

CITY COUNCIL MEETING

**April 28, 2009
7:00 P.M.**

AGENDA

City of



“Where Dreams Can Soar”

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

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

SIGN-UP TO SPEAK FOR SPECIFIC ACTION ITEMS ON THE AGENDA: *If you have signed-up prior to the Council meeting to speak with respect to a particular ordinance or resolution appearing on the agenda, you will be recognized to address the Council for up to one minute before the Council takes action on that item. Those wishing to address such items on the “Consent Agenda” should do so during the “Citizen Comments” portion of the Agenda. If the Council chooses to discuss the item further after taking comments, they may restrict additional public comment before taking action. Please look for the sign-up sheets near the Council Chamber doorway. (See Item II B. for Citizen Comments on other items of City business.)*

I. CALL TO ORDER – Mayor Neil Johnson, Jr.

A. Flag Salute – Mayor Neil Johnson, Jr.

B. Roll Call:

Elected Officials: Mayor Neil Johnson, Jr., Deputy Mayor Dan Swatman, Councilmember David Bowen, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Dave King and Councilmember Jim Rackley.

[Management Staff expected to be in attendance: City Administrator Don Morrison, Public Works Director Dan Grigsby, Police Chief Mike Mitchell, Community Development Director John Vodopich, Chief Financial Officer Al Juarez, Administrative Services Director Harwood Edvalson, Community Services Director Gary Leaf, and City Attorney Jim Dionne.]

C. Announcements, Appointments and Presentations:

1. Announcements:
2. Appointments:
3. Presentations: [A 1.2]

D. Agenda Modifications:

II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:

A. Public Hearings: None.

B. Citizen Comments:

You may address the City Council on matters of City business for up to 5 minutes. Those commenting about ordinances or resolutions on the “Consent Agenda” should limit their comments to one minute per item. When recognized by the Mayor, please state your name and address for the official record. Designated representatives speaking on behalf of a group may take up to 10 minutes on matters of general City business.

C. Correspondence: [A 1.2]

III. COUNCIL COMMITTEE REPORTS:

- A. Finance Committee
- B. Community Development Committee
- C. Public Safety Committee
- D. Other Reports

IV. CONSENT AGENDA:

The items listed below may be acted upon by a single motion and second of the City Council. By simple request to the Chair, any Councilmember may remove items from the Consent Agenda for separate consideration after the adoption of the remainder of the Consent Agenda items.

- A. **Approval of Corrected Minutes:** April 7, 2009 Council Workshop and April 14, 2009 Council Meeting.
- B. **Accounts Payable Checks/Vouchers:** Accounts Payable checks/vouchers #55200 thru 55289 (including wire transfer #'s 185843, 3172009, 4092009, 4556152 & 9012008) in the amount of \$632,770.94; Accounts Payable checks/vouchers #55290 thru 55340 (including wire transfer #'s 244936, 244937 & 4152009) in the amount of \$210,091.24.
- C. **Approval of Payroll:** Payroll for April 1-15, 2009 for checks 28146-28172 including Direct Deposits and Electronic Transfers in the amount of: \$ 380,132.58; Correction for Payroll March 16-31, 2009—Correct Check range is 28112-28145 for the same amount of \$547,884.43
- D. **AB09-74 – Ordinance D09-74** – An Ordinance of the City of Bonney Lake, Pierce County, Washington, Adding a New Chapter 12.10 to the Bonney Lake Municipal Code, Establishing a Naming Policy for City Parks, Open Spaces and Other Municipal Facilities.
- E. **AB09-56 – Resolution 1931** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing the Mayor to Sign an Agreement with Feet First to Provide Educational Services Pursuant to the Safe Routes to School Project.
- F. **AB09-57 – Resolution 1932** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing the Mayor to Sign an Agreement with the Bicycle Alliance of Washington to Provide Educational Services Pursuant to the Safe Routes to School Project.
- G. **AB09-70 – Resolution 1938** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing the Mayor to Sign an Agreement with Portland Energy Conservation Inc. for the Wash Wise Water Conservation Program.
- H. **AB09-73 – Resolution 1941** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing a Contract with Parametrix for the Design of the Eastown Water Main Extension Project.

V. FINANCE COMMITTEE ISSUES:

- A. **AB09-71 – Resolution 1939** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing the Mayor to Sign an Assignment of Contract Rights and a Stewardship Agreement with Pierce County.

VI. COMMUNITY DEVELOPMENT COMMITTEE ISSUES: None.

VII. PUBLIC SAFETY COMMITTEE ISSUES: None.

VIII. FULL COUNCIL ISSUES:

A. **AB09-76** – A Motion of the Bonney Lake City Council Appointing Voting Delegates to the 2009 AWC Annual Meeting.

IX. EXECUTIVE SESSION: Pursuant to RCW 42.30.110, the City Council may hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

X. ADJOURNMENT

For citizens with disabilities requesting translators or adaptive equipment for communication purposes, the City requests notification as soon as possible of the type of service or equipment needed.

THE COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA

CITY COUNCIL WORKSHOP

April 7, 2009
5:30 p.m.



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

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

MINUTES

"Where Dreams Can Soar"

Audio Time
Stamp ↓

Call to Order:

Mayor Neil Johnson, Jr. called the Workshop to order at 5:30 p.m.

Roll Call: [A1.3]

Administrative Services Director/City Clerk Edvalson called the roll. In addition to Mayor Johnson, elected officials attending were Deputy Mayor Dan Swatman, Councilmember David Bowen, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember David King and Councilmember James Rackley.

[Staff Members in attendance were City Administrator Don Morrison, Chief Financial Officer Al Juarez, Community Development Director John Vodopich, Police Chief Mike Mitchell, Public Works Director Dan Grigsby, Building Official Jerry Hight, Community Services Director Gary Leaf, Assistant City Attorney Kathleen Haggard and Administrative Services Director/City Clerk Harwood Edvalson.]

5:30:42

1. Introduction of East Pierce Fire and Rescue Chief Jerry Thorson.

Mayor Johnson introduced Jerry Thorson as the new Fire Chief for East Pierce Fire and Rescue. Chief Thorson thanked the Council for the opportunity to introduce himself this evening. He assured the Council of his interest in ensuring a good working relationship with the Cities in the district. He added he is aware of some facilities issues and needs and hopes the City and District can work together to meet those needs. Chief Thorson announced his intention to either personally attend Council meetings on a regular basis, or have a staff member attend to represent the District. On behalf of the Council, Councilmember Bowen added his welcome and extended an invitation to attend any of the City's meetings and communicate freely with the Council.

5:33:26

2. Council Open Discussion.

Audit Exit Interview

Councilmember Rackley asked if a time had yet been established for an exit interview with the State Auditors for the 2007 audit. Finance Director Juarez described the current process to conclude the audit, and said he anticipated the exit interview will be scheduled before the 2008 audit starts at the end of May.

Logging Hillside Above Sumner

Councilmember Rackley noted the report in the Courier-Herald that logging would be taking place above the Corliss plant located at the foot of Elhi Hill and SR410 and a smaller portion west of Myers Road. Both Mayor Johnson and City Administrator Morrison noted the City had not been given notice of the proposed Department of Natural Resources permits applications. Councilmember Bowen said some of the trees

may have root-rot like trees in the WSU forest. He said there may be an advantage to clearing out any diseased trees. Councilmember Carter noted that the City has steep slope ordinances that help protect the slopes from erosion when forest cutting takes place within the City.

Eastown Point Person

Mayor Johnson announced that Public Works Director Grigsby would be the Eastown 'czar' or point person for the City on Eastown development issues. Mayor Johnson expressed hope the State would soon adopt legislation authorizing cities to participate in latecomers agreements. He hoped this would be a tool to facilitate the installation of needed infrastructure in Eastown if current landowners/developers were unsuccessful with their utility plans.

Upcoming Events

Councilmember Carter commented on upcoming events in the City, including the first adult Easter egg hunt on Friday, April 10th and the youth Easter egg hunt on April 11th. She also noted the City-wide Spring Cleanup scheduled for April 13th – 17th and Parks Appreciation Day on April 18th at Cedarview Park.

Playful Cities Campaign

Councilmember Carter noted the City's continued awards for being a Well-City and other activities at the Senior Center and in the local area. She asked if the Playful Cities Campaign through the National League of Cities is something in which the City might want to participate. Mayor Johnson said he would review the information in the recent NLC newsletter.

Flood Control for White River

Councilmember Carter asked if the article in the Courier-Herald on Sumner's efforts to address flooding of the White River would have an impact on the City. Director Grigsby said the sediment buildup in the river has recently threatened the wastewater treatment plant in Sumner. He expected an uphill battle to obtain dredging rights to deepen the river's channel.

Alcohol Awareness Month

Councilmember Carter reported the Public Safety Committee had a presentation on domestic violence at their last meeting. She also drew attention to April being Alcoholism Awareness Month. She distributed literature on this family disease for review. She asked that particular attention be paid to the 'Open Letter to Police' in the literature. She also mentioned the availability of the Community Resource pamphlet in the City Hall lobby which provides a listing of resources available on the plateau for assistance.

Eastown Widening of SR410

Councilmember Bowen commented on his understanding that funding for the widening of SR410 in Eastown is still available and planned for release of construction bids in August. Mayor Johnson noted the sidewalk project on SR410 may be in jeopardy. Director Grigsby said the City is waiting to see what the State Transportation Improvement Board will do in the face of the State's current deficits.

5:44:24

3. **Review of Council Minutes:** March 17, 2009 Council Workshop, March 24, 2009 Council Meeting, and March 28, 2009 Special Council Meeting.

Deputy Mayor Swatman said the March 17th minutes mention discussions between the City Attorney's Office and the Building Department. He asked if intent of the ordinance language about all permits or future permits had been resolved. Director Vodopich responded the Attorney's Office had determined the language means all existing permits would get a two year extension from the date of the ordinance.

