



**BUCKLEY CITY COUNCIL MEETING AGENDA**  
**April 12, 2016**  
**Multi-Purpose Center, 811 Main Street**  
**City Council Meeting**  
**Opening 7:00 P.M.**

Call to Order  
Pledge of Allegiance  
Roll Call of Council Members

Next Ordinance #10-16  
Next Resolution #16-06  
Next Agenda Bill #AB16-048

**Oath of Office – Officer Collin Burnham**

**A. Citizen Participation**

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

**B. Staff Reports**

**C. Main Agenda**

1. **Public Hearing: Assumption of Rights, Powers, Functions & Obligations of TBD** Pg 8
2. ORD No. \_\_\_-16: Assuming Rights, Powers, Functions & Obligations of TBD Pg 10
3. ORD No. \_\_\_-16: Astound Broadband, LLC Franchise Agreement Pg 19
4. Agreement - TSA Between Buckley & Carbonado for WWTP Lab Services Pg 62
5. Bid Award - Phase II of the SR410 Realignment Project Pg 68
6. Temporary Waiver of Trailer Regulations Pg 79
7. Zoo Trek Authority Ballot Pg 82
8. Lease Agreement Termination – Del’s Farm & Feed Pg 86

**D. Consent Agenda**

Pg 106

9. A. Approve Minutes of March 22, 2016 City Council Meeting  
Approve Minutes of April 5, 2016 City Council Study Session
- B. Claims
- C. Transfer Voucher
- D. Payroll

**E. Committee Reports**

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



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

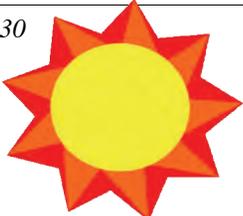
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## **CITY OF BUCKLEY MEETING LIST**

Apr 12	7:00 PM	City Council
Apr 18	7:00 PM	Planning Commission
Apr 19	9:30 AM	Admin, Finance & Public Safety (City Hall)
Apr 19	7:00 PM	Transportation & Utilities (City Hall)
Apr 21	4:00 PM	Community Services
Apr 26	7:00 PM	City Council
May 2	7:00 PM	Planning Commission
May 3	9:30 AM	Admin, Finance & Public Safety (City Hall)
May 3	7:00 PM	City Council Study Session
May 9	10:30 AM	Buckley Hall Board
May 10	7:00 PM	City Council
May 16	7:00 PM	Planning Commission
May 17	9:30 AM	Admin, Finance & Public Safety (City Hall)
May 17	7:00 PM	Transportation & Utilities (City Hall)
May 19	4:00 PM	Community Services
May 24	7:00 PM	City Council

# April 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
						2
3	4 7 PC	5 9:30 AM Admin, Finance & PS  7 City Council Study Session	6	7	8	9
10	11	12  7 City Council	13	14	15	16
17	18 7 PC	19 9:30 AM Admin, Finance & PS  7 Transportation & Utilities	20	21  4 Community Ser- vices	22 	23
24	25	26  7 City Council	27	28	29 	30 

# May 2016



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

**A. CITIZEN PARTICIPATION**

**B. STAFF REPORTS**

**C. MAIN AGENDA**

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Public Hearing – City Assumption of Rights, Powers, Functions &amp; Obligations of TBD</b>	<b>Agenda Date: April 12, 2016</b>		<b>AB16-048</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Kristin Eick	X	X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	Court – Jessica Cash		
City Clerk – Joanne Starr		X	
<b>Attachments:</b> Ordinance			
<p>SUMMARY STATEMENT: The purpose of the Public Hearing is to solicit public input and comment on the proposed transfer and assumption of rights, powers, immunities, functions and obligations of the Buckley Transportation Benefit District to the City as allowed under the 2015 State Legislature Second Engrossed Substitute Senate Bill (“2ESSB”) 5987.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities - 2015			
<b>RECOMMENDED ACTION: None</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	



## **NOTICE OF PUBLIC HEARING ASSUMING THE RIGHTS, POWERS, IMMUNITY, FUNCTIONS & OBLIGATIONS OF THE TRANSPORTATION BENEFIT DISTRICT**

**NOTICE IS HEREBY GIVEN** that the Buckley City Council has scheduled a Public Hearing at a City Council Meeting on **April 12, 2016**, at 7:00 PM, at the Buckley Multipurpose Building, at 811 Main, Buckley. The purpose of the Public Hearing is to solicit public input and comment on the proposed transfer and assumption of rights, powers, immunities, functions and obligations of the Buckley Transportation Benefit District to the City as allowed under the 2015 State Legislature Second Engrossed Substitute Senate Bill (“2ESSB”) 5987.

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

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

Comments for or against may be presented orally at the Public Hearing or submitted in writing to Joanne Starr, City Clerk, P. O. Box 1960, Buckley, WA 98321, or by e-mail to: [jstarr@cityofbuckley.com](mailto:jstarr@cityofbuckley.com), prior to 5:00 PM on Monday, April 11, 2016. For questions, please stop by City Hall at 933 Main Street, or call (360) 761-7801.

**DATED** this 15<sup>th</sup> day of March, 2016

Posted: March 23, 2016

Published: March 30, 2016 and April 6, 2016.

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>ORD No. __-16: City Assumption of Rights, Powers, Functions &amp; Obligations of TBD</b>	<b>Agenda Date: April 12, 2016</b>		<b>AB16-049</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Kristin Eick	X	X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	Court – Jessica Cash		
City Clerk – Joanne Starr		X	
<b>Attachments:</b> Ordinance & Attorney Memo			
<p>SUMMARY STATEMENT: Ordinance being presented for consideration transfers rights, powers, immunities, functions and obligations of the Buckley Transportation Benefit District to the City as allowed under the 2015 State Legislature Second Engrossed Substitute Senate Bill (“2ESSB”) 5987.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities - 2015			
<p><b>RECOMMENDED ACTION: Motion to Approve ORD No. __-16 Authorizing City Assumption of Rights, Powers, Functions &amp; Obligations of TBD.</b></p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

ORDINANCE NO. \_\_\_\_-16

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON ASSUMING THE RIGHTS, POWERS, FUNCTIONS AND OBLIGATIONS OF THE BUCKLEY TRANSPORTATION BENEFIT DISTRICT; AMENDING CHAPTER 13.18 OF THE BUCKLEY MUNICIPAL CODE; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance No. 13-12, the City of Buckley City Council established a transportation benefit district to be known as the Buckley Transportation District (“District” or “TBD”), with geographical boundaries comprise of the corporate limits of the city as they currently exist or as they may exist following future annexations; and

WHEREAS, the 2015 State Legislature adopted Second Engrossed Substitute Senate Bill (“2ESSB”) 5987, the majority of which became effective on July 15, 2015; and

WHEREAS, Section 301 of 2ESSB 5987 authorizes any city in which a transportation benefit district has been established pursuant to chapter 36.73 RCW with boundaries conterminous with the boundaries of the city to assume the rights, powers, functions, and obligations of the TBD, by adoption of an ordinance or resolution of the city legislative authority; and

WHEREAS, Section 302 of 2ESSB 5987 provides that the assumption of rights, powers, functions, and obligations of a transportation benefit district may be initiated by the adoption of an ordinance or a resolution by the city legislative authority, indicating its intention to consider the assumption of such rights, powers, functions, and obligations and setting a public hearing at which all interested parties may appear and be heard and at which the city does then consider the proposed assumption of the rights, power, functions, and obligations of the transportation benefit district; and

WHEREAS, on March 22, 2016, the Buckley City Council adopted Resolution No. 16-05, which declared the City Council’s intention to consider the assumption of rights, powers, functions and obligations of the District, and set a public hearing for April 12, 2016; and

WHEREAS, on April 12, 2016, the Buckley City Council held a public meeting at which all interested parties were invited to appear and be heard; and

WHEREAS, following the conclusion of the public hearing, the City Council determined that the public interest and welfare would be satisfied by the City's assumption of the rights, powers, functions and obligations of the District, because such assumption would provide for more efficient administration of transportation maintenance and improvement funds previously authorized to be collected and expended by the District; NOW, THEREFORE,

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

**Section 1. -- Findings.** The Buckley City Council hereby adopts by reference the above recitals as legislative findings in support of this ordinance. Pursuant to Section 303 of 2ESSB 5987, the City Council further expressly finds, after receiving testimony at the April 12, 2016 public hearing, that the public interest and welfare would be satisfied by the City assuming the rights, powers, immunities, functions and obligations of the Buckley Transportation Benefit District.

**Section 2. -- Assumption of Buckley Transportation Benefit District.** Pursuant to Section 303, subsection (1) of 2ESSB 5987, the City of Buckley does hereby assume all of the rights, powers, immunities, functions, and obligations of the Buckley Transportation Benefit District, and the City of Buckley is hereby vested with each and every right, power, immunity, function, and obligation currently granted to or possessed by the Buckley Transportation Benefit District as of the effective date of this Ordinance. The rights, powers, functions and obligations previously exercised and/or performed by the governing body of the Buckley Transportation Benefit District are hereby assumed by and transferred to the City of Buckley City Council.

**Section 3. -- New Section 13.18.001 Adopted.** A new section 13.18.001 of the Buckley Municipal Code is hereby adopted to read as follows:

**13.18.001. Assumption of transportation benefit district.**

From and after the effective date of Ordinance No. [REDACTED], the City of Buckley assumes all the rights, powers, immunities, functions, and obligations of the Buckley Transportation Benefit District previously established by this chapter, and the City of Buckley is hereby vested with

each and every right, power, immunity, function, and obligation granted to or possessed by the Buckley Transportation Benefit District under Chapter 36.73 RCW, this chapter, and/or any other applicable law as of the effective date of Ordinance No. [REDACTED]. References to the District, the rights, powers, functions and obligations previously exercised and/or performed by the governing body of the Buckley Transportation Benefit District pursuant to Section 13.18.020 of this chapter are hereby assumed by and transferred to the City of Buckley City Council.

**Section 4. -- 13.18.020 BMC Amended.** Pursuant to Section 303, subsection (2) of 2ESSB 5987, the governing body of the Buckley Transportation Benefit District established in Section 13.18.020 of the Buckley Municipal Code is hereby abolished, and Section 13.18.020 of the Buckley Municipal Code is hereby adopted to read as follows:

13.18.020 Governing board.

- (1) The ~~governing board of the transportation benefit district shall be the~~ Buckley city council ~~acting in an ex officio and independent capacity, which~~ shall have the authority to exercise the statutory powers set forth in Chapter 36.73 RCW.
- ~~(2) The treasurer of the transportation benefit district shall be the city finance director.~~
- (3) The ~~board~~ city council shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1).
- (4) The ~~board~~ city council shall issue an annual report, pursuant to the requirements of RCW 36.73.160(2).

**Section 5. -- Section 13.18.030 BMC Amended.** Section 13.18.030 of the Buckley Municipal Code is hereby amended to read as follows:

13.18.030 Authority of the district.

- (1) The ~~district~~ city, acting by and through its city council, may authorize a vehicle tax fee up to the maximum fee provided for in RCW 36.73.065.
- (2) When authorized by the voters pursuant to the requirements of Chapter 36.73 RCW, other taxes, fees, charges and tolls or increases in revenue services may be assessed for the preservation, maintenance and operation of city streets.
- (3) The ~~board~~ city council shall have and may exercise any powers provided by law to fulfill the purposes ~~of the district~~ Chapter 36.73 RCW.

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**Section 6. -- Section 13.18.040 BMC Amended.** Section 13.18.040 of the Buckley Municipal Code is hereby amended to read as follows:

13.18.040 Use of Funds.

The funds generated by the ~~transportation benefit district~~ exercise of the powers granted in Section 13.18.030 and/or Chapter 36.73 RCW may be used for any purpose allowed by law including ~~to operate the district and~~ to make transportation improvements that are consistent with existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels pursuant of Chapter 36.73 RCW. The funds generated shall also be used for transportation improvements that preserve, maintain and operate the existing transportation infrastructure of the city, consistent with the requirements of Chapter 36.73 RCW. The transportation improvements funded ~~by the district~~ shall be made in an effort to reduce the risk of transportation facility failure and improve safety, decrease travel time, increase daily and peak period trip capacity, improve modal connectivity, and preserve and maintain optimal performance of the infrastructure over time to avoid expensive infrastructure replacement in the future.

**Section 7. -- No Existing Right Impaired.** Pursuant to Section 304 of 2ESSB 5987, nothing in this Ordinance shall be construed as impairing or altering any existing rights acquired by the Buckley Transportation Benefit District under chapter 36.73 RCW, this chapter or any other provision of law applicable to transportation benefit districts. Nor does this assumption impair or alter any actions, activities, or proceedings validated thereunder; any civil or criminal proceedings instituted thereunder, any rule, regulation, or order promulgated thereunder; any administrative action taken thereunder; nor the validity of any act performed by the Buckley Transportation Benefit District or division thereof or any officer thereof prior to the assumption of such rights, powers, functions, and obligations by the city hereunder.

**Section 8. -- Rules, Regulations, Pending Business, and Contracts.** Pursuant to Section 305, subsection (1) of 2ESSB 5987, all rules and regulations and all pending business before the board of the Buckley Transportation Benefit District shall be continued and acted upon by the City Council. In addition, pursuant to subsection (2) of

Section 305, all existing contracts and obligations of the Buckley Transportation Benefit District remain in full force and effect, and will be performed by the City. The assumption does not affect the validity of any official act performed by any official or employee prior to the assumption authorized by Sections 2 and 3 of this ordinance.

**Section 9. -- Records of the Buckley Transportation Benefit District.**

Pursuant to Section 306, subsection (1) of 2ESSB 5987, all reports, documents, surveys, books, records, files, papers, or other writings related to the administration of the powers, duties, and functions available to the Buckley Transportation Benefit District shall be made available to the city.

**Section 10. -- Funds, Credits, Appropriations, Federal Grants, or Other Assets.** Pursuant to Section 306, subsection (2) of 2ESSB 5987, all funds, credits, or other assets held in connection with rights, powers, duties, and functions of the Buckley Transportation Benefit District assumed hereunder shall be assigned to the City. Further, pursuant to Section 306, subsection (3) of 2ESSB 5987, any appropriations or federal grants made to the Buckley Transportation Benefit District for the purpose of carrying out the rights, powers, functions, and obligations authorized to be assumed by the City must, on the effective date of the assumption, be credited to the City for the purpose of carrying out such assumed rights, powers, functions, and obligations.

**Section 11. -- Assumption of Indebtedness.** Pursuant to Section 307 of 2ESSB 5987, the city assumes and agrees to provide for the payment of all of the indebtedness of the Buckley Transportation Benefit District, including the payment and retirement of outstanding general obligation and revenue bonds (if any) issued by the Buckley Transportation Benefit District.

**Section 12. -- Severability.** If any one or more section, subsection, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is

held to be unconstitutional or invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances, and the same shall remain in full force and effect.

**Section 13. -- Effective Date.** This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council of the City of Buckley, Washington this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

# City of Buckley

P.O. Box 1960, Buckley WA 98321

Phone: 360-829-1921 ext 200

Fax: 360-829-2659



# Memo

To: Mayor & City Council

From: City Attorney

Date: March 14, 2016

RE: City Assumption of Rights, Powers, Functions & Obligations of TBD

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I'm sending along the resolution and ordinance you are going to need to accomplish the assumption of the Buckley TBD. Here is an outline of the steps you'll need to follow:

1 - The City Council must adopt a resolution indicating its intention to conduct a hearing concerning the assumption of such rights, powers, functions, and obligations of the TBD.

2 - The resolution must set a time and place at which the city council will consider the proposed assumption of the rights, powers, functions, and obligations of the transportation benefit district, and must state that all persons interested may appear and be heard.

3 - The resolution of intention must be published at least two times during the two weeks preceding the scheduled hearing in newspapers of daily general circulation printed or published in the city or county in which the transportation benefit district is to be located.

4 - At the time scheduled for the hearing in the resolution of intention, the city council must consider the assumption of the rights, powers, functions, and obligations of the transportation benefit district and hear those appearing and all protests and objections to it.

