date: March 26th, 2019 AB19-036	
Interlocal Agreement – City of Buckley (Fire Department) and Washington State DSHS for Fire Protection and Emergency Medical Services at Rainier School	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 – Treva Percival		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore	X	X
	Community Services – Kevin Caviezel		
	Planning Dept – Kathy James		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
	PW/Utilities – Chris Banks		
Attachments: Interlocal Agreement			
SUMMARY STATEMENT:			
<p>The current Interlocal Agreement between the City and Washington State DSHS through which the City of Buckley (Fire Department) provides Fire Protection and Emergency Medical Services to Rainier School is expiring on 06/30/2019.</p> <p>A successor Interlocal Agreement has been proposed by DSHS for the period starting July 1, 2019 and ending June 30, 2021. There is no proposed change in the rate paid for service; however the total contract amount is \$1,232 less over the 2-year period than the present contract because of a reduction in the square footage of the facility buildings as a result of building demolition which has occurred since the previous Interlocal Agreement.</p> <p>The Fire Chief recommends Council approval of the proposed Agreement.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Has not been reviewed by a committee; this is a renewing agreement.			
RECOMMENDED ACTION: Move to authorize the Mayor to execute the Interlocal Agreement between the City of Buckley and the Washington State Department of Social and Health Services to provide Fire Protection and Emergency Medical Services to Rainier School..			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	



INTERLOCAL AGREEMENT

DSHS Agreement Number:
1964-50130

This Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

Program Contract Number:

Contractor Contract Number:

CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
The City of Buckley		The City of Buckley	
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	DSHS INDEX NUMBER
PO Box 1960 Buckley, WA 98321-1960		271-100-033	1696
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS
Alan Predmore	(360) 829-1441	(360) 829-0133	apredmore@cityofbuckley.com
DSHS ADMINISTRATION	DSHS DIVISION	DSHS CONTRACT CODE	
Facilities, Finance and Analytics Administration	Facilities Management & Design	1000LC-64	
DSHS CONTACT NAME AND TITLE		DSHS CONTACT ADDRESS	
Jeanne Rodriguez Contract Manager		1115 S Washington St MS45848 Olympia, WA 98504-5848	
DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL ADDRESS	
(360) 902-8330	(360) 902-7889	rodrijr@dshs.wa.gov	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?		CFDA NUMBER(S)	
No			
AGREEMENT START DATE	AGREEMENT END DATE	MAXIMUM AGREEMENT AMOUNT	
07/01/2019	06/30/2021	\$169,707.80	
EXHIBITS. The following Exhibits are attached and are incorporated into this Agreement by reference:			
<input type="checkbox"/> Exhibits (specify): No Data Security Exhibit			
<input type="checkbox"/> No Exhibits.			
The terms and conditions of this Agreement are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise regarding the subject matter of this Agreement, between the parties. The parties signing below represent they have read and understand this Agreement, and have the authority to execute this Agreement. This Agreement shall be binding on DSHS only upon signature by DSHS.			
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED
		Pat Johnson, Mayor - City of Buckley	
DSHS SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED

DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contracts and Legal Services" means the DSHS central headquarters contracting office, or successor section or office.
 - b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
 - c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
 - d. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.
 - e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
 - f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
 - h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key;" a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.
 - i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
 - j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
 - k. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.
 - l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.

DSHS General Terms and Conditions

- m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
 - n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
 - o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
 - p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
 - q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
 - r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.
2. **Amendment.** This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
3. **Assignment.** The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.
4. **Billing Limitations.**
- a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
 - b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
 - c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.
5. **Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.**
- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential

DSHS General Terms and Conditions

Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:

- (1) as provided by law; or,
 - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
- (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
 - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
 - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
 - (c) Verifying after transmittal that the fax was received by the intended recipient.
 - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
 - (a) Use a Trusted System.
 - (b) Encrypt the Confidential Information, including:
 - i. Encrypting email and/or email attachments which contain the Confidential Information.
 - ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.
 - (5) Send paper documents containing Confidential Information via a Trusted System.
 - (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.
- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.

DSHS General Terms and Conditions

- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
7. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.
8. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.
9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.
10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.
- Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.