Councilmember Carter offered corrections to the minutes of the Council Retreat on March 28th. She said where the phrase 'departmental concession strategies' is recorded on Page 2, it should read 'departmental succession strategies.' She said on Page 4 where it mentions AHBL giving a presentation to the Council on the annexation study at a future workshop, the Planning Commission should be included. She also asked that it be reflected in the minutes that she did not agree with the suggestion to cut the Stream Team contract. Mayor Johnson noted that the list was for expenditure items that are currently being frozen. He added that Director Leaf is still working on the Stream Team issue.

5:47:04

4. **Discussion:** AB09-60 – Ordinance D09-60 – Transportation Impact Fee Definitions Amendment.

Mayor Johnson said the following ordinances are presented to Council to begin discussion on possible business incentives for Bonney Lake. He said one of proposals came about as the result of his "Coffee and Conversation with the Mayor" which Councilmember Rackley attended.

City Administrator Morrison said basically this ordinance will limit the application of transportation impact fees to new construction or substantial remodels and grant a limited exemption from transportation impact fees for health care providers who enlarge and relocate their practices if remaining in the City. He said the ordinance would also waive a new TIF for businesses which relocate unless the new building expands substantially over the previous location. Finally, the ordinance clarifies how TIF credits may be earned and applied.

At the conclusion of discussion, the Council majority consensus was to split this proposed ordinance into two ordinances. The Council favored moving forward with an ordinance to grant TIF relief to medical providers who accept Medicare for a majority of their patients. Councilmember Hamilton expressed concern that the ordinance appeared to address only one known provider in the City. Assistant City Attorney Haggard referenced the Revised Code of Washington to assure Council that the ordinance was legal for a broad public purpose. The Council asked that a second ordinance be brought back to workshop which addresses issues such as TIF transfers and SEPA versus TIF projects.

Councilmember Decker moved to take a ten minute recess. Councilmember King seconded the motion.

Motion approved 7 – 0.

5. **Discussion:** AB09-61 – Ordinance D09-61 – Transportation Impact Fee Rebate Amendment.

City Administrator Morrison explained that this proposed ordinance amends the existing TIF rebate ordinance to include all commercial areas of the City, including Midtown, and establishes special criteria for sit-down restaurants. Mayor Johnson noted the ordinance sunsets its incentives in 2011. He encouraged adoption of the ordinance to demonstrate that Bonney Lake is willing to invest in businesses wanting to locate in the City. Councilmember Hamilton commented that the ordinance won't impact the overall funding of the TIF program. He said the TIF would be paid up front and the rebate given from increased sales tax received on the business.

The Council discussed the anticipated sales tax threshold that would trigger the rebate. The ordinance proposes a rebate for Eastown businesses generating at least \$25,000 per year in sales tax to the City of Bonney Lake. The Council discussed this threshold. Some expressed desire for a lower threshold similar to that proposed for Midtown. Others felt the amount as originally proposed was appropriate. Councilmember Decker asked what size of bond issue would be required if the City were to front the cost of necessary sewer and water infrastructure to Eastown. From the audience, Ray Frey said the current projected cost for sewer to the area is 2 to 2.5 million dollars. Director Grigsby said the bond would be larger to include the cost of running adequate water service to the area as well.

Mayor Johnson proposed bringing the ordinance forward with a proposed Eastown rebate threshold of \$15,000 of sales tax to the City of Bonney Lake. He said the Council could amend the provision on the floor, but felt an ordinance is necessary to again demonstrate the City's commitment to appropriate development of its commercial areas.

6:57:37

6. **Discussion:** AB09-62 – Ordinance D09-62 – Commercial Building Incentives.

City Administrator Morrison explained this proposed ordinance would waive 50% of certain land use fees, waive 50% of building and plan review fees; and grant a rebate of 75% of construction sales tax up to \$100,000. Council discussed this proposed ordinance. Councilmember King concluded that this type of incentive is being used in other jurisdictions. He said he saw no problem as long as the ordinance sunsets as indicated in 2011. Council majority consensus was to bring the ordinance forward for action.

7. **Executive Session:**

Pursuant to RCW 42.30.110(1)(b) the City Council adjourned to an Executive Session with the City Attorney at 7:46 p.m. to discuss real estate acquisition by purchase. The Meeting reconvened at 7:52 p.m. After inviting any remaining members of the public back into the open session, the Council took the following actions:

7:52:40

Deputy Mayor Swatman moved to suspend the Council Rules of Procedure and add an item for property acquisition to the meeting agenda. Councilmember Rackley seconded the motion.

Motion approved 7 – 0.

Councilmember Rackley moved to authorize the Mayor to sign a purchase and sale agreement for the Norma Hyland Property located on 195th Avenue Ct. E. south of Allan Yorke Park. Deputy Mayor Swatman seconded the motion.

City Administrator Morrison explained that the property purchase price is \$105,000 with \$10,000 deposited in escrow as earnest money and also includes some closing costs.

Motion approved 7 – 0.

8. **Adjournment:**

At 7:55 p.m., Councilmember Rackley moved to adjourn the workshop. Councilmember King seconded the motion.

Motion approved 7 – 0.

Harwood T. Edvalson, CMC
City Clerk

Neil Johnson, Jr.
Mayor

Items submitted to the Council Workshop of April 7, 2009:

- *City of Bonney Lake – Open Letter to the Police, List of ALATEEN meetings, and information on Alcoholics Anonymous – Councilmember Laurie Carter.*

CITY COUNCIL MEETING

April 14, 2009
7:00 P.M.

MINUTES



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Audio Time
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I. **CALL TO ORDER** – Deputy Mayor Dan Swatman called the meeting to order at 7:01 p.m.

A. **Flag Salute** – Deputy Mayor Swatman led the audience in the Pledge of Allegiance.

B. **Roll Call:** [A 1.3]

City Clerk Edvalson called the roll. In addition to Deputy Mayor Swatman, elected officials attending were Councilmember David Bowen, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Dave King and Councilmember Jim Rackley. Mayor Johnson was absent from the meeting.

[Staff members in attendance were City Administrator Don Morrison, Chief Financial Officer Al Juarez, Community Development Director John Vodopich, Police Chief Mike Mitchell, Public Works Director Dan Grigsby, Community Services Director Gary Leaf, Assistant City Attorney Kathleen Haggard, Administrative Services Director/ City Clerk Harwood Edvalson and Records & Information Specialist Susan Duis.]

C. **Announcements, Appointments and Presentations:** [A 3.6.9]

1. Announcements: None.

2. Appointments: None.

3. Presentations:

a. **Proclamation:** April 18th – Arbor Day in Bonney Lake.

b. **Proclamation:** April 18th – Parks Appreciation Day in Bonney Lake

Deputy Mayor Swatman read both proclamations aloud. Community Services Director Leaf invited all to attend the events happening around the city on April 18, 2009. The day will begin at 9:00 a.m. at Cedarview Park in Bonney Lake, where the Arbor Day Award recipient will be named and Parks Appreciation Day clean-up will get started. Parks Appreciation Day volunteers will be planting trees and cleaning up city parks. In addition, two Eagle Scouts will be working on projects, and volunteers will be installing a memorial at the Public Safety Building in honor of Fire Chief Dan Packer. He said Beautify Bonney Lake and other volunteers are involved in the activities.

D. **Agenda Modifications:**

Councilmember King proposed adding a motion to the agenda under Public Safety Issues to authorize the Public Safety Committee to act on behalf of the City Council to determine a short list of projects for a Justice Assistance Grant Application valued at \$26,000. He said the action is needed to meet the fast-approaching grant deadline.

Councilmember Hamilton moved to add the proposed motion to the agenda under Public Safety Issues, Item A. Councilmember Decker seconded the motion.

Motion approved 7 – 0.

7:08:49

II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:

A. Public Hearings: None. [A 3.6.12]

B. Citizen Comments: [A 1.5]

Melanie Castrelli, 18610 88th St E, Bonney Lake, said she shares a property line with the Diamond Lounge, and has waited for peace and quiet from them for three years. She said the City has tried to help but the noise reduction has not lasted for more than a week at a time. She invited the Council to spend a night at her house to experience the noise levels. She said she has purchased and moved to another home in Bonney Lake, and is now renting her home to a family with two children. They have lived in the house for two weeks and have already complained. She said today they emailed that their sons found several bottles that were thrown into the yard from the Diamond Lounge. She said the Diamond Lounge is advertising a party with go-go dancers and drink specials that begins tonight at 9:00 p.m., which is a work night. She said if she had known that the City was going to let the small Italian restaurant convert into a night club, she would not have moved there.

Stuart Battle, 14041st NE, Seattle, works with the LaRouche Political Action Committee. He asked the Council to consider passing the Homeowner's and Bank Protection Act, which was drafted by LaRouche PAC. He said the act will help fix the root problems of the economic crisis, and has been passed by over 150 city councils and 6 state legislatures.

Dave Fabrotz, 13204 37th Ave NE, Seattle, also spoke for the LaRouche PAC and said the act Mr. Battle described must be passed by the federal government to be enacted. He said due to corruption at the federal level, action must begin at the local level. He said no cities in Washington State have passed the act yet, and encouraged the Council to make a statement by passing the act.

Councilmember Bowen thanked Mr. Battle and Fabrotz for their information and said though he has sympathy for their thoughts, he would abstain from voting on this act if it came before the Council. He said as an elected official, he always abstains from endorsing or voting on issues that are not directly related to running the City.

Lora Butterfield, Bonney Lake Chamber of Commerce, said the new business directory and community guide is available. She said there are a few incorrect phone numbers that they are working to correct. She invited everyone to attend the grand opening of the Chamber of Commerce's new offices at the Harborstone Credit Union in Bonney Lake at 5:30-7:00 p.m. on Thursday, April 16, 2009.