5 - If, after receiving testimony, the city council determines that the public interest or welfare would be satisfied by the city assuming the rights, powers, immunities, functions, and obligations of the transportation benefit district, the city council may declare that to be its intent and assume such rights, powers, immunities, functions, and obligations by ordinance or resolution, providing that the city is vested with every right, power, immunity, function, and obligation currently granted to or possessed by the transportation benefit district.

6 - Upon assumption of the rights, powers, immunities, functions, and obligations of the transportation benefit district by the city, the governing body established pursuant to RCW 36.73.020 must be abolished and the city council is vested with all rights, powers, immunities, functions, and obligations otherwise vested by law in the governing board of the transportation benefit district.

Once this is accomplished, I would also suggest amending the TBD Contract with the DOL to replace references to the TBD with the City or at least contacting the DOL to see if they believe an amendment is required. The current DOL contract prohibits any assignment of the contract, but I don't really think this is a true assignment. Rather, the City is simply assuming the rights of the TBD. You also may need to do a budget amendment to incorporate the TBD budget into the City's budget and amend the code to create a TBD fund.

Let me know if you have any questions!

Thanks,  
Kristin

Kristin N. Eick | Attorney at Law

Ogden Murphy Wallace P.L.L.C.  
901 Fifth Avenue, Suite 3500 Seattle, WA 98164  
phone: 206.447.7000 | fax: 206.447.0215  
keick@omwlaw.com | omwlaw.com

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>ORD No. __-16: Granting non-exclusive telecommunications franchise to Astound Broadband, LLC.</b>	<b>Agenda Date: April 12, 2016</b>		<b>AB16-050</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – W. Scott Snyder	X	X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
Fund Source: N/A	Police Depart – Chief Arsanto		
Timeline: N/A	City Clerk – Joanne Starr		X
<b>Attachments:</b> Ordinance with Franchise Agreement			
<p>SUMMARY STATEMENT: For City Council approval of a grant of a non-exclusive telecommunications franchise to Astound Broadband, LLC, for the installation, operation, and maintenance of a telecommunication system within the City’s rights-of-way. Astound Broadband, LLC, is a telecommunications company that provides private line, internet access services, dark fiber services and lit fiber services. If this franchise is approved Astound will still be required to obtain all appropriate permits and approvals prior to commencing construction and/or installing their facilities in the right-of-way.</p> <p>While State law prohibits the City from imposing a franchise fee for telecommunications systems, the franchise does require Franchisee to pay the City for its administrative costs incurred in preparing and administering the franchise agreement. The Franchisee will reimburse the City for its legal and out-of-pocket costs (i.e. publication, mailing and copying). In addition the Franchisee is offering a 50% discount from their standard commercial rates to the City for services of our choosing: Internet, Ethernet, or dark fiber, based on their standard service agreements for the next six years.</p> <p>This is the 3<sup>rd</sup> presentation to Council and therefore can be considered for adoption pursuant to RCW 35A.47.040</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities 2/16/2016 & 3/15/16			
<b>RECOMMENDED ACTION: Motion to Approve the ORD No. __-16 establishing a new Franchise Agreement between Astound Broadband, LLC, and the City of Buckley and establishing an effective date.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

**CITY OF BUCKLEY**  
**ORDINANCE NO. \_\_\_\_\_**

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

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

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

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

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

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

Section 1. Franchise Granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Relocation of Facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 6. Undergrounding of Facilities.

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

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

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

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

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

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

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

#### Section 7. Maps and Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Safety Requirements.

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

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

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

10.3 Additional safety standards include:

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

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

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

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

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

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

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

Section 13. Restoration after Construction.

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

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

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

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

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

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

Section 14. Emergencies.

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

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

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

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

#### Section 15. Recovery of Costs.

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

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

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

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

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

#### Section 16. Franchise Fees and Utility Taxes.

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

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

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

#### Section 17. Indemnification.

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

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

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

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

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

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

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

#### Section 18. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

Section 20. Bonds.

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

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

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

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

#### Section 21. Remedies to Enforce Compliance.

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

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

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

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

Section 22. Revocation.

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

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

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

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

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

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

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

Section 28. Changes of Ownership or Control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 38. Miscellaneous.

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

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

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

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

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

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

38.7 There are no third party beneficiaries to this Franchise.

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

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

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

**PASSED BY THE CITY COUNCIL OF THE CITY OF BUCKLEY THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

\_\_\_\_\_  
Mayor Patricia Johnson

Attest: \_\_\_\_\_  
Joanne Starr, City Clerk

APPROVED AS TO FORM:

---

James E. Haney, City Attorney

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

PUBLISHED:

EFFECTIVE:

EXHIBIT A  
Page 1 of 2

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

Red Line = Aerial Construction  
Yellow Line = Underground Construction

City-wide view.

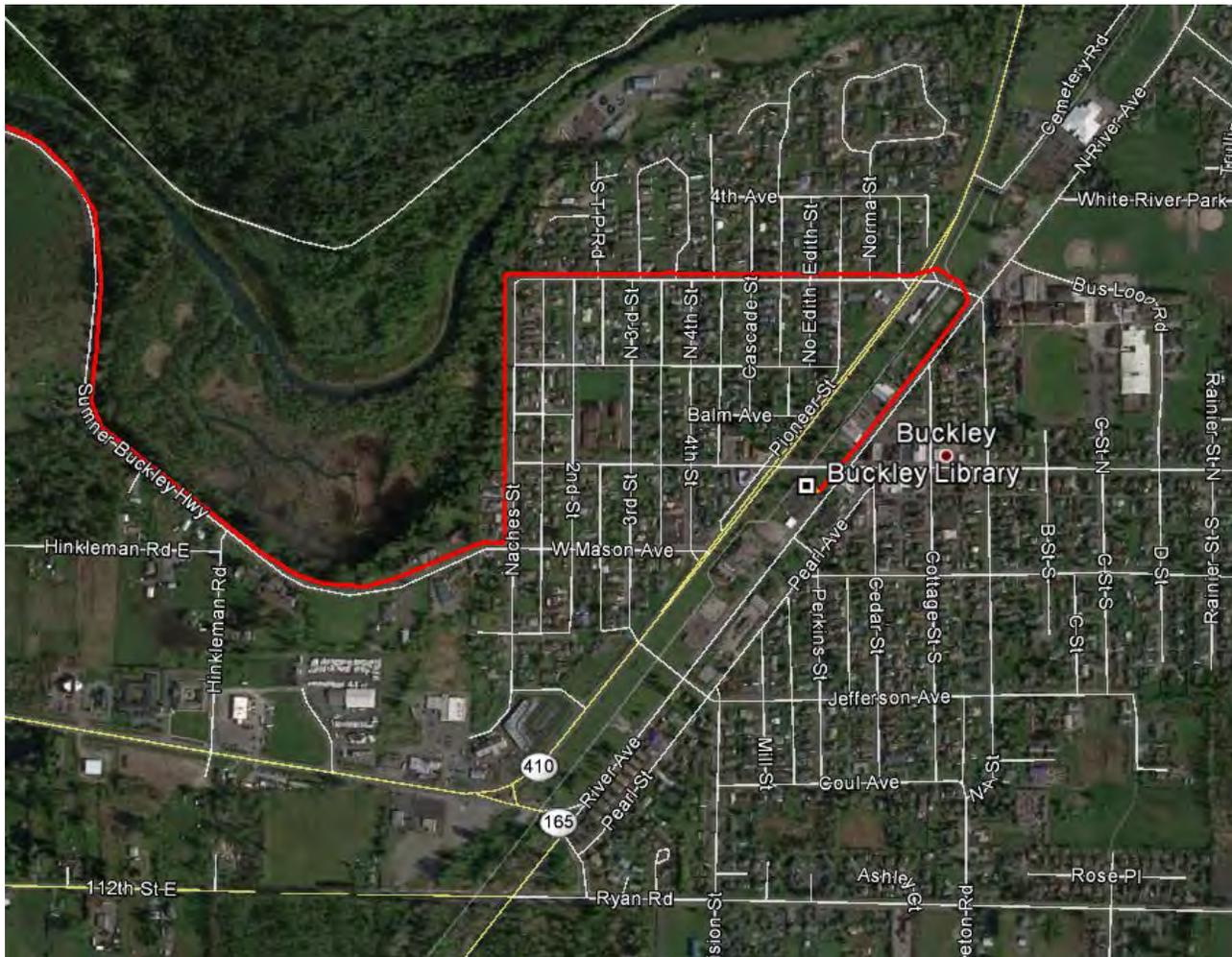


EXHIBIT A  
Page 2 of 2

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

Red Line = Aerial Construction  
Yellow Line = Underground Construction

Enhanced view of Buckley Library location.



EXHIBIT B

STATEMENT OF ACCEPTANCE

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

Astound Broadband, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

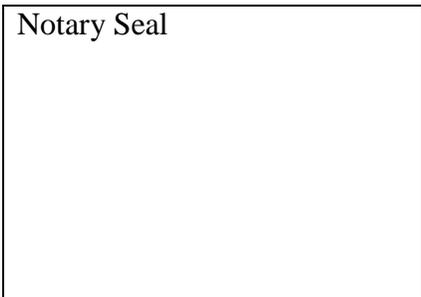
Date: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF WASHINGTON )  
 )SS.  
COUNTY OF \_\_\_\_\_)

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

DATED: \_\_\_\_\_.



\_\_\_\_\_  
(Signature of Notary)

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

**From:** [Fred Miller](#)  
**To:** [Dave Schmidt](#)  
**Cc:** ["Elana R. Zana"](#); [Byron Springer](#); ["Jake Baldwin"](#); [Dave Eller](#); [Jeffrey Stoner](#); [Jim Penney](#)  
**Subject:** RE: Discount offer for the City of Buckley  
**Date:** Friday, March 25, 2016 4:46:26 PM

---

Hi Dave,

I understand there was a concern regarding the time limitation on our discount offer. Let me amend our offer as follows:

At any time in the next six years, Wave will offer a 50% discount from our standard commercial rates to the City of Buckley for services of your choosing: Internet, Ethernet, or dark fiber, based on our standard service agreements. This discount will not apply to any special construction charges, which are based on actual build costs and will be negotiated on a site by site basis.

Standard market prices for these services are dropping, so extending the offer to a six year window is significant. Underlying all this is the fact that we have an excellent track record of providing high capacity services at exceptionally favorable rates for local governments in our service areas. We want to be good partners long term, and we'll do all we can to earn and keep a valued relationship with the City.

Please let me know if that's acceptable, and what the next step will be for approval of our franchise agreement.

Thanks,

Fred Miller  
360.543.5200

---

**From:** Dave Schmidt [mailto:[dschmidt@cityofbuckley.com](mailto:dschmidt@cityofbuckley.com)]  
**Sent:** Monday, March 21, 2016 8:57 AM  
**To:** Fred Miller  
**Cc:** 'Elana R. Zana'; Byron Springer; 'Jake Baldwin'; Dave Eller; Jeffrey Stoner; Jim Penney  
**Subject:** RE: Discount offer for the City of Buckley

Thanks Fred! I'll ensure that copies of your email are given to the Council. Keep in mind though the Utilities Committee wasn't looking at a sunset on this discount.

*David Schmidt*

City Administrator  
Buckley, WA 98321  
(360) 761-7802

*"It's not what you look at that matters, it's what you see."*

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**From:** Fred Miller [<mailto:fmiller@wavebroadband.com>]  
**Sent:** Friday, March 18, 2016 1:30 PM  
**To:** Dave Schmidt ([dschmidt@cityofbuckley.com](mailto:dschmidt@cityofbuckley.com))  
**Cc:** Elana R. Zana; Byron Springer; Jake Baldwin; Dave Eller; Jeffrey Stoner; Jim Penney  
**Subject:** Discount offer for the City of Buckley

Thanks again for your help with our telecommunications franchise. We understand the 2<sup>nd</sup> Council hearing is scheduled for Tuesday, 3/22.

Wave's new fiber network will be a significant economic resource for the businesses and organizations in the City of Buckley. Government entities receive rates discounted lower than standard commercial rates. At any time in the next three years, Wave will offer a 50% discount from our standard commercial rates to the City of Buckley for services of your choosing: Internet, Ethernet, or dark fiber, based on our standard service agreements. This discount will not apply to any special construction charges, which are based on actual build costs and will be negotiated on a site by site basis.

Our government sales team is cc'd on this email. They will be in contact with you soon.

Have a great weekend.

**Fred Miller**  
Business Development  
**wave**  
360.543.5200

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>	<b>Agenda Date:</b> April 12, 2016	<b>AB16-051</b>	
<b>Agreement - TSA Between Buckley &amp; Carbonado for WWTP Lab Services</b>	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
<b>Attachments:</b> Technical Services Agreement			
<p><b>SUMMARY STATEMENT:</b> The City of Buckley WWTP staff has been providing laboratory testing services to the Town of Carbonado for many years. This service has been provided through verbal agreement and the City bills Carbonado on a monthly basis for the services performed. In order to memorialize this relationship the two Mayors have agreed to presenting a formal Agreement to their respective legislating bodies for consideration.</p> <p>The WWTP Supervisor has carefully considered the City’s cost to perform these services and staff has included a 5% administrative overhead charge for costs, which are all reflected in the draft being presented for consideration.</p> <p>Staff is requesting and recommending that Council approve this Agreement.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> None			
<b>RECOMMENDED ACTION: MOVE to Approve the Technical Services Agreement Between Buckley &amp; Carbonado for WWTP Lab Services.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

## **TECHNICAL SERVICE AGREEMENT**

**Between: City of Buckley and Town of Carbonado**  
**For: Lab Testing Services**

### **I. PURPOSE**

This Agreement is made and entered into by City of Buckley, Washington ("City of Buckley"), by and through its Wastewater Treatment Section of the Public Works Department ("WWPW") and Town of Carbonado (the "Service Recipient") collectively referred to as the "Parties." This Agreement provides the terms under which the City of Buckley will perform work for the Service Recipient as summarized in II A. below, and as more particularly described in the Scope of Work in Exhibit One, attached to this Agreement and incorporated herein and made a part hereof.

### **I. TERMS**

#### **A. Description of service provided by the City of Buckley**

Provide laboratory testing services as described in Exhibit One.

#### **B. Administration**

1. Each Party shall appoint a representative to manage the Project. The name of each representative is provided in Exhibit One of this Agreement.
2. In the event that a dispute arises under this Agreement, it shall be referred for resolution to the Buckley City Administrator, or other representative as designated by the City, and a staff person designated by the Service Recipient signatory to this Agreement. This provision shall not be construed as prohibiting either Party from seeking enforcement of the terms of this Agreement, or relief or remedy from a breach of the terms of this Agreement, in law or in equity.

#### **C. Responsibilities**

1. The City of Buckley shall perform the work described in the Scope of Work in Exhibit One.
2. The Service Recipient shall pay for the work described in Exhibit One and make payments in accordance with the terms of Section D. below.

#### **D. Billing and Payment**

1. The Service Recipient shall pay the City of Buckley up to the amount stated in Section C.2. above for actual costs incurred to perform work as described in Exhibit One.
2. The City of Buckley shall include the charges billed to the Service Recipient on an itemized invoice and provide the invoice to the Service Recipient.
3. The Service Recipient will make payment to the City of Buckley for invoiced amounts within sixty (60) days.
4. The Parties represent that funds for service provision under this Agreement have been appropriated and are available. To the extent that such service provision requires future appropriations beyond current appropriation authority, each of the Parties' obligations are contingent upon the appropriation of sufficient funds by that Party's legislative authority to complete the activities described herein. If no such appropriation is made for either Party, this Agreement will terminate at the close of the appropriation year for which the last appropriation that funds these activities was made.

**E. Effectiveness and Duration**

1. This Agreement is effective upon signature by both Parties and shall remain in effect until December 31, 2017, unless terminated as set forth in Section H. of this Agreement.
2. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto.
3. This Agreement is not assignable by either Party, either in whole or in part.
4. This Agreement is a complete expression of the intent of the Parties and any oral or written representations or understandings not incorporated herein are excluded. The Parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Parties which shall be attached to the original Agreement.