DSHS General Terms and Conditions

13. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.
14. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.
15. **Contract Renegotiation, Suspension, or Termination Due to Change in Funding.**

If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

- a. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.
 - b. At DSHS's discretion, DSHS may give notice to Contractor to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
 - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
 - (3) If the Contractor's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
 - c. DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.
16. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the CCLS Chief or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

Additional General Terms and Conditions – Interlocal Agreements:

17. **Disputes.** Both DSHS and the Contractor ("Parties") agree to work in good faith to resolve all conflicts

DSHS General Terms and Conditions

at the lowest level possible. However, if the Parties are not able to promptly and efficiently resolve, through direct informal contact, any dispute concerning the interpretation, application, or implementation of any section of this Agreement, either Party may reduce its description of the dispute in writing, and deliver it to the other Party for consideration. Once received, the assigned managers or designees of each Party will work to informally and amicably resolve the issue within five (5) business days. If managers or designees are unable to come to a mutually acceptable decision within five (5) business days, they may agree to issue an extension to allow for more time.

If the dispute cannot be resolved by the managers or designees, the issue will be referred through each Agency's respective operational protocols, to the Secretary of DSHS ("Secretary") and the Contractor's Agency Head ("Agency Head") or their deputies or designated delegates. Both Parties will be responsible for submitting all relevant documentation, along with a short statement as to how they believe the dispute should be settled, to the Secretary and Agency Head.

Upon receipt of the referral and relevant documentation, the Secretary and Agency Head will confer to consider the potential options of resolution, and to arrive at a decision within fifteen (15) business days. The Secretary and Agency Head may appoint a review team, a facilitator, or both, to assist in the resolution of the dispute. If the Secretary and Agency Head are unable to come to a mutually acceptable decision within fifteen (15) business days, they may agree to issue an extension to allow for more time.

The final decision will be put in writing, and will be signed by both the Secretary and Agency Head. If the Agreement is active at the time of resolution, the Parties will execute an amendment or change order to incorporate the final decision into the Agreement. The decision will be final and binding as to the matter reviewed and the dispute shall be settled in accordance with the terms of the decision.

If the Secretary and Agency Head are unable to come to a mutually acceptable decision, the Parties will request intervention by the Governor, per RCW 43.17.330, in which case the governor shall employ whatever dispute resolution methods that the governor deems appropriate in resolving the dispute.

Both Parties agree that, the existence of a dispute notwithstanding, the Parties will continue without delay to carry out all respective responsibilities under this Agreement that are not affected by the dispute.

18. **Hold Harmless.**

- a. The Contractor shall be responsible for and shall hold DSHS harmless from all claims, loss, liability, damages, or fines arising out of or relating to the Contractor's, or any Subcontractor's, performance or failure to perform this Agreement, or the acts or omissions of the Contractor or any Subcontractor. DSHS shall be responsible for and shall hold the Contractor harmless from all claims, loss, liability, damages, or fines arising out of or relating to DSHS' performance or failure to perform this Agreement.
- b. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

19. **Ownership of Material.** Material created by the Contractor and paid for by DSHS as a part of this Contract shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Contractor uses to perform the Contract but is not created for or paid for by DSHS is owned by the Contractor and is not "work made for hire"; however, DSHS shall have a perpetual license to use

DSHS General Terms and Conditions

this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.

20. Subrecipients.

- a. General. If the Contractor is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the Contractor shall:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
 - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
 - (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
 - (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
 - (6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <https://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)
- b. Single Audit Act Compliance. If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:
 - (1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
 - (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
- c. Overpayments. If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with 2 CFR Part 200.

DSHS General Terms and Conditions

21. Termination.

- a. Default. If for any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates any of the terms and conditions contained in this Agreement, then the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given 15 working days to correct the violation or failure. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party.
- b. Convenience. Either party may terminate this Interlocal Agreement for any other reason by providing 30 calendar days' written notice to the other party.
- c. Payment for Performance. If this Interlocal Agreement is terminated for any reason, DSHS shall only pay for performance rendered or costs incurred in accordance with the terms of this Agreement and prior to the effective date of termination.

22. Treatment of Client Property. Unless otherwise provided, the Contractor shall ensure that any adult client receiving services from the Contractor has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of the Contract, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.