Phil DeLeo, 4610 N Island Drive, Bonney Lake, said he received a guide to 25 great walks in Pierce County, and requested copies for the Senior Center, where he works. He said the guide includes a large map and information on trail etiquette. He said he hopes Bonney Lake can work to get included on the trail list, with walks at Fennel Creek, Lake Bonney, etc. He said the Senior Center is starting a monthly walking trip, starting this month with a walk at Bradley Lake Park in Puyallup. The Senior Center also has regular walks around the area three times per week.

Councilmember Rackley said area resident Paul Qualey has created a Bonney Lake bicycle trail map. Councilmember King noted the Council's recent authorization to purchase property beyond Allan Yorke Park that will help extend the trail system plan. Councilmember Bowen noted that he has seen City employees walking during their lunch breaks.

Diana Ranger, 8412 184th Ave E, Bonney Lake, said she has lived in Bonney Lake since 2002. She said after separating from her husband, she installed an alarm system in her house and had multiple break-ins up through 2007. This past Saturday, she received four separate invoices for false alarm charges from 2007; the initial fine was \$50 and the other three were \$100 charges. She called the City and was told the only way to solve the issue was to speak to the Council. Finance Officer Juarez explained the Municipal Code requirements for alarm system permits and false alarm charges. He confirmed that there was an error in the system and false alarm charges were not being sent. The department has sent out invoices and decided not to try to recoup charges that are dated prior to 2007. He said training is important, and noted that two of his staff members attended a workshop this afternoon about how various cities handle false alarms. He said he had copies of Ms. Rangers' invoices and planned to bring them to the Finance Committee for discussion.

Councilmembers discussed the intent of the false alarm ordinance, and whether the attempted break-ins Ms. Ranger described should classify as 'false alarms' if they were legitimate. Councilmember Hamilton said he was concerned that the City sent out invoices for false alarms that had occurred 1-2 years prior with no warning. Councilmember King proposed that the Finance Director, Police Chief and City Administrator review the issues and present information at the next Finance Committee meeting. In the meantime, he suggested disputed billings such as Ms. Ranger's be suspended until the situation can be reviewed.

Sarah Tierney, 18511 94th St Ct E, Bonney Lake, spoke against the proposed Hulburt Rezone ordinance (D09-64). She asked the Council to consider the history of the property, which was purchased by Mr. Hulburt four years ago and was then subdivided into four parcels. She said the owner managed to get the City to initiate a rezone instead of applying during the normal cycle. She said he made promises to neighboring homeowners about how he intended to develop the property, but that has changed from residential to multi-family housing with no conditions. She said the development will adversely affect the neighborhood, and her concerns have been shot down by the Planning Commission. She said she would have appealed the issue when the City changed the Land Use Map in 2008, but at the time they believed he was going to build a nursing home on the site. She said her group's only avenue if the Council approves the rezone is to appeal to the Supreme Court.

Josh Hulburt, 9202 184th Ave E, Bonney Lake, owns the 'Hulburt property' and thanked the Council for considering the rezone.

Deputy Mayor Swatman asked the City Attorney to advise the Council on taking input from citizens on the proposed ordinance, which is a quasi-judicial issue. Assistant City Attorney Haggard said the City's code allows citizens to comment for one minute on any ordinance or action item. However, she noted that the proposed rezone ordinance is a quasi-judicial, site-specific rezone and as such the Council must base their decision on the evidence and comments in the Hearing Examiner's record only. She advised the Council not to ask questions or invite debate on the citizen comments made at the Meeting regarding this item.

Mr. Hulburt said he has been working to develop the property and worked extensively with the neighboring property owners. He said he understands that they did not get the conditions they wanted in writing, but he plans to continue to work with them to make sure it is positive for the neighborhood and in the city's best interest. He said city staff and the Hearing Examiner reviewed the proposed rezone and found it consistent with the City's plan.

David Wells (no address given), is the City's Special Events Coordinator, and updated the Council on the previous weekend's events. He said about 350 people took part in the first-ever adult Easter Egg flashlight hunt on April 10, 2009. He said it was a success, though there are some problems to be worked out. He said they are considering a costumed Halloween 'egg hunt' for the fall as well. On Saturday, April 11, 2009, about 1,000 children hunted for 17,000 eggs. He thanked Mayor Johnson, Deputy Mayor Swatman and Councilmember Carter for their donations. He said the proceeds of the adult Easter egg hunt will go to support Summer recreation programs. The event was held in Bonney Lake because the City offered volunteers.

- C. Correspondence: None. [A 1.2]

7:55:25

III. **COUNCIL COMMITTEE REPORTS:** [A 3.6.4]

- A. Finance Committee: Deputy Mayor Swatman said the committee met at 5:30 p.m. earlier in the evening, and discussed personnel updates, renewal of the Wash Wise program, other rebate program options, accounts aging reports, a possible sub-meter ordinance, cable franchise agreements, 2009 budget status, Eastown sewer status and Stream Team funding.
- B. Community Development Committee: Councilmember Rackley said the committee met on April 6, 2009 and forwarded several items to the Consent Agenda, including contract awards and completion of the Public Works modular building.
- C. Public Safety Committee: Councilmember King said the committee met on April 6, 2009 and discussed the Metro Animal Services agreement, which is currently under review. The committee heard a presentation from City Administrator Morrison on the night club ordinance and Ms. Castrelli's noise complaints. He said the committee plans to review the noise ordinance and zoning code related to night clubs and residential areas. They heard a presentation on domestic violence ordinances used by

other cities. The committee also discussed the federal Justice Assistance Grant application, which relates to the motion that was added to the agenda.

D. Other Reports: None.

8:01:47

IV. CONSENT AGENDA: [A 3.6]

- A. **Approval of Corrected Minutes:** March 17, 2009 Council Workshop, March 24, 2009 Council Meeting, and March 28, 2009 Special Council Meeting.
- B. **Accounts Payable Checks/Vouchers:** Accounts Payable checks/vouchers #54940 thru 55015 in the amount of \$149,928.40; Accounts Payable checks/vouchers #54941 in the amount of \$50.00; Accounts Payable checks/vouchers #55016 in the amount of \$52.23 for utility account refund; Accounts Payable checks/vouchers #55017 thru 55091 in the amount of \$391,752.30; Accounts Payable checks/vouchers #55092 thru 55162 in the amount of \$591,552.95; Accounts Payable checks/vouchers #55163 thru 55199 in the amount of \$1,675.28 for utility account refunds.
- C. **Approval of Payroll:** Payroll for March 16-31, 2009 for checks 28112-28144 including Direct Deposits and Electronic Transfers in the amount of: \$ 547,884.43.
- D. **AB09-14 – Ordinance 1314** – An Ordinance of the City of Bonney Lake, Pierce County, Washington, Adding a New Section to Bonney Lake Municipal Code Chapter 12.04 and Amending Public Works Design Standard 606.
- E. ~~**AB09-59 – Ordinance 1315**~~ – An Ordinance of the City of Bonney Lake, Pierce County, Washington, Amending Section 5.17.010 of the Bonney Lake Municipal Code and Section 1 of Ordinance No. 1256 Relating to the Licensing and Regulation of Nightclub Establishments. Moved to Full Council Issues, Item E.
- F. **AB09-63 – Resolution 1934** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing a Contractor Agreement with Doolittle Construction, LLC for the 2009 Chip Seal Application.
- G. **AB09-65 – Resolution 1935** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Awarding the 82nd Street Court E Sanitary Sewer Contract to Big Mountain Enterprises.
- H. **AB09-55** – A Motion of the Bonney Lake City Council, Pierce County, Washington, Accepting as Complete the Public Works Prefabricated Modular Building Contract with Modern Building Systems, Inc.

City Administrator Morrison noted there is a typographical error in proposed Ordinance 1315. Councilmember Decker requested the item be moved to Full Council issues, Item E., for discussion.

Councilmember King moved to approve the Consent Agenda as amended. Councilmember Rackley seconded the motion.

**Consent Agenda
approved 7 - 0.**

8:03:57

V. FINANCE COMMITTEE ISSUES:

- A. **AB09-67 – Resolution 1937** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing the Mayor to Accept a Donated Parcel of Land from the Crystal Meadows HOA.

Councilmember Decker moved to approve Resolution 1937. Councilmember King seconded the motion.

Motion approved 7 - 0.

VI. COMMUNITY DEVELOPMENT COMMITTEE ISSUES: None.

8:04:43

VII. PUBLIC SAFETY COMMITTEE ISSUES:

- A. **AB09-75** – A Motion of the Bonney Lake City Council, Pierce County, Washington, Authorizing the Public Safety Committee to Develop a Short List of Eligible Justice Assistance Grant Projects and Present it to the Mayor to Recommend a Project to Present to the Council for Public Comment at the April 28, 2009 Council Meeting in Advance of the May 17, 2009 Filing Deadline.

Councilmember King moved to approve the motion. Councilmember Decker seconded the motion.

Councilmember King explained that the City plans to apply for a \$26,000 Justice Assistance Grant. However, the selection of projects must go through a process of being reviewed, opened for public comment, and approved by the Council before it can be placed on the grant application. He said the best option is to have the Public Safety Committee work on a recommended list of projects. He said this is a bit unusual but necessary due to the deadlines. He said when the Mayor narrows down the options, the item will come back to Council for a vote. City Administrator Morrison confirmed that the grant requires the appropriate body to pick a project within 30 days of the deadline, and allow public comment prior to submittal. Some possible projects include e-ticketing, dual monitors for court clerks, etc. Public Safety Committee members elected to schedule a special committee meeting on Friday, April 17, 2009 at 5:00 p.m. to review project options.

Motion approved 7 – 0.