**F. Indemnification**

To the maximum extent allowable by law, the Service Recipient shall protect, defend, indemnify, and save harmless the City of Buckley, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the Service Recipient's own negligent acts or omissions in performing its obligations pursuant to this Agreement. To the maximum extent allowable by law, the City of Buckley shall protect, defend, indemnify, and save harmless the Service Recipient, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the City of Buckley's own negligent acts or omissions in performing its obligations pursuant to this Agreement. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. The indemnifications provided for in this Section F. shall survive the termination of this Agreement.

**G. Reporting obligation**

Should the City of Buckley perform laboratory testing under this Agreement, its sole reporting obligations under the terms of this Agreement are to provide the results of the laboratory analytical services to the Service Recipient. The Parties agree that the City of Buckley's reporting obligations do not extend to any third party, including any regulatory agency that may seek to obtain or require the results of laboratory analyses. The Parties further agree that any reporting obligations that may exist with regard to third parties, including regulatory agencies, shall remain solely the responsibility of the Service Recipient. The City of Buckley shall have no liability for any failure to meet any existing reporting requirements and the Service Recipient agrees to defend, indemnify and hold harmless the City of Buckley for any damages, suits or claims by third parties related to the failure to report the results of the laboratory analyses.

**H. Termination**

Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**I. Counterparts**

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Town of Carbonado

City of Buckley

\_\_\_\_\_  
By:

\_\_\_\_\_  
Dave Schmidt, City Administrator

ATTEST/AUTHENTICATED

ATTEST/AUTHENTICATED

\_\_\_\_\_  
By:

\_\_\_\_\_  
Joanne Star, City Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM

\_\_\_\_\_  
Carbonado City Attorney

\_\_\_\_\_  
Buckley City Attorney

**EXHIBIT ONE**  
**SCOPE OF WORK & BUDGET**

**Project Purpose/Description**

Laboratory analysis of influent and effluent samples related to NPDES permit compliance testing. Testing methods must comply with current NPDES requirements.

**Service Contacts for this project**

- For City of Buckley: Jim Doty
- For the Service Recipient:

**Scope of Work**

TASK TITLE	DESCRIPTION	PRODUCT TO BE DELIVERED	DATE OF COMPLETION	COST
Influent and Effluent Weekly testing	Weekly and Bi-weekly testing of Influent and Effluent samples for the following parameters only: Fecal Coliform, Total Ammonia, Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), Carbonaceous Biochemical Oxygen Demand (COD),	Lab Analysis Report	Report to be sent to recipient as soon as practical following the end of the month.	\$297.97 /wk including Admin Fee

- The City of Buckley will ensure testing is performed by a laboratory having Washington State Environmental Laboratory Accreditation.
- The City of Buckley will provide field sheets.
- Town of Carbonado staff will collect, package and ship or transport the sample(s), using appropriate collection, chain of custody documentation and shipping techniques. All sampling events will be conducted on mutually agreed upon dates.
- Analysis results will be available within 30 days of receipt of the sample by the City of Buckley Environmental Laboratory.
- The Environmental Laboratory will prepare a Lab Analysis Report consisting of a Comprehensive Data Report (standard laboratory format) available as hardcopy and / or PDF file; a cover letter describing analytical anomalies if any occurred; and copies of associated laboratory QC data.

**Budget Estimate**

Total estimated cost(s) for above task(s) is/ are as outlined below. City of Carbonado will be billed on actual costs to perform tasks, not to exceed the budget amount in the Grand Total box for the cost(s) described in the budget table below.

## Budget Estimate Table

	Method	Sample	Frequency	Labor (Hours)	Supplies	Labor	Total
<b>Fecal Coliform</b>	SM 9222 D (m-FC)-97	Effluent Composite	Weekly	1	\$9.51	\$55.00	\$64.51
<b>Total Ammonia Total Suspended Solids</b>	SM 4500-NH3 F-97 (*1)	Effluent Grab	Bi-Weekly	0.5	\$7.30	\$27.50	\$34.80
<b>BOD Test</b>	SM 2540 D-97	Influent and Effluent Composite	Weekly	1	\$11.01	\$55.00	\$66.01
<b>COD Test</b>	SM 5210 B-01	Influent and Effluent Composite	Weekly	1	\$5.41	\$55.00	\$60.41
	SM 5210 B-01 (*1 ) Hach TNT 830	Effluent Composite	Weekly	1	\$3.07	\$55.00	\$58.07
Subtotal Weekly							\$283.80
<b>Administration Fee</b>	5% of Monthly Total		Weekly				\$14.19
<b>Total Weekly</b>							<b>\$297.97</b>
<b>Average Per Month Cost</b>							<b>\$1,291.20</b>

- For the purposes of this agreement, TSS tests run on both Influent and Effluent Samples collected on the same date, shall count for billing purposes as one test.
- For the purposes of this agreement, BOD tests run on both Influent and Effluent Samples collected on the same date, shall count for billing purposes as one test.

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>	<b>Agenda Date:</b> April 12, 2016	<b>AB16-052</b>	
<b>Bid Award: Realignment Phase II</b>	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
<b>Cost Impact:</b> \$1,815,421.05			
<b>Fund Source:</b> Fund 102 & Grants			
<b>Timeline:</b> Immediate			
<b>Attachments:</b> Memo, Bid Tabs & Engineer Letter			
<p><b>SUMMARY STATEMENT:</b> The information being presented for consideration is the bid tabulations for Phase II of the SR410/SR165/RyanRd/112thStE Realignment Project. This is the final phase of a two-phase project which will improve the safety and function of our “malfunction junction”. Phase 1 was constructed in 2011 and it realigned Ryan Road and 112th Street to connect at a temporary intersection at SR165.</p> <p>As you can see the apparent low bidder for the project is Johansen Excavating with a bid of \$1,815,421.05. Therefore staff is recommending that the City Council award bid of the project to Johansen Excavating for \$1,815,421.05.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> None			
<b>RECOMMENDED ACTION:</b> <b>MOTION to Approve Bid Award of Phase II of the SR410/SR165/RyanRd/112thStE Realignment Project to Johansen Excavating for a Total of \$1,815,421.05 subject to WSDOT and TIB Approval.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

# City of Buckley

P.O. Box 1960, Buckley WA 98321  
Phone: 360-829-1921 ext 200  
Fax: 360-829-2659



# Memo

To: Mayor & City Council

Date: April 7, 2016

RE: Project: SR410/SR165/RyanRd/112thStE Realignment Project (Phase II)

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On April 7, 2016, G&O Engineers and staff conducted a sealed bid opening for the construction of Phase II of the SR410/SR165/RyanRd/112thStE Realignment Project. This is the final phase of a two-phase project which will improve the safety and function of our “dysfunction junction.” Phase 1 was constructed in 2011 and it realigned Ryan Road and 112th Street to connect at a temporary intersection at SR165.

Phase 2 adds a traffic signal at the intersection of SR410 and SR165. It realigns SR165 to intersect SR410 at a “tee” intersection. It improves the alignment of the SR165/Ryan Rd/112th Street intersection. It adds street lighting on Ryan Road, 112th Street and SR165. It adds pedestrian improvements on SR165 between Ryan Road and SR410. It realigns a portion of the Foothills Trail so that trail users may cross SR165 via a protected place at the new traffic signal. It realigns River Avenue to connect to Ryan Road at a “Tee” intersection. The City has received substantial grant funding for both phases of this project. The construction of the Phase 2 project is expected to occur from May to November this year.

Construction cost estimates for the project were provided by the engineer as follows;

Engineer Estimate both Schedules - Phase II Realignment	\$1,482,300.00
---	----------------

The bids received for construction of Phase II are attached under the Engineer’s Bid Tabulations.

The apparent low bidder for the project is Johansen Excavating with a bid of \$1,815,421.05, which is \$333,121.05 or 22% over engineering estimates. The City engineer will provide a letter explaining the difference in cost between the engineering estimate and bid price.

Funding for the project is illustrated in the Table below:

**TOTAL PROJECT COST - Breakdown**

Design Engineering	\$174,940.00
Right-of-way	\$0.00
Construction Engineering	\$265,500.00
Other PSE IntoLight street lights at intersections	\$157,716.00
Contract Amount *(Less \$500 for ineligible record drawings)	\$1,814,921.00
<hr/>	
Total Project Cost	\$2,413,077.00

**TOTAL FUNDING**

WA State TIB Grant	\$603,755.00
Federal Funding - WSDOT	\$1,595,455.00
<hr/>	
Total Grant Funding	\$2,199,210.00

Funding Shortfall - City Local Cost **\$213,867.00**

Based on the funding analysis the City's out-of-pocket for this phase of the project will be \$213,867. Currently the Street Capital Account has a cash balance of \$701,507, which is more than adequate to cover the cost difference. However, we have also requested additional funding from TIB to cover the higher bid costs. There are two potential pools of money from which TIB could award additional funding so our chances are very good that that City's match amount will be reduced.

Therefore based on the analysis it looks like we can and should move forward with the project.

Staff is recommending and requesting that the council award the bid for Phase II of the SR410/SR165/RyanRd/112thStE Realignment Project to Johansen Excavating for the amount of \$1,815,421.05 subject to WSDOT and TIB approval.

If you have any questions, please give a call. Thanks.

Dave



# Gray & Osborne, Inc.

CONSULTING ENGINEERS

April 7, 2016

Mr. Dave Schmidt  
City Administrator  
City of Buckley  
P.O. Box 1960  
Buckley, Washington 98321

**SUBJECT: REVIEW OF BIDS, STATE ROUTE 410/STATE ROUTE 165/  
RYAN ROAD/112<sup>TH</sup> STREET EAST REALIGNMENT PHASE 2,  
FEDERAL AID NO. STPUS-0410(062)  
CITY OF BUCKLEY; PIERCE COUNTY, WASHINGTON  
G&O #14512.00**

Dear Mr. Schmidt

On April 5, 2016, the City of Buckley received nine bids for the State Route 410/State Route 165/Ryan Road/112<sup>th</sup> Street East Realignment Phase 2 project. The bids ranged from \$1,815,421.05 to \$2,455,485.97. The Engineer's Estimate was \$1,482,300.00. Each proposal was checked for correctness of extensions of the prices per unit and the total price. Sixty-six corrections were made; however, these corrections did not change the position of the low bidder. We have provided a bid summary with this letter. The bidders and their respective bid amounts, including sales tax where applicable, are as follows:

	<b>Engineer's Estimate.....</b>	<b>\$1,482,300.00</b>
1.	Johansen Excavating, Inc. (Buckley, WA).....	\$1,815,421.05
2.	Pivetta Brothers Construction, Inc. (Sumner, WA).....	\$1,849,491.00
3.	W.S. Contractors, LLC (Buckley, WA) .....	\$1,992,577.18
4.	RW Scott Construction Company (Auburn, WA ).....	\$1,998,971.00
5.	Pacific Civil & Infrastructure, Inc. (Federal Way, WA) .....	\$2,077,230.20
6.	Tucci & Sons, Inc. (Tacoma, WA).....	\$2,234,290.00
7.	Rodarte Construction, Inc. (Auburn, WA) .....	\$2,263,703.00
8.	Northwest Cascade, Inc. (Puyallup, WA).....	\$2,314,377.75
9.	Valley Electric Company of Mount Vernon (Everett, WA)...	\$2,455,485.97

The City received nine bids, for a competitive bid; the bottom three bids are within 2 percent of each other. However, the low bid was approximately \$330,000 over the Engineer's Estimate. The major differences in price between the low bid and the



Mr. Dave Schmidt  
April 7, 2016  
Page 2

Engineer's Estimate were \$100,000 for the traffic signal, \$120,000 for traffic control, \$40,000 for the irrigation system, \$25,000 for CSTC, and \$25,000 for mobilization.

The low responsive bidder, Johansen Excavating, Inc. of Buckley, Washington, is currently a Washington State registered and licensed contractor and appears to have the relevant qualifications and experience to successfully perform the work the project will require. To our knowledge, the low bidder has not claimed bid error and no formal bidding protests have been recorded. In accordance with RCW 39.04, we have verified the low bidder, Johansen Excavating, Inc. of Buckley, Washington, has met the responsibility criteria.

Based on our evaluation, we recommend that the project be awarded, subject to TIB approval, WSDOT Local Programs approval, and confirmation of additional project funds, to the lowest responsive, responsible bidder, Johansen Excavating, Inc., 28215 112<sup>th</sup> Street East, Buckley, Washington 98321.

Please contact us if you have any questions and/or require additional information.

Sincerely,

GRAY & OSBORNE, INC.

Tani Stafford, P.E.

TLS/hh  
Encl.

cc: Mr. Marty Garman, WSDOT Local Programs, Olympic Region  
Mr. Chris Workman, P.E., Washington State Transportation Improvement Board