Special Terms and Conditions

1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
 - a. "Patient" means any or all of the clients, residents, or patients at Rainier School.
 - b. "Residential Care Services" or "RCS", means a DSHS Division that are responsible for the licensing and oversight of adult family homes, assisted living facilities, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, and certified residential programs.
 - c. "Rainier School" or "RS" means a residential habilitation center owned and operated by the State of Washington, DSHS, Developmental Disabilities Administration (DDA), which is situated at 2120 Ryan Road, Buckley, WA 98321.
2. **Purpose.** The purpose of this Contract is for the Contractor to provide emergency medical, fire suppression, fire protection, and inspection services for the Rainier School (RS) campus in accordance with RCW 35.21.775.
3. **Statement of Work.** The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
 - a. Provide fire protection and suppression services to all lands, equipment, buildings and their contents, related property improvements, and the personal property of Patients and employees located on or at the RS campus in Pierce County, Washington. Contractor shall provide quarterly written performance reports that identify the number of fire and suppression services call responded to at RS, the type of incidents, and the services provided by the Contractor.
 - b. Provide emergency medical services to all people residing, working or visiting the RS campus. Contractor shall provide quarterly written performance reports that identify the number of emergency medical services call responded to at RS, the type of incidents, and the services provided by the Contractor.
 - c. Provide inspections as often as necessary, but not less than annually, across the whole of the RS campus for the purpose of identifying fire code violations and any other law or standard including those set forth by Residential Care Services (RCS) affecting fire and life safety in order to ensure the safety of individuals in RS campus facilities. Upon completion of annual inspections, Contractor shall provide a written report to RS of its findings and recommendations.
 - d. For any significant fire/incident to which the Contractor responds, and the fire/incident results in a required debriefing by RS administration, a representative of the Contractor shall provide consultation during the incident debriefing. For significant fire/incidents to which the Contractor responds, Contractor shall provide a written summary report of the debriefing information Contractor provided to RS.
 - e. The Contractor shall send all required written reports within this Agreement to the DSHS Contract Contact provided on the cover page of this Agreement
4. **Consideration.** Total consideration payable to Contractor for satisfactory performance of the work under this Contract is up to a maximum of \$169,707.80, including any and all expenses, and shall be based on the following:
 - a. In consideration of the goods and services provided by the Contractor under the terms and conditions of this Contract, each year DSHS shall pay the Contractor a fee based upon the sum of the RS total square footage of improvements multiplied by 10 cents per square foot per year.

Special Terms and Conditions

- b. RS total gross square footage as of July 1, 2017 equals 848,539.
 - (1) 848,539 sf x \$0.10 equates to an annual amount not to exceed \$84,853.90, or \$7,071.16 monthly, for the period of July 1, 2019, through June 30, 2021.
- c. This contract may be extended by additional two year terms upon mutual agreement of the parties.
- d. All payments to Contractor under this Contract shall be contingent upon Contractor's satisfactory completion of all goods and services, including all written reports.

5. Billing and Payment.

- a. Invoice System. The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to: **CIBS, Attn: Fiscal, 9601 Steilacoom Blvd, Lakewood, Washington, 98498-7213**, by the Contractor not more often than monthly. The invoices shall describe and document to DSHS' satisfaction a description of the work performed, activities accomplished, the progress of the project, and fees. The rates shall be in accordance with those set forth in Section 4, Consideration, of this Contract.
- b. Payment. Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by Western State Hospital of the properly completed invoices. Payment shall be sent to the address designated by the Contractor on page one (1) of this Contract. DSHS may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.

6. Insurance.

- a. DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable.
- b. The Contractor certifies, by checking the appropriate box below, initialing to the left of the box selected, and signing this Agreement, that:

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

_____ The Contractor maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

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

D. CONSENT AGENDA

**City Council
March 12, 2019**

Mayor Johnson called the regularly scheduled meeting to order at 7:00 PM.

Upon roll call the following members were present: Tremblay, Bender, S. Burkett, Smith, B. Burkett, Leggett and Wilbanks. Also in attendance were City Administrator Schmidt, Police Chief Arsanto, City Planner James and Asst. Police Chief Northam.

Council member Smith moved to amend the agenda to add two Executive Sessions. Council member Bender seconded the motion. Motion carried.

Mayor Johnson swore in new Police Officer Rosalia Noronha.

CITIZEN PARTICIPATION

Matt Perry- 3130 S. 38th St., Tacoma, WA

Matt Perry stated that he is a representative from Puget Sound Energy. He wanted to remind the citizens about the features that Puget Sound Energy has. Such as paperless billing, the my PSE app to track outages, and for citizens that qualify for billing assistance and the weatherization program. Matt was also excited to announce that Buckley was chosen for PSE to donate trees to us for Arbor Day.