8:12:36

VIII. FULL COUNCIL ISSUES:

- A. **AB09-64 – Ordinance 1317** – An Ordinance of the City of Bonney Lake, Pierce County, Washington, Changing the Zoning Designation on Parcels 5640001864, 5640001865, 5640001866, and 5640001867 from Single Family Residential (R-1) to High Density Residential (R-3) Under the Name of Hulburt Under the File Number PLN-2009-01152 through a Site-Specific Rezone (BLMC 18.52.030).

Assistant City Attorney Haggard described how a quasi-judicial action differs from legislative actions of the Council. She said Councilmembers must disclose any ex parte contacts with opponents or proponents, and recuse themselves if they have a conflict of interest. She said the Council must base its decision on evidence in the Hearing Examiner's record only. She reminded the Council that while citizens have the opportunity to speak for one minute on this and any ordinance, their comments should not become a debate, and cannot be used as testimony or evidence related to the Council's decision on the proposed ordinance.

Councilmember Decker moved to approve Ordinance 1317. Councilmember Hamilton seconded the motion.

Councilmember Rackley moved to table the item to a Workshop. Councilmember Decker seconded the motion.

**Motion failed 2 – 5.
Councilmembers Bowen,
Carter, King and Hamilton,
and Deputy Mayor
Swatman voted no.**

Keri Hyytinen, 9306 185th Avenue Pl E, Bonney Lake, is new to the area and lives in Angeline Heights. She said seeing the Council convene has rejuvenated her hopes. She said she worked on a petition where 21 of 25 homeowners signed against rezoning the Hulburt property. She said they have concerns about a large multi-family building and issues like traffic.

Steve Boerstler, 9301 185th Ave Pl E, Bonney Lake, said the homeowners had a verbal agreement with the owner though the Hearing Examiner evidence says there is no covenant. He said he and others did not attend the Hearing Examiner meeting because they believed they would work out an agreement ahead of time. He said a representative from the City was involved, and citizens assumed there was an agreement, but it turns out there is no binding agreement.

Community Development Director Vodopich confirmed for the Council that no developer's agreement currently exists between the developer and the City. Deputy Mayor Swatman asked about the agreements mentioned by citizens. Assistant City Attorney Haggard said any agreements between private parties are not relevant to the Council's decision whether to approve the rezone. The Council must approve or deny based on its code and Comprehensive Plan, not to enforce agreements between private parties. She noted that the Comprehensive Plan was amended in December 2008 and there were no appeals during the 60-day period following, and this rezone makes the property consistent with the Comprehensive Plan.

**Motion approved 6 – 0 – 1.
Councilmember Rackley
abstained from voting.**

At 8:31 p.m., Councilmember Bowen moved for a five minute recess. Councilmember Decker seconded the motion.

Motion approved 7 – 0.

- B. **AB09-61 – Ordinance 1316** – An Ordinance of the City Council of the City of Bonney Lake, Pierce County, Washington, Amending Chapter 19.04.015 of the Bonney Lake Municipal Code Relating to a Temporary Traffic Impact Fee Rebate Program.

Councilmember Rackley moved to approve Ordinance 1316. Councilmember Decker seconded the motion.

Councilmember Bowen moved to amend Section 2. Eastown Zone to read “sales and use tax revenue of at least fifteen thousand dollars (\$15,000) per year” rather than \$25,000. Councilmember Hamilton seconded the motion.

Councilmember Hamilton said the proposed ordinance helps level the playing field, and supports the amendment. Deputy Mayor Swatman said the City wants Eastown development to include big box stores, restaurants, and grocery stores, not small stores and strip malls. Councilmember Rackley noted that lowering the tax threshold to \$15,000 still means the business must have \$2 million per year in sales.

**Motion to amend passed 4 – 3.
Deputy Mayor Swatman and
Councilmembers Carter and
King voted no.**

**Amended main motion
approved 6 – 1.
Councilmember King
voted no.**

- C. **AB09-62 – Ordinance D09-62** – An Ordinance of the City Council of the City of Bonney Lake, Pierce County, Washington, Adding a New Chapter 3.70 to the Bonney Lake Municipal Code Relating to Temporary Incentives to Encourage Business Investment in Commercial Building.

Councilmember King moved to approve Ordinance D09-62. Councilmember Rackley seconded the motion.

Councilmembers discussed the definition of ‘new commercial building’ in the ordinance, noting that the city’s Commercial zone allows some multi-family residential uses as well as retail commercial business.

Councilmember Rackley moved to table Ordinance D09-62 to the April 21, 2009 Workshop for action. Councilmember Bowen seconded the motion.

Motion to table approved 7 – 0.

- D. **AB09-69 – Ordinance 1318** – An Ordinance of the City Council of the City of Bonney Lake, Pierce County, Washington, Amending Chapter 19.04 of the Bonney Lake Municipal Code and the Corresponding Portions of Ordinance Nos. 1230, 1123, and 984 Relating to Transportation Impact Fees.

Councilmember Rackley moved to approve Ordinance 1318. Councilmember Decker seconded the motion.

Councilmembers discussed the proposed ordinance's incentives for health care providers who serve at least 51% or more Medicare patients. City Administrator Morrison confirmed that the ordinance applies to health care providers already operating in the city and any who move their practice to the city in the future.

Motion approved 7 – 0.

- E. **AB09-59 – Ordinance 1315** – An Ordinance of the City of Bonney Lake, Pierce County, Washington, Amending Section 5.17.010 of the Bonney Lake Municipal Code and Section 1 of Ordinance No. 1256 Relating to the Licensing and Regulation of Nightclub Establishments.

Councilmember Decker moved to approve Ordinance 1315. Councilmember Hamilton seconded the motion.

Councilmember Decker moved to amend Section 1. B. 1. to “at any time between the hours of 6:00 a.m. and 2:00 a.m. liquor is sold to the public.” Councilmember Bowen seconded the motion.

City Administrator Morrison reminded the Council that the proposed ordinance needed an amendment to correct a typographical error, to change the time in this section from 12:00 p.m. to 12:00 a.m. (midnight). Councilmember Decker said the ordinance should include businesses who sell alcohol during any hours possible under State law, not for just two hours as proposed in this amendment.

Councilmembers discussed the ordinance's intent to cover any business that serves alcohol at any time between 10:00 p.m. and midnight. The Council also discussed how the proposed ordinance strikes the requirement that 51% of sales revenue come from liquor sales in order to be defined as a night club. Councilmembers said this data is very difficult to obtain from the Liquor Control Board and is not necessary for the definition of a night club.

Councilmember Bowen moved to table Ordinance 1315 to a Workshop.
Councilmember Rackley seconded the motion.

**Motion to table failed 3 – 4.
Deputy Mayor Swatman and
Councilmembers Carter,
King and Hamilton voted no.**

Councilmember Decker restated the full text of his motion to amend the ordinance language for the Council.

**Motion to amend failed 1 – 6.
Deputy Mayor Swatman and
Councilmembers Bowen,
Carter, Hamilton, King, and
Rackley voted no.**

**Councilmember Rackley moved to amend the language in Section 1. B. 1. from
“12:00 p.m.” to “12:00 a.m.” Councilmember King seconded the motion.**

Councilmember King summarized the proposed ordinance, and how it defines a night club as a place that sells liquor between the hours of 10:00 p.m. and midnight, has an assembly space such as a dance floor, and has an occupancy of 30 or more people. He noted that the ordinance excludes establishments like fraternal organizations that have private membership and are not open to the public.

**Motion to amend Ordinance
1315 approved 7 – 0.**

**Amended main motion
approved 7 - 0.**

IX. EXECUTIVE SESSION: None.

9:14:10

X. ADJOURNMENT:

At 9:14 p.m. Councilmember Rackley moved to adjourn the meeting. Councilmember Decker seconded the motion.

Councilmember King noted that he would not be able to attend the April 21, 2009 Workshop due to an out-of-state work commitment.

Motion approved 7 – 0.

Harwood Edvalson, CMC
City Clerk

Neil Johnson
Mayor

Items submitted to the Council Meeting of April 17, 2009: None.

**ACCOUNTS PAYABLE AND
UTILITY REFUND CHECKS/VOUCHERS**

4/28/2009

Accounts Payable checks/vouchers #55200 thru 55289 (including wire transfer #'s 185843, 3172009, 4092009, 4556152 & 9012008) in the amount of \$632,770.94.

Accounts Payable checks/vouchers #55290 thru 55340 (including wire transfer #'s 244936, 244937 & 4152009) in the amount of \$210,091.24.

PAYROLL CERTIFICATION

Payroll for April 1-15, 2009 for checks **28146-28172** including Direct Deposits and Electronic Transfers in the amount of: **\$ 380,132.58.**

Correction for Payroll March 16-31, 2009 Check ranges 28112-28145 for the amount of \$547,884.43

**City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form**

<u>Department/Staff Contact:</u> Don Morrison	<u>Council/Wrkshp Mtg Date:</u> April 28, 2009	<u>Agenda Bill Number:</u> AB09-74
<u>Ordinance Number:</u> D09-74	<u>Resolution Number:</u>	<u>Councilmember Sponsor:</u> Deputy Mayor Swatman
<u>BUDGET INFORMATON</u>		
<u>2008 Budget Amount</u>	<u>Required Expenditure</u>	<u>Impact</u>
		<u>Remaining Balance</u>
<u>Explanation:</u> NA		
<u>Agenda Subject:</u> Naming Policy for Parks and City Facilities		

Administrative Recommendation: Discuss and determine further Council action.

Background Summary: The City Council has adopted a naming policy for streets, but not for parks or other City facilities. An orderly procedure and reasonable criteria are needed to provide guidance in naming City facilities. This will help avoid confusion, provide greater equity, prevent undue favoritism, guard against rash or emotional actions, and promote the general welfare of the community. Is recommended that the Council formally establish a facility naming policy.