BIDDER		ENGINEER'S ESTIMATE		JOHANSEN EXCAVATING, INC.		PIVETTA BROTHERS CONSTRUCTION, INC.		W.S. CONTRACTORS, LLC		RW SCOTT CONSTRUCTION CO.		
BIDDER ADDRESS				28215 112th Street East Buckley, WA 98321		1812 Pease Avenue Sumner, WA 98390		P.O. Box 2300 Buckley, WA 98321		4005 W. Valley Hwy. N., Suite A Auburn, WA 98001		
WASHINGTON STATE WORKMAN'S COMP. ACCT. NO.				JOHANEI954KZ		PIVETBC063B9		WSCONCL935BP		RWSCOC*229MU		
WASHINGTON STATE CONTRACTOR'S REG. NUMBER				054, 375-03		488, 626-00		127, 569-00		579, 092-00		
BID BOND OR OTHER GOOD FAITH TOKEN				5% BID BOND		5% BID BOND		5% BID BOND		5% BID BOND		
NO.	ITEM	QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
<b>SCHEDULE A: STREET IMPROVEMENTS</b>												
1	Mobilization	1 LS	\$97,400.00	\$97,400.00	\$123,850.00	\$123,850.00	\$160,000.00	\$160,000.00	\$95,000.00	\$95,000.00	\$162,000.00	\$162,000.00
2	Clearing and Grubbing	1 AC	\$30,000.00	\$30,000.00	\$16,000.00	\$16,000.00	\$10,000.00	\$10,000.00	\$38,800.00	\$38,800.00	\$17,000.00	\$17,000.00
3	Removal of Structure and Obstruction	1 LS	\$1,200.00	\$1,200.00	\$1,600.00	\$1,600.00	\$5,000.00	\$5,000.00	\$27,750.00	\$27,750.00	\$12,500.00	\$12,500.00
4	Pulverize Existing Asphalt Roadway	4,480 SY	\$2.00	\$8,960.00	\$3.00	\$13,440.00	\$2.50	\$11,200.00	\$2.20	\$9,856.00	\$3.50	\$15,680.00
5	Roadway Excavation, Incl. Haul	1,200 CY	\$14.00	\$16,800.00	\$34.50	\$41,400.00	\$30.00	\$36,000.00	\$22.25	\$26,700.00	\$30.00	\$36,000.00
6	Unsuitable Foundation Excavation, Incl. Haul	60 CY	\$15.00	\$900.00	\$23.50	\$1,410.00	\$40.00	\$2,400.00	\$94.50	\$5,670.00	\$25.00	\$1,500.00
7	Gravel Borrow, Incl. Haul	2,500 TN	\$12.00	\$30,000.00	\$18.25	\$45,625.00	\$20.00	\$50,000.00	\$22.25	\$55,625.00	\$22.00	\$55,000.00
8	Locate Existing Utilities	1 LS	\$3,000.00	\$3,000.00	\$7,000.00	\$7,000.00	\$7,500.00	\$7,500.00	\$2,780.00	\$2,780.00	\$5,000.00	\$5,000.00
9	Quarry Spalls	10 TN	\$45.00	\$450.00	\$175.00	\$1,750.00	\$80.00	\$800.00	\$27.80	\$278.00	\$100.00	\$1,000.00
10	Connection to Existing Drainage Structure	4 EA	\$600.00	\$2,400.00	\$1,300.00	\$5,200.00	\$2,200.00	\$8,800.00	\$1,300.00	\$5,200.00	\$700.00	\$2,800.00
11	Polymer Coated Steel Detention Pipe, 0.138 In. Th., 72 In. Diam. (Incl. Bedding)	50 LF	\$315.00	\$15,750.00	\$420.00	\$21,000.00	\$500.00	\$25,000.00	\$500.00	\$25,000.00	\$425.00	\$21,250.00
12	CPEP Storm Sewer Pipe, 12 In. Diam. (Incl. Bedding)	1,080 LF	\$28.00	\$30,240.00	\$38.00	\$41,040.00	\$56.00	\$60,480.00	\$55.00	\$59,400.00	\$32.00	\$34,560.00
13	DI Storm Sewer Pipe, 12 In. Diam. (Incl. Bedding)	20 LF	\$60.00	\$1,200.00	\$100.00	\$2,000.00	\$219.00	\$4,380.00	\$122.00	\$2,440.00	\$75.00	\$1,500.00
14	Adjust Manhole	1 EA	\$500.00	\$500.00	\$700.00	\$700.00	\$800.00	\$800.00	\$1,050.00	\$1,050.00	\$400.00	\$400.00
15	Area Drain	2 EA	\$800.00	\$1,600.00	\$800.00	\$1,600.00	\$1,100.00	\$2,200.00	\$1,000.00	\$2,000.00	\$850.00	\$1,700.00
16	Concrete Inlet	1 EA	\$1,000.00	\$1,000.00	\$1,200.00	\$1,200.00	\$1,500.00	\$1,500.00	\$725.00	\$725.00	\$1,000.00	\$1,000.00
17	Catch Basin, Type 1	14 EA	\$1,200.00	\$16,800.00	\$1,150.00	\$16,100.00	\$1,200.00	\$16,800.00	\$1,700.00	\$23,800.00	\$1,250.00	\$17,500.00
18	Adjust Catch Basin	6 EA	\$350.00	\$2,100.00	\$700.00	\$4,200.00	\$500.00	\$3,000.00	\$1,112.00	\$6,672.00	\$400.00	\$2,400.00
19	Catch Basin, Type 2, 48 In. Diam.	2 EA	\$2,300.00	\$4,600.00	\$2,300.00	\$4,600.00	\$4,000.00	\$8,000.00	\$2,780.00	\$5,560.00	\$2,750.00	\$5,500.00
20	Catch Basin, Type 2, 60 In. Diam.	1 EA	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00	\$6,000.00	\$6,000.00	\$3,900.00	\$3,900.00	\$3,500.00	\$3,500.00
21	Catch Basin, Type 2, 60 In. Diam. w/Flow Control	1 EA	\$6,500.00	\$6,500.00	\$4,900.00	\$4,900.00	\$9,000.00	\$9,000.00	\$6,116.00	\$6,116.00	\$7,500.00	\$7,500.00
22	8' x 11' Storm Treatment Vault	1 EA	\$65,000.00	\$65,000.00	\$72,500.00	\$72,500.00	\$97,000.00	\$97,000.00	\$66,720.00	\$66,720.00	\$72,500.00	\$72,500.00
23	Trench Excavation Safety System	1 LS	\$5,000.00	\$5,000.00	\$2,300.00	\$2,300.00	\$3,000.00	\$3,000.00	\$5,560.00	\$5,560.00	\$2,500.00	\$2,500.00
24	Bank Run Gravel for Trench Backfill	430 CY	\$16.00	\$6,880.00	\$32.00	\$13,760.00	\$37.00	\$15,910.00	\$22.24	\$9,563.20	\$26.00	\$11,180.00
25	Removal of Unsuitable Material (Trench)	50 CY	\$22.00	\$1,100.00	\$36.00	\$1,800.00	\$40.00	\$2,000.00	\$66.72	\$3,336.00	\$50.00	\$2,500.00
26	Permeable Ballast	40 TN	\$25.00	\$1,000.00	\$36.00	\$1,440.00	\$60.00	\$2,400.00	\$31.14	\$1,245.60	\$50.00	\$2,000.00
27	Controlled Density Fill	10 CY	\$150.00	\$1,500.00	\$175.00	\$1,750.00	\$170.00	\$1,700.00	\$111.20	\$1,112.00	\$150.00	\$1,500.00
28	Commercial Concrete	10 CY	\$200.00	\$2,000.00	\$166.00	\$1,660.00	\$300.00	\$3,000.00	\$111.20	\$1,112.00	\$500.00	\$5,000.00
29	Construction Geotextile for Trench Stabilization	143 SY	\$2.00	\$286.00	\$1.75	\$250.25	\$15.00	\$2,145.00	\$5.56	\$795.08	\$5.00	\$715.00
30	Crushed Surfacing Top Course	700 TN	\$20.00	\$14,000.00	\$58.00	\$40,600.00	\$40.00	\$28,000.00	\$33.36	\$23,352.00	\$23.00	\$16,100.00

DATE: 4/2016  
DRAWN: SC  
CHECKED: TS  
APPROVED: TS

CITY OF BUCKLEY, WA.  
SR 410/SR 165/RYAN RD./112TH ST. E. REALIGNMENT PROJ. - PH. 2  
GRAY & OSBORNE #14512

GRAY & OSBORNE, INC.  
CONSULTING ENGINEERS

	BIDDER			ENGINEER'S ESTIMATE		JOHANSEN EXCAVATING, INC.		PIVETTA BROTHERS CONSTRUCTION, INC.		W.S. CONTRACTORS, LLC		RW SCOTT CONSTRUCTION CO.	
31	Crushed Surfacing Base Course	2,860	TN	\$20.00	\$57,200.00	\$16.25	\$46,475.00	\$30.00	\$85,800.00	\$33.36	\$95,409.60	\$23.00	\$65,780.00
32	Planing Bituminous Pavement	9,060	SY	\$5.00	\$45,300.00	\$2.40	\$21,744.00	\$2.70	\$24,462.00	\$1.27	\$11,506.20	\$2.25	\$20,385.00
33	HMA Cl. 1/2" PG 64-22	4,050	TN	\$80.00	\$324,000.00	\$78.00	\$315,900.00	\$83.70	\$338,985.00	\$79.80	\$323,190.00	\$80.00	\$324,000.00
34	Job Mix Compliance Price Adjustment	1	CALC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
35	Compaction Price Adjustment	1	CALC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
36	Topsoil, Type A	440	CY	\$30.00	\$13,200.00	\$48.50	\$21,340.00	\$57.00	\$25,080.00	\$39.00	\$17,160.00	\$45.00	\$19,800.00
37	Seeding, Fertilizing and Mulching	1.6	AC	\$3,000.00	\$4,800.00	\$40.25	\$64.40	\$5,200.00	\$8,320.00	\$3,575.00	\$5,720.00	\$3,750.00	\$6,000.00
38	Erosion/Water Pollution Control	1	LS	\$10,000.00	\$10,000.00	\$13,000.00	\$13,000.00	\$20,000.00	\$20,000.00	\$14,500.00	\$14,500.00	\$27,500.00	\$27,500.00
39	Root Barrier	280	LF	\$10.00	\$2,800.00	\$9.25	\$2,590.00	\$20.00	\$5,600.00	\$15.60	\$4,368.00	\$10.00	\$2,800.00
40	PSIPE, Acer Truncatum x Platanoides 'Warrenred,' Pacific Sunset Maple, 5 Gallon	28	EA	\$25.00	\$700.00	\$67.00	\$1,876.00	\$125.00	\$3,500.00	\$80.50	\$2,254.00	\$275.00	\$7,700.00
41	PSIPE, Arctostaphylos UVA-VRSI Kinnikinnick, 1 Gallon	1,500	EA	\$9.00	\$13,500.00	\$9.25	\$13,875.00	\$12.00	\$18,000.00	\$7.30	\$10,950.00	\$12.00	\$18,000.00
42	PSIPE, Euonumus Alatus, Compact Burning Bush, 2 Gallon	86	EA	\$12.00	\$1,032.00	\$17.25	\$1,483.50	\$28.00	\$2,408.00	\$21.00	\$1,806.00	\$22.00	\$1,892.00
43	PSIPE, Mahonia Repens, Creeping Mahonia, 1 Gallon	850	EA	\$9.00	\$7,650.00	\$11.25	\$9,562.50	\$12.00	\$10,200.00	\$7.50	\$6,375.00	\$15.00	\$12,750.00
44	PSIPE, Symphoricarpus albus, Common Strawberry, 1 Gallon	83	EA	\$12.00	\$996.00	\$9.25	\$767.75	\$12.00	\$996.00	\$6.70	\$556.10	\$15.00	\$1,245.00
45	PSIPE, Rosa gymnocarpa, Baldhip Rose, 1 Gallon	55	EA	\$9.00	\$495.00	\$9.25	\$508.75	\$12.00	\$660.00	\$6.70	\$368.50	\$15.00	\$825.00
46	PSIPE, Mahonia aquifolium, Oregon Grape, 2 Gallon	50	EA	\$9.00	\$450.00	\$13.25	\$662.50	\$30.00	\$1,500.00	\$16.80	\$840.00	\$30.00	\$1,500.00
47	PSIPE, Holodiscus discolor, Oceanspray, 1 Gallon	15	EA	\$20.00	\$300.00	\$9.25	\$138.75	\$12.00	\$180.00	\$6.70	\$100.50	\$15.00	\$225.00
48	PSIPE, Philadelphus lewisii, Mock Orange, 1 Gallon	34	EA	\$9.00	\$306.00	\$9.25	\$314.50	\$30.00	\$1,020.00	\$6.70	\$227.80	\$15.00	\$510.00
49	Bark or Wood Chip Mulch	150	CY	\$32.00	\$4,800.00	\$46.50	\$6,975.00	\$70.00	\$10,500.00	\$39.00	\$5,850.00	\$50.00	\$7,500.00
50	Irrigation System	1	LS	\$23,000.00	\$23,000.00	\$67,000.00	\$67,000.00	\$46,000.00	\$46,000.00	\$44,800.00	\$44,800.00	\$65,000.00	\$65,000.00
51	Cement Conc. Traffic Curb and Gutter	2,970	LF	\$17.00	\$50,490.00	\$13.75	\$40,837.50	\$11.50	\$34,155.00	\$52.00	\$154,440.00	\$15.00	\$44,550.00
52	Recessed Pavement Marker	1.1	HD	\$2,000.00	\$2,200.00	\$1,525.00	\$1,677.50	\$2,800.00	\$3,080.00	\$1,650.00	\$1,815.00	\$3,000.00	\$3,300.00
53	Paint Line	2,750	LF	\$0.65	\$1,787.50	\$0.46	\$1,265.00	\$1.00	\$2,750.00	\$0.50	\$1,375.00	\$1.00	\$2,750.00
54	Plastic Line	3,970	LF	\$1.50	\$5,955.00	\$1.15	\$4,565.50	\$2.20	\$8,734.00	\$1.21	\$4,803.70	\$2.50	\$9,925.00
55	Plastic Wide Lane Line	2,240	LF	\$1.80	\$4,032.00	\$2.40	\$5,376.00	\$4.00	\$8,960.00	\$2.59	\$5,801.60	\$4.00	\$8,960.00
56	Plastic Crosswalk Line	1,570	SF	\$7.00	\$10,990.00	\$5.95	\$9,341.50	\$5.50	\$8,635.00	\$6.33	\$9,938.10	\$5.00	\$7,850.00
57	Plastic Stop Line	235	LF	\$9.00	\$2,115.00	\$10.25	\$2,408.75	\$8.00	\$1,880.00	\$11.00	\$2,585.00	\$8.00	\$1,880.00
58	Plastic Traffic Arrow	20	EA	\$95.00	\$1,900.00	\$128.00	\$2,560.00	\$200.00	\$4,000.00	\$137.50	\$2,750.00	\$200.00	\$4,000.00
59	Painted Bicycle Lane Symbol	4	EA	\$100.00	\$400.00	\$155.00	\$620.00	\$110.00	\$440.00	\$165.00	\$660.00	\$200.00	\$800.00
60	Permanent Signing	1	LS	\$16,000.00	\$16,000.00	\$11,000.00	\$11,000.00	\$10,000.00	\$10,000.00	\$23,650.00	\$23,650.00	\$12,500.00	\$12,500.00
61	Temporary Pavement Marking - Short Duration	3,340	LF	\$1.50	\$5,010.00	\$0.46	\$1,536.40	\$0.10	\$334.00	\$0.50	\$1,670.00	\$0.10	\$334.00
62	Traffic Signal System Complete at SR 410/SR 165	1	LS	\$260,000.00	\$260,000.00	\$360,000.00	\$360,000.00	\$370,000.00	\$370,000.00	\$281,275.20	\$281,275.20	\$375,000.00	\$375,000.00

DATE: 4/2016  
DRAWN: SC  
CHECKED: TS  
APPROVED: TS

CITY OF BUCKLEY, WA.  
SR 410/SR 165/RYAN RD./112TH ST. E. REALIGNMENT PROJ. - PH. 2  
GRAY & OSBORNE #14512

GRAY & OSBORNE, INC.  
CONSULTING ENGINEERS

	BIDDER			ENGINEER'S ESTIMATE		JOHANSEN EXCAVATING, INC.		PIVETTA BROTHERS CONSTRUCTION, INC.		W.S. CONTRACTORS, LLC		RW SCOTT CONSTRUCTION CO.	
63	Portable Changeable Message Sign	8,000	HR	\$3.11	\$24,880.00	\$2.55	\$20,400.00	\$2.00	\$16,000.00	\$5.39	\$43,120.00	\$2.00	\$16,000.00
64	Project Temporary Traffic Control	1	LS	\$50,000.00	\$50,000.00	\$170,000.00	\$170,000.00	\$28,500.00	\$28,500.00	\$192,500.00	\$192,500.00	\$200,000.00	\$200,000.00
65	Street Light Tube	12	EA	\$800.00	\$9,600.00	\$725.00	\$8,700.00	\$750.00	\$9,000.00	\$715.00	\$8,580.00	\$750.00	\$9,000.00
66	Illumination Trench	2,500	LF	\$6.50	\$16,250.00	\$8.25	\$20,625.00	\$9.00	\$22,500.00	\$19.80	\$49,500.00	\$25.00	\$62,500.00
67	2-1/2 In. Diam., Sch. 80, PVC Conduit w/Fittings	2,500	LF	\$7.00	\$17,500.00	\$5.65	\$14,125.00	\$6.00	\$15,000.00	\$5.50	\$13,750.00	\$6.00	\$15,000.00
68	Adjust Valve Box	1	EA	\$400.00	\$400.00	\$275.00	\$275.00	\$800.00	\$800.00	\$504.00	\$504.00	\$350.00	\$350.00
69	Bollard, Type 1	6	EA	\$700.00	\$4,200.00	\$680.00	\$4,080.00	\$800.00	\$4,800.00	\$672.00	\$4,032.00	\$600.00	\$3,600.00
70	Cement Conc. Sidewalk	1,700	SY	\$30.00	\$51,000.00	\$35.75	\$60,775.00	\$24.00	\$40,800.00	\$40.32	\$68,544.00	\$25.00	\$42,500.00
71	Cement Conc. Curb Ramp	8	EA	\$2,500.00	\$20,000.00	\$1,325.00	\$10,600.00	\$1,184.00	\$9,472.00	\$2,128.00	\$17,024.00	\$1,500.00	\$12,000.00
72	Cement Conc. Driveway Entrance	305	SY	\$45.00	\$13,725.00	\$55.00	\$16,775.00	\$45.00	\$13,725.00	\$56.00	\$17,080.00	\$45.00	\$13,725.00
73	Monument Case and Cover	7	EA	\$700.00	\$4,900.00	\$550.00	\$3,850.00	\$700.00	\$4,900.00	\$392.00	\$2,744.00	\$1,250.00	\$8,750.00
74	Adjust Monument Case and Cover	1	EA	\$375.00	\$375.00	\$275.00	\$275.00	\$800.00	\$800.00	\$336.00	\$336.00	\$500.00	\$500.00
75	Field Office Building	1	LS	\$8,000.00	\$8,000.00	\$12,300.00	\$12,300.00	\$13,000.00	\$13,000.00	\$5,000.00	\$5,000.00	\$17,500.00	\$17,500.00
76	Minor Change	1	CALC	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
77	SPCC Plan	1	LS	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$1,500.00	\$1,500.00
78	Record Drawings (Minimum Bid \$500.00)	1	LS	\$2,500.00	\$2,500.00	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$1,500.00	\$1,500.00
	Subtotal, Schedule A:				\$1,478,404.50		\$1,814,421.05		\$1,831,491.00		\$1,987,577.18		\$1,988,971.00
	Sales Tax @ 0% (Per W.S. Revenue Rule No. 171)				\$0.00		\$0.00		\$0.00		\$0.00		\$0.00
	<b>TOTAL CONSTRUCTION COST, SCHEDULE A</b>				\$1,478,404.50		\$1,814,421.05		\$1,831,491.00		\$1,987,577.18		\$1,988,971.00
	<b>SCHEDULE B: 1-YEAR GUARANTEE (NON-FEDERAL PARTICIPATION)</b>												
200	1-Year Guarantee	1	LS	\$3,895.50	\$3,895.50	\$1,000.00	\$1,000.00	\$18,000.00	\$18,000.00	\$5,000.00	\$5,000.00	\$10,000.00	\$10,000.00
	Subtotal, Schedule B:				\$3,895.50		\$1,000.00		\$18,000.00		\$5,000.00		\$10,000.00
	Sales Tax @ 0% (Per W.S. Revenue Rule No. 171)				\$0.00		\$0.00		\$0.00		\$0.00		\$0.00
	<b>TOTAL CONSTRUCTION COST, SCHEDULE B</b>				\$3,895.50		\$1,000.00		\$18,000.00		\$5,000.00		\$10,000.00
	<b>TOTAL CONSTRUCTION COST, SCHEDULE A</b>				\$1,478,404.50		\$1,814,421.05		\$1,831,491.00		\$1,987,577.18		\$1,988,971.00
	<b>TOTAL CONSTRUCTION COST, SCHEDULE B</b>				\$3,895.50		\$1,000.00		\$18,000.00		\$5,000.00		\$10,000.00
	<b>TOTAL CONSTRUCTION COST, SCHEDULES A AND B</b>				\$1,482,300.00		\$1,815,421.05		\$1,849,491.00		\$1,992,577.18		\$1,998,971.00