Mike Franks- 520 B Ryan Road, Buckley, WA 98321

Mike Franks gave his opinion that the trees that are donated from Puget Sound Energy should be planted along the green space.

STAFF REPORTS

Planner James gave an update and said that the Planning Commission is working on six specific ordinances and they will hopefully be ready by July. She also wanted to remind everyone that the Shoreline Master Program Hearing will be held Monday March 18, 2019.

Police Chief Arsanto gave a quick update that the new police vehicles should be arriving in a couple of weeks. New Officer Rosalia Noronha has 8 more shifts and then will be going on her own. Bennon Vanhoof will be graduating from the academy in April.

City Administrator Schmidt wanted to thank Police and Fire for their response to the fatality fire.

MAIN AGENDA

ORD No. 05-19: Agreement between Pierce County and the City of Buckley Regarding Naches Street Improvements:

Council member Tremblay moved to Approve ORD No. 05-19 Agreement between Pierce County and the City of Buckley Regarding Naches Street Improvements. Council member Smith seconded the motion. Upon roll call vote motion carried 7/0.

Early Separation Agreement between the City and Kathy James:

Council retreated into Executive Session at 7:17 PM for approximately 10 minutes, to discuss the agreement matter, action to follow. At 7:27 Mayor Johnson requested 5 more minutes.

Council returned from Executive Session and reconvened the meeting at 7:32 PM.

Council member Tremblay moved to Approve the Early Separation Agreement between the City and Kathy James for Early Retirement, Severance Pay and Other Benefits. Council member Leggett seconded the motion. Motion carried.

Engineering Design & Preparation of Bid/Construction Documents – Cedar Street Improvements:

Council member Smith moved to Approve the Consultant Agreement with Gray & Osborne for Engineering Design and Preparation of Bid/Construction Documents for the Cedar Street Improvements. Council member B. Burkett seconded the motion. Motion carried.

CONSENT AGENDA

Council Member Smith moved to Approve the Consent Agenda. Council member Tremblay seconded the motion. Motion carried.

Approve Minutes of February 26, 2019, City Council Meeting
Approve Minutes of March 5, 2019, City Council Study Session

Claim check numbers 59608 through 59681 in the amount of \$299,070.94 for the period of February 27, 2019, through March 12, 2019; Payroll check numbers 37752 through 37795 in the amount of \$79,173.13 and ACH Payroll in the amount of \$337,296.49 for the month of February 2019; and Treasurer check numbers 12144 through 12150 in the amount of \$2,145.81 and EFT payments in the amount of \$13,755.48 for the month of February are hereby approved and ordered paid this 12th day of March 2019.

COMMITTEE REPORTS

Mayors Report:

None.

Administration, Finance & Public Safety:

Council member Tremblay stated they met this morning and wanted to remind everyone about the Spring Clean-up that is April 8 – April 11th. Our City wide shred event is May 11th.

Transportation & Utilities:

Council member B. Burkett stated that their next meeting will be March 19th at 7 PM at City Hall and it is open to the public.

Community Services:

Council member S. Burkett stated that their next meeting will be March 21st at 1 PM at City Hall and it is also open to the public.

Council Member Comments & Good of the Order:

Council member Smith moved to change the agenda format that is presented for citizen participation to say “encouraged” to sign up at City Hall by Wednesday prior to the Council Meeting. B. Burkett seconded the motion. Motion Carried.

Council member Bender stated that she would like to have a meeting with Planning Commission and Council regarding the subarea next to the Veterans Memorial.

Council retreated to Executive Session at 7:49 PM for approximately 10 minutes, to discuss the City Attorney taking possible legal action regarding the sale of the former fire station to address the boundary line adjustment.

Council returned from Executive Session and reconvened the meeting at 7:59 PM.

Council member Smith moved to Approve the City Attorney to take legal action regarding the sale of the former Fire Station to address the boundary line adjustment. Council member Tremblay seconded the motion. Motion carried.

Council member Smith moved to adjourn. Council member S. Burkett seconded the motion. Motion carried.

With nothing further the meeting was adjourned at 8:10 PM.

Mayor

City Administrator

E. COMMITTEE REPORTS