This item was originally discussed in September 2008. It was considered again by Council as a Council resolution at the February 3, 2009 Council workshop, and referred to an ad-hoc committee for further consideration. The City Council reviewed the proposed ordinance at the 4/21 workshop and agreed that it should be brought forward for action.

<u>Council Committee Dates:</u>	<u>Commission Dates:</u>	<u>Board/Hearing Examiner Dates:</u>
Finance Committee:	Planning Commission:	Park Board:
Public Safety Committee:	Civil Service Commission:	Hearing Examiner:
Community Development & Planning Committee:		
Council Workshops: 9/2/08, 9/16/08 2/3/09, 4/21/09		

Council Action:

Council Call for Hearing:	Council Hearings Date:
Council Referred Back to:	Workshop: _____ Committee: _____
Council Tabled Until:	Council Meeting Dates: 04/28/09

Signatures:

Dir. Authorization 	Mayor	Date City Attorney Reviewed:
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ORDINANCE NO. D09-74

AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, ADDING A NEW CHAPTER 12.10 TO THE BONNEY LAKE MUNICIPAL CODE, ESTABLISHING A NAMING POLICY FOR CITY PARKS, OPEN SPACES AND OTHER MUNICIPAL FACILITIES.

WHEREAS, the City Council finds that in order to avoid confusion, develop consistency in the naming of city facilities, and to protect and support the general welfare of the community, it is in the best interest of the City to formally establish a facility naming policy;

WHEREAS, the City Council recognizes the desires of donors to request a specific name for their donations as significantly different than naming City owned assets;

WHEREAS, the City Council further believes that there should be a mechanism to acknowledge substantial contributions toward capital improvements or services through the naming of spaces or areas within City owned facilities subject to Council approval.

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

Section 1. A new chapter 12.10 is added to Bonney Lake Municipal Code Title 12 to read as follows:

Chapter 12.10 Park, Open Space, and Municipal Facility Naming Policy

12.10.10 Definitions

As used in this chapter:

- A. "Naming" for the purpose of this chapter means the intention of permanently identifying a human created object, open space, waterway, or other feature occurring in the natural environment.
- B. "Deceased" means person or persons who have been dead for more than two years.
- C. "Elected official" means any person who acquires local, regional, or national office through an election.
- D. "Family member or relative" means any person having a current or past familial relationship including natural born, adopted, or legally connected persons.
- E. "Ancillary Feature" means individual exterior or interior features and or facilities within the larger park or facility, including but not limited to, meeting rooms, landscaped grounds, flower gardens, sculptures, picnic shelters, play lots, ball fields, and other similar items.

12.10.20 **Park and Open Space Naming Policies.** Parks, open spaces, waterways, and other elements of the natural environment shall fall under the policies outlined in this section.

A. **Council to Name City Parks.** The City Council shall designate the names of public parks and recreation facilities. The City Council will not make its selection until after receiving written recommendations from the Bonney Lake Parks Board. Such recommendations shall state how the proposed name(s) meet the naming criteria. If a contest or competition is held to help determine the name of a park or recreation facility, the Parks Board shall establish guidelines and rules for the contest. No City funds shall be used for any contest prizes.

B. **Naming Criteria.** The naming of public parks and recreation facilities shall be made upon one or more of the following criteria:

- i. The proposed name fits a neighborhood or geographical identification (e.g. Lake Bonney);
- ii. The proposed name fits a natural or geological feature (e. g. Fennel Creek);
- iii. The proposed name is a Bonney Lake historical figure or of local cultural or historical significance (e.g. Naches);
- iv. The proposed name is for a deceased individual who has made a significant land and/or monetary contribution to the park system that is commensurate with the value of the recognition.
- v. The proposed name is to recognize a contribution made "in memoriam" for the donor or entity, when the name has been stipulated as a condition of the donation.
- vi. The proposed name is for a civic group or corporation whose mission statement is compatible with City goals and objectives and that has made a significant land and/or monetary contribution to the park system;
- vii. The proposed name is for a City employee who has made extraordinary and significant contributions to the park system, and held a position with the City for at least twelve (12) years.
- viii. A proposed name using the name of an elected official, family members, or relatives shall only be considered under extraordinary circumstances and shall require six members of the city council voting in the affirmative.

C. **Naming of Ancillary Features.** 1. Generally. A park's or open space's individual ancillary features and/or facilities may have names designated other than that of the entire park or open space. These names shall be subject to same general criteria designated in section (B), but may be more generously applied commensurate with the value of the feature so named.

2. Naming through Fundraisers. The City Council may authorize a feature of a park or open space to be developed or established through a fundraising effort that

may include naming. It is not the intent of this policy to prohibit such fundraising activities that involve naming as part of the fundraising effort. Examples may include: a “named bricks” fundraiser to pave a path; “named seats” to fund raise for a bleacher; “named bushes” to fund raise for a rose garden, etc.

D. **Naming of Donated Property – Conditions.** The naming of donated public park property, facility, or ancillary feature should ordinarily be with the intent for it to be a perpetual recognition of the individual, family, corporation, foundation, association or other entity for which the donated facility has been named. The naming should be commensurate with the value of the donation. The renaming of a donated facility is generally discouraged. Rescinding the name of a donated facility shall occur only under extraordinary circumstances and after thorough study and the receipt of written recommendations from the Mayor and the Park Board. The City Council may rescind the naming of a facility donated after the effective date of this Ordinance only under the following circumstances:

- i) The individual, family, corporation, foundation, association or other entity for which the facility has been named has been convicted of a felony, a crime involving moral turpitude, or participated in any other illegal or disreputable behavior which would bring discredit to the City and do substantial harm to the reputation and mission and vision of the City and the facility, or
- ii) The useful life of the facility has expired and the facility must be replaced or substantially renovated, or
- iii) The specific agreed upon period of time for the retention of the name has expired, or
- iv) The donor, or their legally authorized representative, has requested or consented to a renaming action by the City.

E. **Signage.** Following selection of a name, the Department shall identify the specific facility with appropriate signage specifying the name.

12.10.30 Naming of Other City Facilities. Other City facilities, such as city hall, police stations, annexes, maintenance buildings, community centers, senior centers, and related man made structures shall fall under the policies outlined in this section. As a general policy, public building names shall be named to reflect the functionality of the facility by simply stating its purpose without further description (example: Bonney Lake Senior Center, Bonney Lake Performing Arts Center, Public Safety Building).

A. **Council to Name City Facilities.** The City Council shall designate the names of city facilities, including ancillary features. The City Council will make its selection only after receiving a written recommendation from the Mayor. Such recommendations shall state how the proposed name(s) meet the naming criteria outlined below. If a contest or competition is held to help determine the name of a facility, the Mayor shall establish guidelines and rules for the contest. No City

funds shall be used for any contest prizes.

B. Naming Criteria. The naming of general City facilities shall be made upon one or more of the following criteria:

- i. The building name simply reflects the functionality of the facility without further description;
- ii. The proposed name fits a neighborhood or geographical identification (e.g. Lake Bonney);
- iii. The proposed name is for an individual deceased who has made a significant financial contribution to the City that is commensurate with the value of the recognition;
- iv. The proposed name is to recognize a contribution made "in memoriam" for an individual, when the name has been stipulated as a condition of a significant donation.

C. Naming of Ancillary Features. 1. Generally. A facility's significant individual interior or exterior features and/or rooms may have names designated other than that of the general facility. These names shall be subject to same general criteria designated in section (B), but may be lessened or modified to include living persons and commensurate with the value of the ancillary feature so named.

2. Naming through Fundraisers. The City Council may authorize a feature of a building to be developed or established through a fundraising effort that may include naming. It is not the intent of this policy to prohibit such fundraising activities that involve naming as part of the fundraising effort. Examples may include: "named bricks" to fundraise for a floor, path, or sidewalk; "named bushes" to fundraise for a garden, etc.

12.10.40 Name Plates for Minor Ancillary Features. Nothing in this policy shall be construed to prohibit the Mayor from fixing a name plate or providing similar recognition to a minor feature in a park or other City facility. Such recognition shall be made only for those persons who have made a significant contribution to the City or otherwise donated the feature to the City. Examples include trees, bushes, flower beds, park benches, kiosks, play toys, water fountains, and similar items.

12.10.50 Administration of Policy. The City shall provide a good faith, discretionary administration of this ordinance for the benefit of the public in general, but the City makes no promise for the specific application of any part or the whole of this ordinance to any individual. This ordinance is not intended to provide an enforceable right, expectation, or property interest to any third party providing donations or bequests to the City.

Section 2. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the

remaining portion of this ordinance and the same shall remain in full force effect.

Section 3. This Ordinance shall take effect thirty (30) days after its passage, subject to prior approval by the Mayor and prior publication for five days as required by law.

PASSED BY THE CITY COUNCIL this _____ day of _____, 2009.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney

**City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form**

Department/Staff Contact: Gary Leaf, Comm. Svcs. Dir.	Council/Wrkshp Mtg Date: April 28, 2009	Agenda Bill Number: AB09-56
Ordinance Number:	Resolution Number: 1931	Councilmember Sponsor:

BUDGET INFORMATON			
2009 Budget Amount	Required Expenditure	Impact	Remaining Balance
\$96,000.00	\$71,850.00	\$71,850.00	\$24,150.00

Explanation:

This contract amount will be encumbered. No expenditure at this time.

Agenda Subject:

A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing a contract with Feet First for the pedestrian portion of the educational component for the Safe Routes to School project.