BIDDER		PACIFIC CIVIL & INFRASTRUCTURE, INC.		TUCCI & SONS, INC.		RODARTE CONSTRUCTION, INC.		NORTHWEST CASCADE, INC.		VALLEY ELECTRIC CO. OF MOUNT VERNON		
BIDDER ADDRESS		3450 S. 344th Way, Suite 115 Federal Way, WA 98001		4224 Waller Road East Tacoma, WA 98443		17 East Valley Hwy. E. Auburn, WA 98092		10412 John Bananola Way E. Puyallup, WA 98373		1100 Merrill Creek Pkwy. Everett, WA 98203		
WASHINGTON STATE WORKMAN'S COMP. ACCT. NO.		PACIFIC1867J8		TUCCIS*379N0		RODARI*225D9		NORTHC1994ME		VALLEEC141NA		
WASHINGTON STATE CONTRACTOR'S REG. NUMBER		317, 522-00		700, 260-00		388, 601-00		265, 081-00		454, 151-00		
BID BOND OR OTHER GOOD FAITH TOKEN		5% BID BOND		5% BID BOND		5% BID BOND		5% BID BOND		5% BID BOND		
NO.	ITEM	QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
<b>SCHEDULE A: STREET IMPROVEMENTS</b>												
1	Mobilization	1 LS	\$200,000.00	\$200,000.00	\$113,000.00	\$113,000.00	\$107,890.00	\$107,890.00	\$120,000.00	\$120,000.00	\$152,922.88	\$152,922.88
2	Clearing and Grubbing	1 AC	\$100,000.00	\$100,000.00	\$22,000.00	\$22,000.00	\$20,000.00	\$20,000.00	\$58,000.00	\$58,000.00	\$16,700.06	\$16,700.06
3	Removal of Structure and Obstruction	1 LS	\$90,000.00	\$90,000.00	\$39,500.00	\$39,500.00	\$42,500.00	\$42,500.00	\$95,000.00	\$95,000.00	\$94,633.66	\$94,633.66
4	Pulverize Existing Asphalt Roadway	4,480 SY	\$5.35	\$23,968.00	\$7.20	\$32,256.00	\$4.50	\$20,160.00	\$4.40	\$19,712.00	\$7.01	\$31,404.80
5	Roadway Excavation, Incl. Haul	1,200 CY	\$28.50	\$34,200.00	\$47.00	\$56,400.00	\$35.00	\$42,000.00	\$39.00	\$46,800.00	\$167.00	\$200,400.00
6	Unsuitable Foundation Excavation, Incl. Haul	60 CY	\$105.00	\$6,300.00	\$100.00	\$6,000.00	\$80.00	\$4,800.00	\$78.00	\$4,680.00	\$52.33	\$3,139.80
7	Gravel Borrow, Incl. Haul	2,500 TN	\$19.00	\$47,500.00	\$26.00	\$65,000.00	\$25.00	\$62,500.00	\$24.00	\$60,000.00	\$32.29	\$80,725.00
8	Locate Existing Utilities	1 LS	\$10,000.00	\$10,000.00	\$2,500.00	\$2,500.00	\$6,500.00	\$6,500.00	\$12,500.00	\$12,500.00	\$7,236.69	\$7,236.69
9	Quarry Spalls	10 TN	\$100.00	\$1,000.00	\$150.00	\$1,500.00	\$70.00	\$700.00	\$92.00	\$920.00	\$50.00	\$500.00
10	Connection to Existing Drainage Structure	4 EA	\$3,100.00	\$12,400.00	\$1,500.00	\$6,000.00	\$1,000.00	\$4,000.00	\$1,800.00	\$7,200.00	\$1,670.01	\$6,680.04
11	Polymer Coated Steel Detention Pipe, 0.138 In. Th., 72 In. Diam. (Incl. Bedding)	50 LF	\$545.00	\$27,250.00	\$440.00	\$22,000.00	\$600.00	\$30,000.00	\$675.00	\$33,750.00	\$562.24	\$28,112.00
12	CPEP Storm Sewer Pipe, 12 In. Diam. (Incl. Bedding)	1,080 LF	\$40.00	\$43,200.00	\$57.00	\$61,560.00	\$66.00	\$71,280.00	\$41.00	\$44,280.00	\$48.43	\$52,304.40
13	DI Storm Sewer Pipe, 12 In. Diam. (Incl. Bedding)	20 LF	\$135.00	\$2,700.00	\$100.00	\$2,000.00	\$150.00	\$3,000.00	\$63.00	\$1,260.00	\$72.92	\$1,458.40
14	Adjust Manhole	1 EA	\$270.00	\$270.00	\$500.00	\$500.00	\$600.00	\$600.00	\$1,000.00	\$1,000.00	\$501.00	\$501.00
15	Area Drain	2 EA	\$370.00	\$740.00	\$1,090.00	\$2,180.00	\$1,200.00	\$2,400.00	\$1,300.00	\$2,600.00	\$1,224.67	\$2,449.34
16	Concrete Inlet	1 EA	\$1,500.00	\$1,500.00	\$1,150.00	\$1,150.00	\$1,000.00	\$1,000.00	\$1,350.00	\$1,350.00	\$1,336.00	\$1,336.00
17	Catch Basin, Type 1	14 EA	\$1,400.00	\$19,600.00	\$1,100.00	\$15,400.00	\$1,500.00	\$21,000.00	\$1,375.00	\$19,250.00	\$1,670.01	\$23,380.14
18	Adjust Catch Basin	6 EA	\$500.00	\$3,000.00	\$500.00	\$3,000.00	\$500.00	\$3,000.00	\$550.00	\$3,300.00	\$556.67	\$3,340.02
19	Catch Basin, Type 2, 48 In. Diam.	2 EA	\$3,200.00	\$6,400.00	\$3,800.00	\$7,600.00	\$4,600.00	\$9,200.00	\$3,050.00	\$6,100.00	\$3,562.68	\$7,125.36
20	Catch Basin, Type 2, 60 In. Diam.	1 EA	\$5,150.00	\$5,150.00	\$6,400.00	\$6,400.00	\$7,500.00	\$7,500.00	\$7,000.00	\$7,000.00	\$7,348.03	\$7,348.03
21	Catch Basin, Type 2, 60 In. Diam. w/Flow Control	1 EA	\$6,900.00	\$6,900.00	\$8,500.00	\$8,500.00	\$10,000.00	\$10,000.00	\$9,000.00	\$9,000.00	\$8,684.03	\$8,684.03
22	8' x 11' Storm Treatment Vault	1 EA	\$96,500.00	\$96,500.00	\$77,000.00	\$77,000.00	\$90,000.00	\$90,000.00	\$85,000.00	\$85,000.00	\$83,500.29	\$83,500.29
23	Trench Excavation Safety System	1 LS	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$600.00	\$600.00	\$3,000.00	\$3,000.00	\$5,566.69	\$5,566.69
24	Bank Run Gravel for Trench Backfill	430 CY	\$22.00	\$9,460.00	\$57.00	\$24,510.00	\$45.00	\$19,350.00	\$35.00	\$15,050.00	\$41.19	\$17,711.70
25	Removal of Unsuitable Material (Trench)	50 CY	\$35.00	\$1,750.00	\$125.00	\$6,250.00	\$80.00	\$4,000.00	\$43.00	\$2,150.00	\$61.23	\$3,061.50
26	Permeable Ballast	40 TN	\$25.00	\$1,000.00	\$50.00	\$2,000.00	\$90.00	\$3,600.00	\$82.00	\$3,280.00	\$55.67	\$2,226.80
27	Controlled Density Fill	10 CY	\$150.00	\$1,500.00	\$150.00	\$1,500.00	\$150.00	\$1,500.00	\$600.00	\$6,000.00	\$178.13	\$1,781.30
28	Commercial Concrete	10 CY	\$300.00	\$3,000.00	\$150.00	\$1,500.00	\$350.00	\$3,500.00	\$575.00	\$5,750.00	\$120.00	\$1,200.00
29	Construction Geotextile for Trench Stabilization	143 SY	\$3.40	\$486.20	\$5.00	\$715.00	\$7.00	\$1,001.00	\$4.00	\$572.00	\$6.68	\$955.24
30	Crushed Surfacing Top Course	700 TN	\$22.00	\$15,400.00	\$31.00	\$21,700.00	\$35.00	\$24,500.00	\$36.00	\$25,200.00	\$41.75	\$29,225.00

DATE: 4/2016  
DRAWN: SC  
CHECKED: TS  
APPROVED: TS

CITY OF BUCKLEY, WA.  
SR 410/SR 165/RYAN RD./112TH ST. E. REALIGNMENT PROJ. - PH. 2  
GRAY & OSBORNE #14512

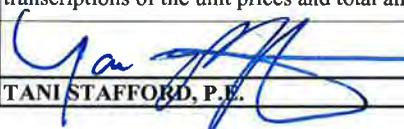
GRAY & OSBORNE, INC.  
CONSULTING ENGINEERS

	BIDDER			PACIFIC CIVIL & INFRASTRUCTURE, INC.	TUCCI & SONS, INC.	RODARTE CONSTRUCTION, INC.	NORTHWEST CASCADE, INC.	VALLEY ELECTRIC CO. OF MOUNT VERNON					
31	Crushed Surfacing Base Course	2,860	TN	\$22.00	\$62,920.00	\$31.00	\$88,660.00	\$30.00	\$85,800.00	\$32.00	\$91,520.00	\$40.08	\$114,628.80
32	Planing Bituminous Pavement	9,060	SY	\$3.35	\$30,351.00	\$4.60	\$41,676.00	\$5.00	\$45,300.00	\$3.25	\$29,445.00	\$3.08	\$27,904.80
33	HMA Cl. 1/2" PG 64-22	4,050	TN	\$74.00	\$299,700.00	\$76.00	\$307,800.00	\$95.00	\$384,750.00	\$86.00	\$348,300.00	\$85.73	\$347,206.50
34	Job Mix Compliance Price Adjustment	1	CALC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
35	Compaction Price Adjustment	1	CALC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
36	Topsoil, Type A	440	CY	\$53.00	\$23,320.00	\$53.00	\$23,320.00	\$48.00	\$21,120.00	\$60.00	\$26,400.00	\$44.53	\$19,593.20
37	Seeding, Fertilizing and Mulching	1.6	AC	\$4,800.00	\$7,680.00	\$4,800.00	\$7,680.00	\$4,500.00	\$7,200.00	\$5,400.00	\$8,640.00	\$5,250.00	\$8,400.00
38	Erosion/Water Pollution Control	1	LS	\$65,000.00	\$65,000.00	\$14,000.00	\$14,000.00	\$30,000.00	\$30,000.00	\$60,750.00	\$60,750.00	\$89,300.79	\$89,300.79
39	Root Barrier	280	LF	\$18.00	\$5,040.00	\$18.00	\$5,040.00	\$10.00	\$2,800.00	\$20.00	\$5,600.00	\$13.36	\$3,740.80
40	PSIPE, Acer Truncatum x Platanoides 'Warrenred,' Pacific Sunset Maple, 5 Gallon	28	EA	\$115.00	\$3,220.00	\$115.00	\$3,220.00	\$75.00	\$2,100.00	\$129.00	\$3,612.00	\$61.23	\$1,714.44
41	PSIPE, Arctostaphylos UVA-VRSI Kinnikinnick, 1 Gallon	1,500	EA	\$11.00	\$16,500.00	\$11.00	\$16,500.00	\$10.00	\$15,000.00	\$12.50	\$18,750.00	\$16.70	\$25,050.00
42	PSIPE, Euonymus Alatus, Compact Burning Bush, 2 Gallon	86	EA	\$26.00	\$2,236.00	\$26.00	\$2,236.00	\$18.00	\$1,548.00	\$29.00	\$2,494.00	\$31.17	\$2,680.62
43	PSIPE, Mahonia Repens, Creeping Mahonia, 1 Gallon	850	EA	\$11.00	\$9,350.00	\$11.00	\$9,350.00	\$12.00	\$10,200.00	\$12.50	\$10,625.00	\$16.70	\$14,195.00
44	PSIPE, Symphoricarpus albus, Common Strawberry, 1 Gallon	83	EA	\$11.00	\$913.00	\$11.00	\$913.00	\$10.00	\$830.00	\$12.50	\$1,037.50	\$16.70	\$1,386.10
45	PSIPE, Rosa gymnocarpa, Baldhip Rose, 1 Gallon	55	EA	\$11.00	\$605.00	\$11.00	\$605.00	\$10.00	\$550.00	\$12.50	\$687.50	\$16.70	\$918.50
46	PSIPE, Mahonia aquifolium, Oregon Grape, 2 Gallon	50	EA	\$28.00	\$1,400.00	\$28.00	\$1,400.00	\$14.00	\$700.00	\$31.50	\$1,575.00	\$31.17	\$1,558.50
47	PSIPE, Holodiscus discolor, Oceanspray, 1 Gallon	15	EA	\$11.00	\$165.00	\$11.00	\$165.00	\$10.00	\$150.00	\$12.50	\$187.50	\$16.70	\$250.50
48	PSIPE, Philadelphus lewisii, Mock Orange, 1 Gallon	34	EA	\$12.00	\$408.00	\$12.00	\$408.00	\$10.00	\$340.00	\$13.50	\$459.00	\$16.70	\$567.80
49	Bark or Wood Chip Mulch	150	CY	\$65.00	\$9,750.00	\$65.00	\$9,750.00	\$50.00	\$7,500.00	\$73.00	\$10,950.00	\$50.10	\$7,515.00
50	Irrigation System	1	LS	\$43,000.00	\$43,000.00	\$43,000.00	\$43,000.00	\$73,000.00	\$73,000.00	\$48,500.00	\$48,500.00	\$83,500.29	\$83,500.29
51	Cement Conc. Traffic Curb and Gutter	2,970	LF	\$12.70	\$37,719.00	\$15.50	\$46,035.00	\$28.00	\$83,160.00	\$17.00	\$50,490.00	\$11.52	\$34,214.40
52	Recessed Pavement Marker	1.1	HD	\$1,500.00	\$1,650.00	\$900.00	\$990.00	\$1,600.00	\$1,760.00	\$1,700.00	\$1,870.00	\$988.65	\$1,087.52
53	Paint Line	2,750	LF	\$0.45	\$1,237.50	\$0.45	\$1,237.50	\$0.50	\$1,375.00	\$0.50	\$1,375.00	\$0.49	\$1,347.50
54	Plastic Line	3,970	LF	\$1.10	\$4,367.00	\$1.80	\$7,146.00	\$1.20	\$4,764.00	\$1.25	\$4,962.50	\$1.97	\$7,820.90
55	Plastic Wide Lane Line	2,240	LF	\$2.35	\$5,264.00	\$2.35	\$5,264.00	\$2.50	\$5,600.00	\$2.50	\$5,600.00	\$2.59	\$5,801.60
56	Plastic Crosswalk Line	1,570	SF	\$5.75	\$9,027.50	\$6.50	\$10,205.00	\$6.00	\$9,420.00	\$6.50	\$10,205.00	\$7.24	\$11,366.80
57	Plastic Stop Line	235	LF	\$10.00	\$2,350.00	\$7.70	\$1,809.50	\$11.00	\$2,585.00	\$11.25	\$2,643.75	\$8.53	\$2,004.55
58	Plastic Traffic Arrow	20	EA	\$125.00	\$2,500.00	\$90.00	\$1,800.00	\$130.00	\$2,600.00	\$140.00	\$2,800.00	\$100.20	\$2,004.00
59	Painted Bicycle Lane Symbol	4	EA	\$150.00	\$600.00	\$33.00	\$132.00	\$155.00	\$620.00	\$170.00	\$680.00	\$36.74	\$146.96
60	Permanent Signing	1	LS	\$15,000.00	\$15,000.00	\$21,500.00	\$21,500.00	\$18,000.00	\$18,000.00	\$18,000.00	\$18,000.00	\$23,936.75	\$23,936.75
61	Temporary Pavement Marking - Short Duration	3,340	LF	\$0.45	\$1,503.00	\$0.30	\$1,002.00	\$0.50	\$1,670.00	\$0.50	\$1,670.00	\$1.53	\$5,110.20
62	Traffic Signal System Complete at SR 410/SR 165	1	LS	\$242,000.00	\$242,000.00	\$350,000.00	\$350,000.00	\$435,000.00	\$435,000.00	\$415,000.00	\$415,000.00	\$314,495.60	\$314,495.60