Administrative Recommendation: Approve

Background Summary:

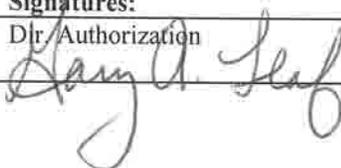
Last year the City executed a grant agreement with WSDOT to construct pedestrian facilities (i.e., trails and sidewalks) that will enable children to safely walk to local schools in the Bonney Lake area. This project will reduce traffic congestion, air pollution, and transportation expense borne by school district taxpayers. The project was estimated to cost \$2.5 million at the time of our grant application, and grant funds will contribute approximately \$1.5 million. Feet First will work on the pedestrian portion of the educational component of this grant. Grant funds will reimburse 100% of the educational component (i.e., design and construction reimburse less than 100% of costs). Community Services and Public Works are working collaboratively on managing this project. Some of these expenditures will occur in 2009 while the rest will be in 2010. Walk route plans to each school are included in this contract.

Council Committee Dates:	Commission Dates:	Board/Hearing Examiner Dates:
Finance Committee:	Planning Commission:	Park Board:
Public Safety Committee:	Civil Service Commission:	Hearing Examiner:
Community Development & Planning Committee: 4/20/09		
Council Workshops:		

Council Action:

Council Call for Hearing:	Council Hearings Date:
Council Referred Back to:	Workshop: _____ Committee:
Council Tabled Until:	Council Meeting Dates:

Signatures:

Dir. Authorization 	Mayor 	Date City Attorney Reviewed: Standard City Contract
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COMMUNITY DEVELOPMENT COMMITTEE

Action Item #3

DATE: April 20, 2009

ORIGINATOR: Gary Leaf

TITLE: Community Services Director

SUBJECT: A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing a contract with Feet First for the pedestrian portion of the educational component for the Safe Routes to School project. Last year the City executed a grant agreement with WSDOT to construct pedestrian facilities (i.e., trails and sidewalks) that will enable children to safely walk to local schools in the Bonney Lake area. This project will reduce traffic congestion, air pollution, and transportation expense borne by school district taxpayers. The project was estimated to cost \$2.5 million at the time of our grant application, and grant funds will contribute approximately \$1.5 million. Feet First will work on the pedestrian portion of the educational component of this grant. Grant funds will reimburse 100% of the educational component (i.e., design and construction reimburse less than 100% of costs). Community Services and Public Works are working collaboratively on managing this project. Some of these expenditures will occur in 2009 while the rest will be in 2010. Walk route plans to each school are included in this contract.

RESOLUTION: 1931

REQUEST OR RECOMMENDATION BY ORIGINATOR: Approve

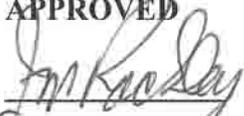
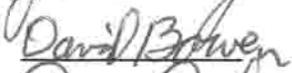
ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE
FINANCE DIRECTOR _____
CITY ATTORNEY _____

<u>2009 Budget Amount</u>	<u>Current Balance</u>	<u>Required Expenditure</u>	<u>Remaining Balance</u>
\$ 96,000.00	\$ 96,000.00	\$ 71, 850.00	\$ 24,150.00

Explanation:

This contract amount will be encumbered. No expenditure at this time.

COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL

	DATE	APPROVED	DISAPPROVED
James Rackley, Chairman	4-20-09		_____
David Bowen	4-20-09		_____
Dan Decker	4-20-09		_____

COMMITTEE COMMENTS: _____

COMMITTEE'S RECOMMENDATION TO FORWARD TO:
CITY CLERK
CITY ATTORNEY

Please schedule for City Council Meeting date of: April 28, 2009

Consent Agenda: Yes No

RESOLUTION NO. 1931

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH
FEET FIRST TO PROVIDE EDUCATIONAL SERVICES
PURSUANT TO THE SAFE ROUTES TO SCHOOL PROJECT**

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign a contract with Feet First pursuant to its proposal to the City of Bonney Lake, attached hereto and incorporated herein by this reference.

PASSED by the City Council this 28th day of April, 2009.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

James Dionne, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 28th day of April, 2009, by and between the City of Bonney Lake ("City") and Feet First ("Consultant").

The parties hereby agree as follows:

- 1. Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in Exhibit A attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.
- 2. Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.
- 3. Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in Exhibit B; *provided*, that payment for work within the Scope of Work (Exhibit A) shall not exceed the fee/hour estimate set out in Exhibit B without written amendment to this Agreement, agreed to and signed by both parties.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its sub consultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under this Agreement as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees of Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The consultant shall include a provision substantially the same as this

section in any and all contracts with sub consultants performing work required of the contractor under this contract. The consultant agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the consultant failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

8. **Term.** This Agreement shall become effective upon the day of its execution by both parties, and shall terminate upon completion of the work and delivery of all materials described in Exhibit A.

9. **Termination by City.** The City may terminate this Agreement at any time upon not less than ten (10) days written notice to Consultant, subject to the City's obligation to pay Consultant in accordance with subsections A and B below.

A. In the event this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost of work complete at the time of termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized Extra Work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the termination notice. If the accumulated payment(s) made to the Consultant prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Consultant shall immediately reimburse the City for any excess paid.

B. In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable by the City at the time of termination, the cost to the City of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; *provided*, that any such use by the

City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.

12. **Indemnification / Hold Harmless**

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

13. **Subletting or Assigning.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

14. **Entire Agreement.** This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

15. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

16. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

17. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE

CONSULTANT

By: _____
Neil Johnson Jr., Mayor

By: _____

Attachments:

Exhibit A: Scope of Work/Deliverables/Fee
Exhibit B: Rates

EXHIBIT A: SCOPE OF WORK

The Consultant shall perform the following services as directed by the City:

EXHIBIT B: RATES



PROMOTING WALKABLE COMMUNITIES

4/10/2009

Element	Description	Amount	Outcome
STAFF			
Program Development and Consultation			
<p><i>GOAL: To help the City of Bonney Lake and its 7 public schools increase the prevalence of active school commuting and maximize the impact of their SR2S grant program.</i></p>	<p><i>Feet First proposes to: 1) take an active role in program development, 2) create safe walk route maps for 7 schools, 3) design and implement key pedestrian education and encouragement components, 4) teach local champions to replicate and adapt SR2S activity, 5) provide ongoing support for the timely completion of grant deliverables, and 6) conduct a thorough evaluation of the program impact.</i></p>		
	<p>Feet First staff hours for program development and consultation. Travel time will be billed, travel expenses included. Estimated time at 5 hrs/week for 15 months.</p>	<p>\$19,500</p>	<p>Communication with school administration, city officials, public health, Bicycle Alliance; meetings, research and planning, ongoing assistance to school-based teams; budget coordination, contract logistics with City of Bonney Lake.</p>
SUBTOTAL		\$19,500	

TRAINING AND COORDINATION

Element	Description	Amount	Outcome
School-based teams	<p>In conjunction with the Bicycle Alliance of Washington, conduct a 1-day training for City, School District, and other SR2S team members based on the National Center for SR2S training. Identify school-based champions. Includes food and supplies. Does not include substitute costs if conducted during school hours. (\$4,000 cost total)</p>	\$2,000	1-Day SR2S Training
Pre-event coordination	<p>Plan and conduct three 2-hour meetings with school-based SR2S teams, including Health Techs, parent volunteers, public health, public safety and/or other interested parties to plan school-based activity. Includes materials and meeting refreshments</p> <p>Additional budget should include costs for childcare, room fees and substitute teacher hours. Requires local contact to set up meeting space and other logistics.</p>	\$1,950	Three 2-hour meetings to coordinate and prepare school teams
Staff meeting presentation to school district body			

	One 30 minute staff presentation in the fall to discuss history of SR2S, program elements, timeframe, and evaluation requirements. Would work best at large assembly of teachers, ie an inservice training day. Most advantageous time to be scheduled with assistance of City and School District staff.	\$200	Presentation to raise awareness and interest of SR2S grant program
SUBTOTAL		\$4,150	
<i>EDUCATION AND ENCOURAGEMENT FOR FAMILIES</i>			
Element	Description	Amount	Outcome
School Walking Audits	Hold two Walking Audits and provide reports, which include recommendations for structural improvements and program direction. Create a training tool to be used by the city for additional walking audits. The City will work with Feet First to identify the two walking audits sites. School-based teams will replicate as desired. \$2,500 each school.	\$5,000	Two Feet First Walking Audits and Reports with relative pictures and recommendations.
SUBTOTAL		\$5,000	
<i>EDUCATION AND ENCOURAGEMENT FOR STUDENTS</i>			
Safety Education Curriculum			

	Conduct pedestrian safety education walking field trips at two elementary schools. The walking field trips are a mobile tour targeting third and/or fourth grades and parent volunteers. School arrangements will be made with Dave Wells and the Health Tech at participating schools. \$1,200 each.	\$2,400	Pedestrian Safety Training in 2 Elementary Schools
Walking incentive projects	On-call support for school-based teams with materials and information for menu of encouragement campaigns. Note: Additional program budget is required for access by school-based champions.	\$3,900	Walking incentive projects may include: Iwalk events in October, SR2S campaigns in May, Pedometer Challenges, Art/logo projects, High School / Middle School Ambassador programs, Multi-media Yodio projects, Idle-free Campaigns. Target: Two SR2S projects per school over course of grant.
SUBTOTAL		\$6,300	
Element	Description	Amount	
<i>PRINT MATERIAL</i>			
Safe Walk Route Map	Develop school walk route map at 7 schools (listed under 'research and planning). Design walk route map using FF in-house mapping technology.	\$14,000	Seven 8.5X11" color pdf of school walking route maps with safety info on flip side.
	Print and distribute maps: full color, double-sided with safety information included Q: 5,400 (500 per elementary, 700 per middle, and 1,500 per high)	\$2,500	5,400 printed, full color maps
Parents Choices Brochure			

	Develop parent education and encouragement brochure and distribute participating schools. Q: 3,000 (English only)	\$3,000	3,000 Parent Education Brochures
Walking school bus backpacks and incentives	Printed material and prizes to incorporate into school-based campaigns. Contents to be determined according to the preference and choices of school-based teams. Includes leader backpacks, pedometers, first aid supplies, safety vests, pedestrian flag and/or toe tokens. (\$500 per school at 7 schools)	\$3,500	Materials to assist in incentive programs and other school-based projects
Walk-to-school lollipop signs	Hand-held diamond-shaped signs featuring student artwork from art contest (Q= 2,000)	\$2,400	2,000 lollipop signs
SUBTOTAL		\$25,400	

Element	Description	Amount
<i>EVALUATION</i>		

	<p>Parent Survey of attitudes regarding walking and cycling to school (spring 09). Distributed to all participating school families via backpack mail, collected in schools' front office and gathered/analyzed and reported by Feet First. Survey is a standard industry tool developed by the National Center for SR2S.</p>	\$4,500	Qualitative measurement and summary report
	<p>In-class transportation surveys conducted at each school to count numbers of children walking or cycling to school. 4 survey measurement dates. Each measurement requires classroom teachers to conduct survey with attendance 2 times in designated week.</p>	\$1,000	Four measurements of student travel modes
	<p>Report of study findings and disseminate to school community</p>	\$1,000	Report of evaluation findings
SUBTOTAL		\$6,500	
Element	Description	Amount	
<i>ELECTRONIC MEDIA</i>			
	<p>Develop intereactive media to attact students/teachers to learn more about walking safety, events, program information.</p>	\$5,000	Develop webpage, blog and interactive map for Safe Routes to School program at seven schools.
SUBTOTAL		\$5,000	
TOTAL		\$71,850	

**City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form**

Department/Staff Contact: Gary Leaf, Comm. Svcs. Dir.	Council/Wrkshp Mtg Date: April 28, 2009	Agenda Bill Number: AB09-57
Ordinance Number:	Resolution Number: 1932	Councilmember Sponsor:
BUDGET INFORMATON		
2009 Budget Amount \$96,000.00	Required Expenditure \$52,200.00	Impact \$52,200.00
		Remaining Balance \$43,800.00
Explanation: This contract amount will be encumbered. No expenditure at this time.		
Agenda Subject: A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing a contract with the Bicycle Alliance of Washington for the bicycle portion of the educational component for the Safe Routes to School project.		

Administrative Recommendation: Approve

Background Summary: Last year the City executed a grant agreement with WSDOT to construct pedestrian facilities (i.e., trails and sidewalks) that will enable children to safely walk to local schools in the Bonney Lake area. This project will reduce traffic congestion, air pollution, and transportation expense borne by school district taxpayers. The project was estimated to cost \$2.5 million at the time of our grant application, and grant funds will contribute approximately \$1.5 million. The Bicycle Alliance of Washington will work on the bicycle portion of the educational component of this grant. Grant funds will reimburse 100% of the educational component (i.e., design and construction reimburse less than 100% of costs). Community Services and Public Works are working collaboratively on managing this project. Some of these expenditures will occur in 2009 while the rest will be in 2010.

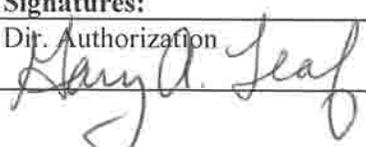
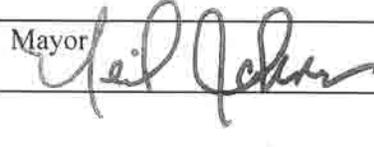
Attachments: Resolution 1932, Contract, and WSDOT Grant Agreement

Council Committee Dates:	Commission Dates:	Board/Hearing Examiner Dates:
Finance Committee:	Planning Commission:	Park Board:
Public Safety Committee:	Civil Service Commission:	Hearing Examiner:
Community Development & Planning Committee: 4/20/09		
Council Workshops:		

Council Action:

Council Call for Hearing:	Council Hearings Date:
Council Referred Back to:	Workshop: Committee:
Council Tabled Until:	Council Meeting Dates: April 28, 2009

Signatures:

Dir. Authorization 	Mayor 	Date City Attorney Reviewed: Standard City Contract
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Action Item #1

COMMUNITY DEVELOPMENT COMMITTEE

DATE: April 20, 2009

ORIGINATOR: Gary Leaf

TITLE: Community Services Director

SUBJECT: A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing a contract with the Bicycle Alliance of Washington for the bicycle portion of the educational component for the Safe Routes to School project. Last year the City executed a grant agreement with WSDOT to construct pedestrian facilities (i.e., trails and sidewalks) that will enable children to safely walk to local schools in the Bonney Lake area. This project will reduce traffic congestion, air pollution, and transportation expense borne by school district taxpayers. The project was estimated to cost \$2.5 million at the time of our grant application, and grant funds will contribute approximately \$1.5 million. The Bicycle Alliance of Washington will work on the bicycle portion of the educational component of this grant. Grant funds will reimburse 100% of the educational component (i.e., design and construction reimburse less than 100% of costs). Community Services and Public Works are working collaboratively on managing this project. Some of these expenditures will occur in 2009 while the rest will be in 2010.

RESOLUTION: 1932

REQUEST OR RECOMMENDATION BY ORIGINATOR: Approve

ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE
FINANCE DIRECTOR _____
CITY ATTORNEY _____

<u>2009 Budget Amount</u>	<u>Current Balance</u>	<u>Required Expenditure</u>	<u>Remaining Balance</u>
\$ 96,000.00	\$ 96,000.00	\$ 52,200.00	\$ 43,800.00

Explanation:

This contract amount will be encumbered. No expenditure at this time.

COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL

	<u>DATE</u>	<u>APPROVED</u>	<u>DISAPPROVED</u>
James Rackley, Chairman	<u>4-20-09</u>	<u>Jim Rackley</u>	_____
David Bowen	<u>4-20-09</u>	<u>David Bowen</u>	_____
Dan Decker	<u>4-20-09</u>	<u>Dan Decker</u>	_____

COMMITTEE COMMENTS: _____

COMMITTEE'S RECOMMENDATION TO FORWARD TO:
CITY CLERK
CITY ATTORNEY

Please schedule for City Council Meeting date of: April 28, 2009

Consent Agenda: Yes No

RESOLUTION NO. 1932

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH
THE BICYCLE ALLIANCE OF WASHINGTON TO PROVIDE
EDUCATIONAL SERVICES PURSUANT TO THE SAFE ROUTES
TO SCHOOL PROJECT**

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign a contract with the Bicycle Alliance of Washington pursuant to its proposal to the City of Bonney Lake, attached hereto and incorporated herein by this reference.

PASSED by the City Council this 28th day of April, 2009.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

James Dionne, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 28th day of April, 2009, by and between the City of Bonney Lake (" City") and Bicycle Alliance of Washington(" Consultant").

The parties hereby agree as follows:

- 1. Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in Exhibit A attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.
- 2. Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.
- 3. Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in Exhibit B; *provided*, that payment for work within the Scope of Work (Exhibit A) shall not exceed the fee/hour estimate set out in Exhibit B without written amendment to this Agreement, agreed to and signed by both parties.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its sub consultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under this Agreement as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees of Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The consultant shall include a provision substantially the same as this

section in any and all contracts with sub consultants performing work required of the contractor under this contract. The consultant agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the consultant failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

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C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; *provided*, that any such use by the

City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.

12. **Indemnification / Hold Harmless**

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

13. **Subletting or Assigning.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

14. **Entire Agreement.** This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

15. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

16. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

17. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE

CONSULTANT

By: _____
Neil Johnson Jr., Mayor

By: _____

Attachments:

Exhibit A: Scope of Work/Deliverables/Fee
Exhibit B: Rates

EXHIBIT A: SCOPE OF WORK

The Consultant shall perform the following services as directed by the City:

EXHIBIT B: RATES

City of Bonney Lake Safe Routes to School Program (SR2S)

Bicycle Alliance of Washington Proposed Tasks for Education and Encouragement

GOAL: Assist the City of Bonney Lake and the Sumner School District and 7 of its public schools to increase the participation in bicycling to school to maximize the impact of their SR2S grant program.

The Bicycle Alliance proposes to:

- 1) Participate in program development, evaluation, coordination, and support for the timely completion of grant deliverables
- 2) Co-conduct 1-day training for City, School District, and other SR2S team members based on the National Center for SR2S training. Identify school based champions.
- 3) Conduct assemblies at the 7 schools to teach bicycle safety and inspire children to bicycle
- 4) Conduct 3 bikeability audits while teaching local stakeholders how to conduct audits
- 5) Teach and assist with bike trains at 3 schools while teaching local stakeholders how to plan and implement bike trains
- 6) Hold 3 bike rodeos at schools and/or community events
- 7) Provide 3 bike skills trainings for teachers and others to implement in PE class
- 8) In cooperation with city and school district staff, design and print bicycling education and encouragement materials, including brochures, posters, and handouts. Provide incentives.

This proposal does not include the purchase or providing of bicycles and/or helmets by the Bicycle Alliance of Washington. Nor does it include the costs associated with providing substitute teachers during school hours for any event or training discussed in this proposal.

A description and cost for each task is provided below.

Task 3: Conduct assemblies

Conduct 1 assembly approximately ½ hour in length each at the 7 schools to teach bicycle safety and inspire children to bicycle. The assemblies would be conducted by Willie Weir, dependent on availability. He is a world traveler, commentator, and author who frequently conducts highly successful school assemblies. The assemblies can be tailored to meet the needs of the schools.

Cost: \$4,200

Timeline: Spring 2010

Task 4: Conduct 3 bikeability audits

The Bicycle Alliance will work with school, city and other stakeholders to identify the 3 schools where the audits will be conducted. Bicycle Alliance staff will compile the audit tool and other necessary documents, and lead the audit. Bicycle Alliance staff will also compile the audit comments and prepare a final report, the findings of which could be presented at a stakeholder meeting if requested. While the audits are being conducted, appropriate stakeholders will be trained on how to conduct audits. Stakeholders can then conduct audits at other schools as desirable.