DATE: 4/2016  
DRAWN: SC  
CHECKED: TS  
APPROVED: TS

CITY OF BUCKLEY, WA.  
SR 410/SR 165/RYAN RD./112TH ST. E. REALIGNMENT PROJ. - PH. 2  
GRAY & OSBORNE #14512

GRAY & OSBORNE, INC.  
CONSULTING ENGINEERS

BIDDER			PACIFIC CIVIL & INFRASTRUCTURE, INC.		TUCCI & SONS, INC.		RODARTE CONSTRUCTION, INC.		NORTHWEST CASCADE, INC.		VALLEY ELECTRIC CO. OF MOUNT VERNON	
63	Portable Changeable Message Sign	8,000 HR	\$2.10	\$16,800.00	\$4.00	\$32,000.00	\$3.50	\$28,000.00	\$5.50	\$44,000.00	\$5.01	\$40,080.00
64	Project Temporary Traffic Control	1 LS	\$197,250.00	\$197,250.00	\$379,000.00	\$379,000.00	\$165,000.00	\$165,000.00	\$185,000.00	\$185,000.00	\$161,673.25	\$161,673.25
65	Street Light Tube	12 EA	\$650.00	\$7,800.00	\$700.00	\$8,400.00	\$900.00	\$10,800.00	\$800.00	\$9,600.00	\$1,853.30	\$22,239.60
66	Illumination Trench	2,500 LF	\$18.00	\$45,000.00	\$8.00	\$20,000.00	\$10.00	\$25,000.00	\$9.00	\$22,500.00	\$28.11	\$70,275.00
67	2-1/2 In. Diam., Sch. 80, PVC Conduit w/Fittings	2,500 LF	\$5.00	\$12,500.00	\$5.50	\$13,750.00	\$6.00	\$15,000.00	\$6.00	\$15,000.00	\$10.80	\$27,000.00
68	Adjust Valve Box	1 EA	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$300.00	\$300.00	\$550.00	\$550.00
69	Bollard, Type 1	6 EA	\$750.00	\$4,500.00	\$2,100.00	\$12,600.00	\$900.00	\$5,400.00	\$1,125.00	\$6,750.00	\$732.27	\$4,393.62
70	Cement Conc. Sidewalk	1,700 SY	\$30.00	\$51,000.00	\$30.00	\$51,000.00	\$45.00	\$76,500.00	\$41.00	\$69,700.00	\$24.94	\$42,398.00
71	Cement Conc. Curb Ramp	8 EA	\$1,240.00	\$9,920.00	\$2,100.00	\$16,800.00	\$1,800.00	\$14,400.00	\$2,200.00	\$17,600.00	\$1,220.16	\$9,761.28
72	Cement Conc. Driveway Entrance	305 SY	\$45.00	\$13,725.00	\$55.00	\$16,775.00	\$56.00	\$17,080.00	\$79.00	\$24,095.00	\$46.20	\$14,091.00
73	Monument Case and Cover	7 EA	\$650.00	\$4,550.00	\$1,000.00	\$7,000.00	\$500.00	\$3,500.00	\$450.00	\$3,150.00	\$275.00	\$1,925.00
74	Adjust Monument Case and Cover	1 EA	\$485.00	\$485.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$110.00	\$110.00
75	Field Office Building	1 LS	\$25,000.00	\$25,000.00	\$30,000.00	\$30,000.00	\$11,500.00	\$11,500.00	\$16,000.00	\$16,000.00	\$10,924.62	\$10,924.62
76	Minor Change	1 CALC	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
77	SPCC Plan	1 LS	\$250.00	\$250.00	\$500.00	\$500.00	\$500.00	\$500.00	\$2,500.00	\$2,500.00	\$1,336.00	\$1,336.00
78	Record Drawings (Minimum Bid \$500.00)	1 LS	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$650.00	\$650.00	\$1,670.01	\$1,670.01
Subtotal, Schedule A:				\$2,076,230.20		\$2,233,290.00		\$2,257,703.00		\$2,311,877.75		\$2,453,485.97
Sales Tax @ 0% (Per W.S. Revenue Rule No. 171)				\$0.00		\$0.00		\$0.00		\$0.00		\$0.00
<b>TOTAL CONSTRUCTION COST, SCHEDULE A</b>				\$2,076,230.20		\$2,233,290.00		\$2,257,703.00		\$2,311,877.75		\$2,453,485.97
<b>SCHEDULE B: 1-YEAR GUARANTEE (NON-FEDERAL PARTICIPATION)</b>												
200	1-Year Guarantee	1 LS	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$6,000.00	\$6,000.00	\$2,500.00	\$2,500.00	\$2,000.00	\$2,000.00
Subtotal, Schedule B:				\$1,000.00		\$1,000.00		\$6,000.00		\$2,500.00		\$2,000.00
Sales Tax @ 0% (Per W.S. Revenue Rule No. 171)				\$0.00		\$0.00		\$0.00		\$0.00		\$0.00
<b>TOTAL CONSTRUCTION COST, SCHEDULE B</b>				\$1,000.00		\$1,000.00		\$6,000.00		\$2,500.00		\$2,000.00
<b>TOTAL CONSTRUCTION COST, SCHEDULE A</b>				\$2,076,230.20		\$2,233,290.00		\$2,257,703.00		\$2,311,877.75		\$2,453,485.97
<b>TOTAL CONSTRUCTION COST, SCHEDULE B</b>				\$1,000.00		\$1,000.00		\$6,000.00		\$2,500.00		\$2,000.00
<b>TOTAL CONSTRUCTION COST, SCHEDULES A AND B</b>				\$2,077,230.20		\$2,234,290.00		\$2,263,703.00		\$2,314,377.75		\$2,455,485.97
Sealed bids were opened at the City of Buckley, 933 Main Street, Buckley, Washington 98321 on Tuesday, April 5, 2016, at 11:00 a.m. (local time).												
I hereby certify that, to the best of my knowledge, the above tabulations are true and correct transcriptions of the unit prices and total amounts bid.						<b>DENOTES MATHEMATICAL OR ROUNDING ERROR</b>						
												
<b>TANI STAFFORD, P.E.</b>												

DATE: 4/2016  
DRAWN: SC  
CHECKED: TS  
APPROVED: TS

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION				
<b>SUBJECT:</b>		<b>Agenda Date: April 12, 2016</b>		
<b>Temporary Waiver of Trailer Regulations BMC 11.48.0303(1)</b>  Cost Impact: N/A Fund Source: N/A Timeline: N/A		<b>AB16-053</b>		
		Department/Committee/Individual	Created	Reviewed
		Mayor Pat Johnson		X
		City Administrator – Dave Schmidt	X	X
		City Attorney – Phil Olbrechts		X
		City Engineer – Dominic Miller		
		City Clerk – Joanne Starr		X
		Finance Dept – Sheila Bazzar		
		Building Official – Mike Deadmond		
		Fire Dept – Chief Predmore		
		Parks & Rec Dept – Ellen Boyd		
		Planning Dept – Kathy Thompson		
		Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash				
<b>Attachments:</b> BMC 11.48 highlighted				
<p>SUMMARY STATEMENT: Due to the White River Bridge closure beginning April 15 some of the City staff have requested that they be allowed to pull their RV's onto City facilities such as the Police Station parking lot and/or WWTP as temporary living quarters during the closure period. However, BMC 11.48 currently prohibits the parking of trailers on public property for more than 8 consecutive hours in any 3 day period. In order to offer accommodation we are requesting that the City Council authorize a temporary waiver from this prohibition during the period of 10 p.m. Friday, April 15 to noon Saturday, April 23.</p> <p>Any temporary waiver should be conditioned on each party getting approval from the by the Chief of Police before parking the RV.</p>				
COMMITTEE REVIEW AND RECOMMENDATION: None				
<b>RECOMMENDED ACTION: MOVE to Authorize a Temporary Waiver from the prohibition identified in BMC 11.48.030(1) for the period of 10 p.m. Friday, April 15 to noon Saturday, April 23 subject to the conditions that the RV cannot block the public right-of-way and the individual must obtain approval from the Police Chief before parking the RV.</b>				
RECORD OF COUNCIL ACTION				
Meeting Date	Action	Vote		

## Chapter 11.48

### TRAILERS

#### Sections:

- 11.48.010 Chapter purpose.
- 11.48.020 Definitions.
- 11.48.030 Parking – Permit.
- 11.48.040 Property owners not to allow parking without permit.
- 11.48.050 Removal of wheels.
- 11.48.055 Violation – Penalty.

#### **11.48.010 Chapter purpose.**

This chapter and the enforcement thereof is deemed expedient to maintain the peace, good government and welfare of the city and its trade, commerce and manufacture, and is necessary as a sanitary measure and for the proper safeguarding of the public health, safety and morals. (Ord. 14-08 § 1, 2008; Ord. 726 § 1, 1966).

#### **11.48.020 Definitions.**

Words used in this chapter are defined as follows:

- (1) “Person” means person, firm, corporation, partnership or association.
- (2) “Police chief” means the police chief of the city of Buckley.
- (3) “Trailer camp” or “trailer park” means any site, lot, field or tract of ground upon which two or more trailer coaches are placed, and includes any building, structure, tent, vehicle, or enclosure used or intended for use as a part of the equipment of such camp.
- (4) “Trailer coach” means any vehicle or structure, including but not limited to campers, trailers and motor homes, used or maintained for use as a conveyance upon highways or city streets, so designed and constructed as to permit occupancy thereof as a temporary dwelling or sleeping place for one or more persons and having no other foundation than wheels or jacks. This definition does not apply to equipment owned and operated by the armed forces of the United States. (Ord. 14-08 § 1, 2008; Ord. 726 § 2, 1966).

#### **11.48.030 Parking – Permit.**

It is unlawful for any person in possession of a trailer coach:

(1) To allow the trailer coach to stand upon any public property, including roads, alleys, parks and public parking lots within the city limits, for more than eight hours in any three-day period;

(2) To use or allow the use of the trailer coach for living and/or sleeping quarters upon any private property within the city limits except in a trailer camp duly licensed as such in accordance with applicable regulations of the state, county and city; provided, however, that a trailer coach may be lawfully parked for use and occupancy on private property for a period not to exceed 14 consecutive days, and not to exceed 28 days in one calendar year, if the person in possession of the trailer coach obtains written permission from the owner of the private property prior to occupancy and if the person obtains a permit from the chief of police within one day of such occupancy.

(3) The parking fee for a trailer coach permit shall be established by resolution of the city council. (Ord. 14-08 § 1, 2008; Ord. 9-97 § 1, 1997; Ord. 9-91 § 1, 1991; Ord. 726 § 3, 1966).

#### **11.48.040 Property owners not to allow parking without permit.**

It is unlawful for the owner, person in possession or having control of any private property situated within the city limits to permit a trailer coach, when at any time used for commercial, living and/or sleeping quarters, to be parked on such private property, unless and until the person in possession of such trailer coach shall have exhibited to such owner, person in possession or having control of such private property a written permit therefor, signed by the chief of police. (Ord. 14-08 § 1, 2008; Ord. 726 § 4, 1966).

**11.48.050 Removal of wheels.**

Any removal or partial removal of wheels of a trailer coach, except for temporary purposes of repair, or other action to attach a trailer coach to the ground by means of posts, piers, foundation or skirting shall subject the trailer coach to the requirements of the city building code as well as this chapter. (Ord. 14-08 § 1, 2008; Ord. 726 § 5, 1966).

**11.48.055 Violation – Penalty.**

Any person violating the provisions of this chapter shall be deemed to have committed a civil infraction and shall be subject to a penalty as provided in Chapter 1.04 BMC. (Ord. 14-08 § 1, 2008).

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Zoo Trek Authority Ballot</b>  Cost Impact: 0 Fund Source: Timeline:	<b>Agenda Date: April 12, 2016 AB16-054</b>		
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		
	City Attorney (Land) – Phil Olbrechts		
	City Attorney – Kristin Eick		
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
<b>Attachments:</b>  SUMMARY STATEMENT: The Zoo Trek Authority is requesting the Council’s vote for Position Two of the Zoo and Trek Authority Board.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION: <b>MOTION to nominate _____ for Position Two of the Zoo and Trek Authority Board.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

## Joanne Starr

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**From:** Cindy Anderson <cander5@co.pierce.wa.us>  
**Sent:** Tuesday, April 05, 2016 2:52 PM  
**To:** Amy Stevenson-Ness (astevenson-ness@ci.pacific.wa.us); Carol Etgen; Clerk of Carbonado (clerk@carbonado.org); Danielle Daskam (ddaskam@auburnwa.gov); Debra Dearing (roycityhall@comcast.net); Emelia Genetia (Emy) (egenetia@cityofup.com); Harwood Edvalson (cityclerk@ci.bonney-lake.wa.us); Jane Montgomery; Joanne Starr (jstarr@cityofbuckley.com); Judy Grams (townclerk@rustonwa.org); Kathy Linnemeyer (townclerk@eatonville-wa.gov); Katie Bolam; Lisa Keely; Marla Nevill / Judy Tremblay (south\_prairie@yahoo.com); Mary Winter; Molly Towslee (TowsleeM@cityofgigharbor.net); Paul Loveless (paul.loveless@ci.steilacoom.wa.us); Rachel Pitzel (rpitzel@cityoforting.org); Trisha Summers (clerk@townofwilkeson.com); Wise, Shawna; 'legals@thenewstribune.com'; Tes Ongoco; pbarry@dupontwa.gov; Michelle Converse (Michelllec@ci.sumner.wa.us)  
**Subject:** Zoo and Trek Authority Board  
**Attachments:** Ballot Form #2 - Position Two with Bios.docx



Good afternoon:

I am sorry to have to send this out again, but the Zoo/Trek Authority position requires a total vote representing 60% of the Pierce County population (not including the City of Tacoma). I did not receive the required 60% of the population, so those four nominees who either did not receive a vote, or whose total number was considerably less than the others, were eliminated.

Please place this on your next Council agenda. I am not setting a return date because of your different meeting dates, but if possible I would like to have them returned by email no later than May 18 (please no US mail). If you have any questions, please contact me.

Thank you, again, for all your help!

**Cindy Anderson** | Long Range Planning Clerk | Pierce County Planning and Land Services | (253) 798-2630 | 2401 South 35th Street, Room 175, Tacoma WA 98409-7490 | [cander5@co.pierce.wa.us](mailto:cander5@co.pierce.wa.us) | [Pierce County Website](http://www.piercecountywa.gov)

**ZOO and TREK AUTHORITY BOARD  
POSITION TWO**

**OFFICIAL BALLOTS  
VOTE FOR ONE**

**Justin Evans**

**City of Bonney Lake**

**Denise McCluskey**

**City of University Place**

**Heather Shadko**

**City of Puyallup**

The city/town of \_\_\_\_\_ wishes to cast its vote for \_\_\_\_\_ of the City/Town of \_\_\_\_\_ to serve as a member of the Zoo and Trek Authority Board (ZTA) for a three-year term, representing the 11 larger cities and towns within the Pierce County Regional Council boundary.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Please submit this form with a council resolution or motion. Please email your ballots to Cindy Anderson, PCRC Clerk, at [cander5@co.pierce.wa.us](mailto:cander5@co.pierce.wa.us) or call 253-798-2630 if you have any questions. Thank you.

Zoo and Trek Authority Board  
Position Two Nominations  
Biographies

**Justin Evans – City of Bonney Lake**

**Family:** Married with one daughter

**Community Service:** Founder of “A March to Give” toy drive to benefit the children of Seattle Children’s Hospital-Strong Against Cancer Foundation, Volunteer Firefighter / EMT, and Beautify Bonney Lake volunteer

**Professional Experience:** Operations manager, project manager, project engineer, and logistics coordinator

**Elected/Legislative Experience:** City of Bonney Lake Councilmember also serving on the Public Safety and Economic Development committees, PSRC alternate, PCRC alternate, legislative session assistant to State Senator Jim Kastama

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**Denise McCluskey – City of University Place**

**Family:** Married with two grown children and one grandchild

**Schooling:** AA in Arts and Business; BA-Organizational Leadership: Chapman University; MS-Human Resources Development: Chapman University

**Occupation:** Regional Manager, RMHS, Fort Lewis

**Community Services:** School enhancement instructor, Dance Theatre Northwest board, Boy Scouts, Girl Scouts, Pierce College business advisory committee, University Place Capital Strategy Task Force, Conservation Futures board, Curran Cider Squeeze, Gilda Club, Hess Park Committee liaison, Homestead Park volunteer; Parks Appreciation Day facilitator; University Place Planning Commission, Preservation committees for Kobayashi, Colgate, and Curran House, Regional Center Advisory committee member, steering committee for fire chief selection, Tahoma Audubon Society, Toastmasters, United Way

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**Heather Shadko – City of Puyallup**

**Personal Information:** Married, originally from the Midwest, has lived in Puyallup since 1998

**Education:** BS in Business Administration, University of Mississippi

**Professional Experience:** Contract and procurement specialist Port of Tacoma, Hospital clinic administrator and educational testing administrator

**Community Involvement:** Puyallup City Council, Puyallup Library Board Chair and Board member, Puyallup Planning Commission, Puyallup Library Foundation member, Girl Scouts, volunteers for projects such as rain garden installation, Pierce Conservation tree plantings, and Library Foundation program

# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>	<b>Agenda Date:</b> April 12, 2016	<b>AB16-055</b>	
<b>Lease Agreement Termination – Del’s Farm &amp; Feed</b>	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
<b>Attachments:</b> Memo, Lease Agreement & Letter from Tractor Supply			
SUMMARY STATEMENT: See attached memorandum.			
COMMITTEE REVIEW AND RECOMMENDATION: Full Council			
RECOMMENDED ACTION: <b>MOVE to Authorize the Mayor and City Administrator to Negotiate with Tractor Supply for Early Termination of the Lease Agreement for the City Building at 117 N. River Ave without Penalty.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

# City of Buckley

P.O. Box 1960, Buckley WA 98321

Phone: 360-829-1921 ext 200

Fax: 360-829-2659



# Memo

To: Mayor & City Council

From: City Administrator

Date: April 7, 2016

RE: Lease Agreement Termination – Del’s Farm & Feed

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As discussed at the City Council work session on April 5, 2016, the City received a letter from a representative of Tractor Supply Co. on March 23, 2016 notifying the City that Del’s Farm & Feed will be closing on April 15, 2016 and relocating to the new Tractor Supply Store being constructed in Enumclaw.

This notice came after the City Administrator contacted Tractor Supply after hearing rumors that the store would be closing. The letter indicates that Tractor Supply plans to completely vacate the property by May 15, 2016; however the current lease runs through December, 2016. Termination provisions are outlined in paragraph 20 of the Agreement which states *“The Lessee shall have the right to terminate this Lease before the expiration of the term set forth in paragraph 3 above, by giving 24 months prior notice to the City in writing of the date of termination of the Lease. The Lessor may terminate this Lease by giving 24 months advance notice in writing to the Lessee of the termination date.”* Therefore, per terms of the Agreement, both parties “must” notify the other 24 months in advance of termination. This technically means that Tractor Supply is responsible for payment of the lease amount through December, 2016 whether they are occupying the building or not.

Current lease for the building as of January 1, 2016 consists of a “base lease” which is \$1,988.07 per month plus State leasehold excise tax amount of 12.84% or \$255.27 for a monthly total of \$2,243.34. If Tractor Supply vacates the building in May then they would be responsible for the lease payment through December which would total \$15,703.38.

However, as disclosed to the Council we already have 5 separate requests from interested parties wanting to lease the building for continued use as a local farm and feed store. Since Tractor Supply legally has the building tied up through December, the City doesn’t have the ability to consider alternatives unless we are able to negotiate some type of early termination with Tractor Supply.

Therefore, I am requesting that the City Council authorize the Mayor and me to negotiate with Tractor Supply for early termination of the lease without penalty. That would allow the City to obtain a formal market appraisal and formally advertise the building for lease as of a fixed date under an RFP or RFI. In addition, this will allow the City Council time and opportunity to quickly establish criteria for a selection process since there are so many interested parties.

Thank you.



March 23, 2016

Dave Schmidt  
City of Buckley  
PO Box 1960  
Buckley, WA 98321

RE: Del's - 4613  
117 North River Avenue  
Buckley, Washington 98321

Dear Mr. Schmidt:

As a follow up to our friendly conversation last week, I'm sending this notice which will hopefully provide insight and some benefit for planning purposes. We have made the decision to close our Del's store located in Buckley that we lease from the City of Buckley. The proposed closure date of the store is April 15, 2016 and we should have all items removed and in broom-clean condition within 30 days at most.

Del's lease does not expire until December 31, 2016 however; please know it is my intent to fully cooperate returning the space to you upon our departure. We all realize vacant real estate can lend itself to many unwanted and unwelcomed circumstances and events! Hopefully by our return of the space sooner, you can find a tenant to lease the space long term, a win-win for both parties.

I plan to visit the area the week of May 9 - 12, and would like to meet you on site. This, of course, doesn't mean nothing's happening prior to those dates, but I wanted to let you know I'll be in the area. If you have any questions, please feel free to contact me at (615) 440-4297 or [lhamilton@tractorsupply.com](mailto:lhamilton@tractorsupply.com)

Thanks Dave, and we'll be in touch.

Respectfully,

Linda Hamilton  
Manager - Lease Renewals

## GUARANTY OF LEASE

In consideration of the terms and conditions contained in that certain lease dated as of July 13, 2007 (the "Lease"), by and between the City of Buckley, a municipal corporation, together with its successors and assigns, the "Landlord"), and DEL'S FARM SUPPLY, LLC, a Delaware limited liability company (the "Tenant"), for the Demised Premises located in the City of Buckley, County of Pierce, State of Washington, and as more particularly described in Exhibit "A" attached hereto and made a part hereof, TRACTOR SUPPLY COMPANY, a Delaware corporation ("Guarantor"), hereby unconditionally guarantees, subject to the terms and conditions of the Lease, (i) the full and prompt payment of all rent and all other sums required to be paid by Tenant under the Lease (collectively, the "Guaranteed Payments"), and (ii) the full and faithful performance by the Tenant of all of its obligations and agreements contained under the Lease (collectively, the "Guaranteed Obligations"), and the Guarantor further promises to pay all of Landlord's costs and expenses, including reasonable attorneys' fees and court costs, incurred in enforcing the Guaranteed Obligations or in enforcing this Guaranty. All terms not defined herein shall have the meanings given to them in the Lease.

1. Landlord may at any time and from time to time, without notice to or consent by the undersigned, take any or all of the following actions without affecting or impairing the liability and obligations of the Guarantor hereunder:

- A. grant an extension or extensions of time of payment of any Guaranteed Payment or time for performance of any Guaranteed Obligation;
- B. grant a waiver in any Guaranteed Payment or in the performance of any Guaranteed Obligation; or
- C. consent to an extension or extensions of the term of the Lease.

The liability of the Guarantor under this Guaranty shall not be affected or impaired by any failure or delay by Landlord in enforcing any Guaranteed Payment or Guaranteed Obligation or this Guaranty or realizing on any security therefor or in exercising any right or power in respect thereto, or by any compromise, waiver, settlement, change, subordination, modification or disposition of any Guaranteed Payment or Guaranteed Obligation. Notwithstanding anything to the contrary contained herein, the liability hereunder of Guarantor is based upon the obligations set forth in the Lease, as the Lease may be renewed, extended, modified or amended from time to time with the prior written consent of Guarantor.

In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of Landlord, at any time, to resort to Tenant for payment or other rights and remedies, and Landlord shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or actions are pending or being taken seeking resort to or realization upon or from any of the foregoing. Notwithstanding the foregoing, Guarantor shall have no obligations under this Guaranty with respect to any Guaranteed Payment or Guaranteed Obligation unless and until Landlord has given Tenant notice of default with respect to such Guaranteed Payment or Guaranteed Obligation, if such notice is required by the terms of the Lease, and the grace period set forth in the Lease, if any, for cure of such default has expired.

2. The Guarantor waives all diligence in collection or in protection of any security, presentment, protest, demand, notice of dishonor or default, notice of acceptance of this Guaranty, notice of any extensions granted or other action taken in reliance hereon and all demands and notices of any kind in connection with this Guaranty or any Guaranteed Payment or Guaranteed Obligation.

3. The Guarantor hereby acknowledges full and complete notice and knowledge of all the terms, conditions, covenants, obligations and agreements of the Lease.

4. The payment by the Guarantor of any amount pursuant to this Guaranty shall not in any way entitle the Guarantor to any right, title or interest (whether by subrogation or otherwise) of the Tenant under the Lease.

5. This Guaranty shall be continuing, absolute and unconditional and remain in full force and effect until the date on which all Guaranteed Payments are made, all Guaranteed Obligations are performed, and all obligations of the undersigned under this Guaranty are fulfilled.

6. This Guaranty also shall bind the successors and assigns of the Guarantor and shall inure to the benefit of Landlord and its successors and assigns. No assignment by the Landlord of its interest in the Lease shall release the Guarantor from its obligations hereunder and no assignment or other hypothecation by the Tenant of any interest in the Lease shall release the Guarantor from its obligations hereunder.

7. This Guaranty shall be construed according to the laws of the State of Washington.

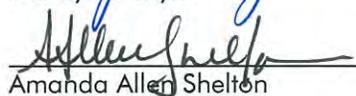
8. The Landlord and the Guarantor intend and believe that each provision of this Guaranty comports with all applicable law. However, if any provision of this Guaranty is found by a court to be invalid for any reason, the remainder of this Guaranty shall continue in full force and effect and the invalid provision shall be construed as if it were not contained herein.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the 11th day of July, 2007.

GUARANTOR:

TRACTOR SUPPLY COMPANY,  
a Delaware corporation

  
\_\_\_\_\_  
Carolyn Carlyle

  
\_\_\_\_\_  
Amanda Allen Shelton

BY:   
\_\_\_\_\_  
Clay Teter, Vice-President, Real Estate

STATE OF TENNESSEE     )  
  )  
COUNTY OF WILLIAMSON    )

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Clay Teter, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Authorized Representative of Del's Farm Supply, a Delaware limited liability company, and that he executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Authorized Representative.

In Witness Whereof, I hereunto set my hand and official seal this 11th day of July, 2007.



  
\_\_\_\_\_  
NOTARY PUBLIC: Angela Kelly  
My Commission Expires: March 7, 2011

EXHIBIT "A" TO GUARANTY  
LEGAL DESCRIPTION

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

## LEASE AGREEMENT

### PARTIES

This agreement (the "Lease") dated the 13 day of July, 2007, by and between the City of Buckley, a municipal corporation, (hereinafter known as "Lessor") and Del's Farm Supply, LLC, a Delaware limited liability company, (hereinafter known as "Lessee").

### WITNESSETH

1. Premises. Lessor hereby leases to Lessee, upon the terms and conditions herein set forth, the real property situated in the City of Buckley, Pierce County, Washington, as legally described in Exhibit "A" attached hereto (the "Premises").

2. Use of Premises. There exists a building upon said Premises (the "Improvements"). Lessor has no knowledge of any conditions now existing within or upon the Improvements for which an abatement proceeding under the International Building Code would be necessary but otherwise makes no representation or warranty regarding physical condition of the Improvements or Premises. Premises shall be used for farm supply retail business, including all other related activities. Lessee shall comply with all governmental rules, orders, regulations or requirements relating to the use and occupancy of the Premises. Lessee shall not use, store or dispose of any hazardous or toxic waste or materials on the Premises at any time, except to the extent necessary in the normal course of Lessee's business and then only in compliance with all applicable laws and regulations. In any event, Lessee shall not dispose of any hazardous waste or materials upon the real property, and shall defend, indemnify and hold Lessor harmless from any and all damages and/or cost of clean up of any toxic or hazardous waste or materials found upon the property or within the soils related to operations of Lessee's business, including cost and damages assessed pursuant to RCW 70.105(d).

3. Term. This Lease shall be for a term of Ten (10) years, commencing on the 1<sup>st</sup> day of January, 2007. The Lessee shall be subject to earlier termination as provided in paragraph 20 herein.

4. Rental. Lessee agrees to pay Lessor, at Lessor's address set forth in Section 17 hereof, or at such other place as Lessor may designate in writing, monthly rent in the amount of one-thousand six-hundred sixty-three dollars and fifty-five cents (\$1,663.55) per month commencing the 1<sup>st</sup> day of January, 2007. This shall be known as the "basic rental." Rent shall be paid to Lessee in advance of the first day of each and every month during the term thereof. The basic rental amount set forth above shall be subject to a special adjustment on the 5<sup>th</sup> anniversary of the signing of this Lease in accordance with the provisions of paragraph 20 hereunder. Any payment hereunder not made by the 10<sup>th</sup> day of the month following its due date shall result in the imposition of a late fee in the amount of 5% of the payment missed, which late fee shall become immediately due and payable.

5. Rent Adjustments. In addition to the special adjustments referenced in paragraph 4 above, commencing with the second year of the lease term, and each and every year thereafter, the basic rental shall be increased or decreased (but not by more than 5% per year) by the percentage increase or decrease in the Consumer Price Index published by the Department of Labor, for all items, all urban consumers in the Seattle-Tacoma area over the previous 12 months. As an example, if the lease term commences on January 1, 2007, then the percentage increase or decrease on January 1, 2008 shall be the percentage difference in the Consumer Price Index as of December 1, 2006 and the Consumer Price Index as of December 1, 2007. The rent amounts shall never fall below the amount fixed in paragraph 4 as the original basic rental.

6. Construction upon Premises. Lessee acknowledges that the Premises described herein are a part of the former Burlington Northern Right-of-Way now owned by the City of Buckley. Lessee further acknowledges that Lessor has disclosed its intention to maintain architectural and landscaping integrity upon this property as a part of a community theme relating to the

Railway property. Lessee, therefore, agrees that it shall obtain the Lessor's written consent prior to the remodeling or addition of any buildings, structures or landscaping upon the Premises, except as to minor alterations and upkeep of the Improvements which do not necessitate a building permit from the City. Lessor has no duty to alter or improve the building. Lessee has purchased the Improvements from a prior Lessee and acknowledges that the Lessor has no duty to maintain the Improvements nor does Lessor warrant the condition of Improvements.

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

8. Maintenance. Lessee shall maintain the Premises and Improvements as its own expense and in a good sanitary condition and repair allowing no consolidation or accumulation of junk, trash or other refuse materials.

9. Taxes. In addition to the rental payments as referenced in paragraph 4 hereinabove, the Lessee shall further be responsible for the payment to Lessor of a leasehold excise tax as required by RCW 82.29A.030 on a monthly basis. At the time of the execution of this agreement, said leasehold excise taxes are 12.84% of the basic rental above. Lessor shall provide written notice to Lessee of any change in the amount of the leasehold excise tax due from Lessee.

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

11. Liability Insurance. Lessee shall, at Lessee's sole expense, maintain public liability insurance insuring against any and all claims for injury to or death of persons, and occurring upon, in, or about the Premises and Improvements. Such insurance shall have liability limits of not less than \$500,000.00 in respect of injury or death to any one person, not less than \$500,000.00 for property damage. All such insurance shall name Lessor and

Lessee as co-insured and shall be placed with an insurance company having an A.M. Best rating of at least A-VIII. Within thirty (30) days after execution of this Lease, Lessee shall furnish Lessor with a certificate evidencing the aforesaid insurance coverage, and renewal certificates shall be furnished to Lessor at least 30 days prior to the expiration date of each policy for which a certificate was theretofore furnished. Said policy(s) shall not be amended or cancelled without 30 days advance written notification to Lessor.

12. Assignment and Subletting. Neither this Lease nor any rights hereunder may be assigned, transferred, encumbered or sublet in whole or in part by Lessee, by operation of law or otherwise, without Lessor's prior written consent, which consent shall not be unreasonably withheld.

13. Liens. Lessee shall not suffer or permit any lien to be filed against the Premises or Improvements by reason of work, labor, services or materials performed or supplied to Lessee or anyone holding the Premises or any part thereof under Lessee. If any such lien is filed against the Premises, the Lessee shall cause the same to be discharged of record within 30 days after the date Lessee receives notice of filing.

14. Indemnity by Lessee. Lessee shall indemnify, defend and hold Lessor harmless from any claims for death or of injury to persons or damages to or destruction of property sustained by Lessee or by any other person upon the Premises or within the Improvements, including, without limiting the generality of the foregoing, any claims caused by or arising from the condition or maintenance of any part of the Premises, unless such damage is proximately caused by the negligence or intentional misconduct of Lessor.

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

A) If Lessee shall fail to perform any obligation or otherwise breaches any of the covenants or agreements contained herein.

B) If Lessee shall make an assignment for the benefit of creditors or shall file a voluntary petition under any bankruptcy act or under any

other law for the relief of debtors or if an involuntary petition is filed against Lessee under any such law and is not dismissed within 30 days after filing.

C) If a receiver is appointed for the property of Lessee and is not discharged or removed within 30 days.

D) If any department of any government or any officer thereof shall take possession of the business or property of the Lessee except for a taking by proceedings in eminent domain.

Upon any such occurrence, Lessor shall provide written notice to Lessee specifying the nature of the default. Lessee shall have fifteen (15) days following receipt of Lessor's notice to cure monetary defaults and thirty (30) days following receipt of Lessor's notice to cure non-monetary defaults (which cure period shall be reasonably extended when the non-monetary default is of such a nature that it cannot reasonably be cured within thirty (30) days, provided that Lessee is diligently pursuing its cure). Upon expiration of the applicable cure period, Lessor, at its option, may terminate this Lease by notice to the Lessee on 10 days notice and upon such termination Lessee shall forthwith quit and surrender the Premises to the Lessor, but Lessee shall remain liable as hereinafter provided.

If this Lease shall be terminated as herein provided, Lessor may immediately, or at any time thereafter, reenter the Premises and remove any and all persons and property there from by any suitable proceeding at law or otherwise, without liability therefor, and reenter the Premises, without such reentry diminishing the Lessee's obligation to pay rental on a monthly basis for the full term hereof, and Lessee agrees to pay Lessor any deficiency arising from reentry and reletting of the Premises at a lesser rental than provided herein through the remaining term of the Lease. Lessor shall apply the proceeds of any reletting first to the payment of such reasonable expenses as Lessor may have incurred in recovering the possession of the Premises and removing persons and property therefrom, and placing the same into good order or condition, or preparing or altering the same for reletting, and all other expenses incurred by Lessor for reletting the Premises; and then to Lessee's obligation to pay rental.

Any such reletting may be for the remainder for the term of the Lease or for a longer or shorter period. In any such case, whether or not the Premises or any part thereof be relet, Lessee shall pay to Lessor the rent and all other charges required to be paid by Lessee up to the time of such termination of this Lease, and thereafter, Lessee agrees to pay the equivalent of the amount of all rent reserved herein and all other charges required to be paid by Lessee, less the net proceeds of reletting, if any, and the same shall be due and payable by Lessee monthly in amount as ascertained by Lessor, and Lessor may bring an action, as such monthly deficiencies arise.

After expiration of any applicable cure period and Landlord's notice of termination as provided in this paragraph 15, Lessor shall have the option to accelerate rent and all other charges payable by Lessee hereunder and forthwith recover from Lessee an aggregate sum representing at the time of such termination of this Lease, the then present worth of the excess, if any, of the aggregate of the rent and all other charges payable by Lessee hereunder that would have accrued for the period beginning on the date the Lessee vacates the Premises and ending on that date which is the earlier of (i) the expiration of the Lease or (ii) twenty-four (24) months, over the proceeds of reletting, if any.

With regard to any sums owed to Lessor by Lessee following termination of this Lease, the sums shall be reduced by the value of the Improvements on the Premises, which Improvements shall then become the property of the Lessor.

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

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

Del's Farm Supply, LLC  
c/o Lease Administration Department

Tractor Supply Company  
200 Powell Place  
Brentwood, TN 37027

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

City of Buckley  
P.O. Box 1960  
Buckley, WA 98321

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

18. Subordination. Lessee agrees to subordinate its interest in the Premises to any first mortgage or deed of trust placed upon the Premises after the date of execution of this Lease upon fulfillment of the condition that the mortgagee or holder of a deed of trust provides Lessee with an SNDA in the form attached hereto and made a part hereof as Exhibit "B", or such other form as is reasonably acceptable to Lessee.

19. Surrender of Premises. Lessee, at the expiration or sooner termination of this Lease, shall quit and surrender the Premises in good, neat, clean and sanitary condition. All Lessee's personal property, merchandise, inventory, furniture, furnishings, signs, equipment, machinery, trade fixtures, trade uses, and satellite equipment, if any, (collectively, "Tenant Property") located at the Premises shall remain the property of Lessee throughout the term and may be removed from the Premises at any time. Lessor shall have no lien or other interest whatsoever in any Tenant Property and within ten (10) days following Lessee's request, Lessor shall execute documents in reasonable form to evidence Lessor's waiver of any right, title, lien, or interest in Tenant Property located in the Premises.

20. Basic Rental Reevaluation and Termination. The basic rental as set forth in paragraph 4 shall be reevaluated on the 5<sup>th</sup> anniversary of the date this Lease is signed. Prior to the anniversary date listed above, Lessor shall obtain two property value appraisals, at Lessee's expense, exclusive of any improvements, which shall be used to determine any change in the basic rental rate. If the appraisals are within 10% of each other, the appraised values shall be averaged to determine property value. If the appraisals are more than 10% apart, the two appraisers shall choose a third appraiser to arbitrate the value. This arbitrator's determination shall be final. Rent shall be calculated to provide for a return of 12% per year on value.

The Lessee shall have the right to terminate this Lease before the expiration of the term set forth in paragraph 3 above, by giving twenty-four (24) months prior notice to the City in writing of the date of termination of the Lease. The Lessor may terminate this Lease by giving twenty-four (24) months advance notice in writing to the Lessee of the termination date.

21. First Right of Refusal.

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

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

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

22. Non-Waiver. No failure of Lessor or Lessee to insist upon the strict performance of any provision of this Lease shall be construed as depriving Lessor or Lessee of its right to insist on strict performance of such provision or

any other provision in the future. No waiver by Lessor or Lessee of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee respectively. No acceptance of rent or of any other payment by Lessor from Lessee after any default by Lessee shall constitute a waiver of any such default (unless payment is made during any applicable cure period) or any other default. Consent by Lessor in any one instance shall not dispense with necessity of consent by Lessor in any other instance.

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

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

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

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

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

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

29. Governing Law. This Lease shall be interpreted in accordance with the laws of the State of Washington.

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

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

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

33. Guaranty of Lease. Simultaneous with the execution of this Lease, Tractor Supply Company, a Delaware corporation, and the sole member of Lessee, shall execute and deliver a Guaranty of Lease in the form attached hereto and made a part hereof as Exhibit "C".

34. Independent Counsel. The Lessee acknowledges that the drafter of this Lease 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 THE LESSEE HAS BEEN ADVISED TO CONSULT WITH INDEPENDENT LEGAL COUNSEL OF ITS CHOICE AND HAS HAD AN OPPORTUNITY TO DO SO. BY SIGNING THIS AGREEMENT, THE 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 PART.







**D. CONSENT AGENDA**

**City Council  
March 22, 2016**

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

Upon roll call the following members were present: Sundstrom, Rose, Leggett, Kyllonen, Burkett and Boyle Barrett. Also in attendance were City Administrator Schmidt, Police Chief Arsanto, City Planner Thompson, Finance Director Bazzar, and City Clerk Starr.

**Council member Kyllonen moved to excuse Council member Tremblay. Council member Boyle Barrett seconded the motion. Motion carried.**

Mayor Johnson stated that she would like to move the Staff Reports to the end of the Agenda after the Consent Agenda.

**Council member Boyle Barrett moved to approve the Amended Agenda. Council member Rose seconded the motion. Motion carried.**

**CITIZEN PARTICIPATION**

**Brett Stevens – 1607 Spaulding Circle, Buckley, WA 98321 –**

Brett Stevens stated that he would like to purchase the property adjacent to his property that the City owns but thinks that the value that the City has placed on it is unreasonable. He would like the Council to reconsider the price on the property. Brett Stevens was made aware that he is welcome to attend the Transportation & Utilities Committee meetings.

**MAIN AGENDA**

**WSDOT Presentation – SR410 Bridge Closure:**

**WSDOT personal provided a short presentation regarding their upcoming closure of the White River Bridge.**

**Presentation – White River School District FFA Debate Team:**

**The White River School District FFA Debate Team presented the debate they will present at the State competition.**

**ORD No. -16: Astound Broadband, LLC Franchise Agreement – 2<sup>nd</sup>**

**Reading/Adoption:**

**Council member Boyle Barrett moved to postpone this motion sending it back to committee and bringing it forward to the second meeting in April or the first meeting in May. Council member Kyllonen seconded the motion. Motion carried.**

**ORD No. 09-16: Adopting New 2016 Stormwater Management Program:**

Council member Boyle Barrett moved to Approve ORD No. 09-16 Adopting an updated 2016 Stormwater Management Program. Council member Rose seconded the motion. Upon roll call vote motion carried 6/0.

**RES No. 16-05: City's Intent to Conduct a Public Hearing Re Assumption of TBD:**

Council member Rose moved to Approve RES No. 16-05 Regarding the City's Intent to Conduct a Public Hearing for Assumption of the TBD. Council member Leggett seconded the motion. Motion carried.

**Lease Agreement – Addendum #4 to Doxa (“SoZo”) Crossfit, LLC Lease:**

Council member Boyle Barrett moved to Approve Addendum #4 to the Agreement between the City and Doxa (SoZo) Crossfit LLC for Lease of the old Fire Station. Council member Leggett seconded the motion. Motion carried.

**Agreement – PD Building Expansion and Remodeling Feasibility – Addendum #1:**

Council member Boyle Barrett moved to Approve Addendum #1 to the Agreement for Public Safety Building Expansion and Remodeling Feasibility Study. Council member Leggett seconded the motion. Motion carried.

**Selection of Financial Institute for Banking Services:**

Council member Boyle Barrett moved to Approve the Selection of US Bank to provide Banking Services to the City. Council member Leggett seconded the motion. Motion carried.

**CONSENT AGENDA**

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

Approve Minutes of March 8, 2016 City Council Study Session.

Claim check numbers 54295 through 54324, in the amount of \$143,293.93, for the period of March 9, 2016 through March 22, 2016 are hereby approved and ordered paid this 22<sup>nd</sup> day of March 2016.

**STAFF REPORTS**

City Clerk Starr stated that the Council packets are now being posted electronically to the website.

City Administrator Schmidt stated that as most are aware, construction of the skate park has been started. Regarding the North Parking Lot project, the tentative schedule is going to try to be finished before the Junior Log show in June. Also, the City is still working

on the water situation and continuing to flush the system, and complaints have dropped considerably. We are making sure that the website is updated anytime there is an update on the water quality.

## **COMMITTEE REPORTS**

**Mayor's Report:** Mayor Johnson stated she was in Washington DC last week and it was very informative. She also discussed the current homeless situation that is going on in the nation as well as within the City of Buckley. Also, she and Recreational Services Director Boyd have been talking about putting together concerts in the park for this summer, and the goal is going to be 3 or 4 in August. We have heard from Olympia that they are going to possibly be cutting services such as the Public Works Trust Fund, MRSC, and the Police Academy.

**Administration, Finance & Public Safety:** Council member Boyle Barrett stated that Assistant Chief Skogen stated that Carbonado has signed the AMR Contract, but they are still waiting on the others to sign. All other topics that were discussed were on tonight's agenda.

**Transportation & Utilities:** Council member Sundstrom stated that the minutes that Council member Tremblay provided were what the Committee discussed. Council member Sundstrom also stated that he added comments regarding the Commercial Impact Fees.

**Community Services:** Council member Rose stated they will be meeting April 21<sup>st</sup> at the Multi-Purpose Center at 4:00 PM.

### **Council Member Comments & Good of the Order:**

Council member Kyllonen stated that the Youth Center is having their annual Spring Fling Benefit Auction on Saturday, April 23<sup>rd</sup>. Council member Sundstrom stated that his Stormwater Conference wasn't the same as in the past, but he received some useful information.

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

**With nothing further the meeting was adjourned at 8:36 PM.**

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Mayor

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City Administrator

## CITY COUNCIL

### STUDY SESSION

**April 5, 2016**

**ATTENDEES:** Council members Sundstrom, Rose, Burkett, Leggett, Tremblay and Kyllonen. Also in attendance were Mayor Johnson, City Administrator Schmidt and Kimberly Lauk representing the City of Enumclaw.

Mayor Pro Tem Tremblay called the Study Session to order at 7:00 PM.

#### **Dangerous Dog Survey:**

Mayor Pro Tem Tremblay opened the Study Session by going around the table and asking each Council member to provide input on the Dangerous Dog Survey. After each Council member provided input, it appeared that the Council did not want to send out a survey to the citizens of Buckley.

#### **Joint City Committee – Buckley & Enumclaw:**

Kimberly Lauk, a member of the Enumclaw City Council, shared a future vision statement that she and the City of Enumclaw City Council drafted at their last Council meeting. They envision a joint committee between the two cities to share ideas, common issues and goals. Mayor Pro Tem Tremblay and other Council members thought this was a great idea, and the next steps will be deciding how many Council members from each jurisdiction will be on the committee as well as dates and times for meetings.

#### **Procedure and Process for Lease of the Feed Store:**

After a long discussion regarding the lease of Del's Feed Store, the Council stated that they would like to see this topic on the next Council Agenda.

#### **Splash Park:**

Mayor Pro Tem Tremblay stated that the pictures provided to the Council regarding the future splash park were not at all what he had in mind; other Council members thought the same. Council members shared pictures of splash parks in other jurisdictions which were more along the lines of what they had in mind, and they were able to give City Administrator Schmidt ideas for what they would like AHBL to design.

In regards to the upcoming closure of the White River Bridge, City Administrator Schmidt asked the Council for input on allowing city employees to bring campers/RVs and park them on

City property during the week the bridge is closed so they don't have to commute around. The Council didn't have an issue with this as it will be a short term situation.

With nothing further, the Study Session was adjourned at 8:26 PM.

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City Administrator Dave Schmidt

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Mayor Pat Johnson

**E. COMMITTEE REPORTS**