Cost: \$4,500

Timeline: Spring 2010

Task 7: Provide 3 bike skills trainings for teachers and others

The classes will be taught by League of American Bicyclists certified trainers. The purpose of the trainings are to "train the trainers" so that teachers and interested public safety staff can teach basic bicycle riding skills to students. Cost includes required curriculum materials for students.

Cost:

\$5,700

Timeline: Fall 2009

Task 8: Design and print bicycling education and encouragement materials.

In cooperation with city and school district staff, design and print bicycling education and encouragement materials, including brochures, posters, and handouts. In most cases, existing materials or modified materials will be printed. In certain cases, such as for school related events, new materials may be necessary. Posters and/or poster contests are also fun ways for students to learn and be encouraged to participate. Incentives, such as blinky lights, will be purchased and distributed.

Cost:

\$10,000

Timeline: Throughout project

Local Agency Agreement

Agency Bonney Lake
 Address PO Box 7380
Bonney Lake, WA 98391-0944

CFDA No. 20.205
 (Catalog of Federal Domestic Assistance)
 Project No. SRTS-PB-3161(002)
 Agreement No. LA 6505
 For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102, A-87 and A-133, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name Fennel Creek Trail & 192nd St Sidewalks Length 1.5 Miles
 Termini Trail Existing Fennel Creek Trail to Victor Falls Elem. School / 192nd St. - Vic Bonney Lake High School to

Description of Work

Construct curb, gutter and sidewalks along the both sides of 192nd Ave E from the vicinity of Bonney Lake High School to Rhodes Lake Road. Connect to the existing sidewalk along 188th Ave E via 111th and 109th Streets. Construct a Multi-Use Trail with bridge from the existing Fennel Creek Trail to Victor Falls Elementary School. Implement walk & bike to school days, distribute educational materials, poster contest, media campaign, and school assemblies.

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
100 %			
a. Agency	158,700.00		158,700.00
b. Other Enforcement / Education	184,000.00		184,000.00
c. Other Eligible Unfunded	193,500.00	193,500.00	
d. State	2,000.00		2,000.00
e. Total PE Cost Estimate (a+b+c+d)	538,200.00	193,500.00	344,700.00
Right of Way			
%			
f. Agency			
g. Other			
h. Other			
i. State			
j. Total R/W Cost Estimate (f+g+h+i)			
Construction			
%			
k. Contract			
l. Other			
m. Other			
n. Other			
o. Agency			
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)	538,200.00	193,500.00	344,700.00

Agency Official
 By [Signature]
 Title Mayor

Washington State Department of Transportation
 By [Signature]
 Assistant Secretary for Highways and Local Programs

Date Executed OCT 22 2007

Construction Method of Financing (Check Method Selected)

State Ad and Award

- Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of

\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

September 11, 2007, Resolution/Ordinance No. 1738

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Transportation Equity Act for the 21st Century (TEA 21), as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved by WSDOT.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

**Local Agency Federal Aid
Project Prospectus**

Prefix	Route	()	Date
Federal Aid Project Number SRTS	3161		
Local Agency Project Number	(WSDOT Use Only)	Federal Employer Tax ID Number	

Agency Bonney Lake	Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other		
Project Title Fennel Creek Trail and 192nd Street Sidewalks	Start Latitude N47.1588	Start Longitude W122.1738	
	End Latitude N47.1545	End Longitude W122.1783	
Project Termini From Rhodes Lake Road	To Vicinity Bonney Lake High School		
From: To:	Length of Project approx 1.5 miles	Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad	
Federal Agency <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> Others	City Number 0105	County Number 27	County Name Pierce
			WSDOT Region Olympic Region
Congressional District 8	Legislative Districts 31 / 2	Urban Area Number	TMA / MPO / RTPO PSRC

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.	\$538,200	\$193,500	\$344,700	8	2007
R/W	\$0	\$0	\$0		
Const.	\$1,961,800	\$824,500	\$1,137,300	6	2007
Total	\$2,500,000	\$1,018,000	\$1,482,000		

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width 192nd Ave - 12 lanes	Number of Lanes 2 lanes with shoulders
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192nd Street is two lanes with 1 foot shoulders.

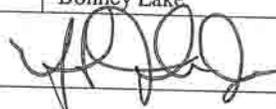
Fennel Creek Trail will be new alignment.

Description of Proposed Work

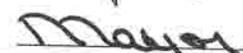
Description of Proposed Work (Attach additional sheet(s) if necessary)

Construct curb, gutter and sidewalks along the both sides of 192nd Ave E from the vicinity of Bonney Lake High School to Rhodes Lake Road. Connect to the existing sidewalk along 188th Ave E via 111th and 109th Streets. Construct a Multi-Use Trail with bridge from the existing Fennel Creek Trail to Victor Falls Elementary School. Implement walk & bike to school days, distribute educational materials, poster contest, media campaign, and school assemblies.

Local Agency Contact Person Gary Leaf	Title Community Services Director	Phone 253-862-8602
Mailing Address PO Box 7380	City Bonney Lake	State WA
		Zip Code 98391-0944

By  _____

Project Prospectus Approval

Title  _____

Approving Authority _____

Date 9-11-07

**City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form**

Department/Staff Contact: Gary Leaf, Comm. Svcs. Dir.	Council/Wrkshp Mtg Date: September 11, 2007	Agenda Bill Number: AB07-184
Ordinance Number:	Resolution Number: 1738	Councilmember Sponsor:
<u>BUDGET INFORMATON</u>		
<u>2007 Budget Amount</u> N/A	<u>Required Expenditure</u> N/A	<u>Impact</u> N/A
		<u>Remaining Balance</u> N/A
<u>Explanation:</u> \$1,482,000 Grant Revenue		
<u>Agenda Subject:</u> Trails & Sidewalks		

Administrative Recommendation: Authorize Mayor to sign the grant agreement with WSDOT

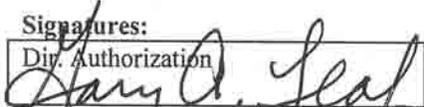
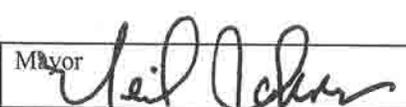
Background Summary: This grant agreement provides \$1,482,000 grant revenue for one linear mile of trail, a bridge over Fennel Creek, 0.9 linear mile of sidewalks and stormwater detention along 192nd Avenue. There are also educational and enforcement components. Total project cost is estimated to be approximately \$2.5 million. Therefore matching funds of approximately \$1,018,000 will be required of the City of Bonney Lake. \$238,000 of the matching funds are already programmed into the existing General Fund budget, so the *additional* matching fund requirement is only \$780,000. Project expenditures will take place in 2008 and 2009, meaning that approximately \$390,000 in matching funds will need to be included in the City budget in each year (2008 and 2009). The BLPD, Sumner School District, Tacoma-Pierce County Health, and the Washington Bicycle Alliance are partners in this project and will coordinate the educational component efforts. The educational component for this grant will encompass all six Sumner School District schools in the Bonney Lake area. The Sumner School District's contribution to this project includes providing ten acres for the trail (adjacent to Victor Falls Elementary School) while the City of Bonney Lake will provide the required grant matching funds for construction of the trail, sidewalks, curb & gutter, and stormwater detention.

Council Committee Dates:	Commission Dates:	Board/Hearing Examiner Dates:
Finance Committee: 9/11/07	Planning Commission:	Park Board:
Public Safety Committee:	Civil Service Commission:	Hearing Examiner:
Community Development & Planning Committee:		
Council Workshops:		

Council Action:

Council Call for Hearing:	Council Hearings Date:
Council Referred Back to:	Workshop: Committee:
Council Tabled Until:	Council Meeting Dates:

Signatures:

Dir. Authorization: 	Mayor: 	Date City Attorney Reviewed: 8/27/07
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FINANCE COMMITTEE

DATE: 9-11-07

ORIGINATOR: Gary Leaf

TITLE: Community Services Director

SUBJECT/DISCUSSION: Local Agency Agreement with WASHDOT

This grant agreement provides \$1,482,000 grant revenue for one linear mile of trail, a bridge over Fennel Creek, 0.9 linear mile of sidewalks, stormwater detention along 192nd Avenue, and educational and enforcement components. Total project cost is estimated to be approximately \$2.5 million. Matching funds of approximately \$1,018,000 will be required of the City of Bonney Lake. \$238,000 of the matching funds are already programmed into the existing General Fund budget, so the additional matching fund requirement is only \$780,000. Project expenditures will take place in 2008 and 2009, meaning that approximately \$390,000 in matching funds will need to be included in the City budget in each of those years (2008 and 2009). The BLPD, Sumner School District, Tacoma-Pierce County Health, and the Washington Bicycle Alliance are partners in this critical non-motorized transportation project.

ORDINANCE/RESOLUTION Resolution # 1738

REQUEST OR RECOMMENDATION BY ORIGINATOR:

Authorize Mayor to sign agreement

ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE MAYOR

FINANCE DIRECTOR _____
CITY ATTORNEY _____

BUDGET INFORMATION

BUDGETED ITEM: TOTAL COST: N/A

(Note: If budgeted item, attach copy of budget page and identify)

Table with 4 columns: 2007 Budget Amount, Required Expenditure, Impact, Remaining Balance. All values are N/A.

Explanation:

This is a revenue item.

COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL

Table with 4 columns: Name, DATE, APPROVED, DISAPPROVED. Includes signatures and dates for Dan Swatman, Phil DeLeo, and James Rackley.

COMMITTEE COMMENTS: ☺

COMMITTEE'S RECOMMENDATION TO FORWARD TO:

CITY CLERK FINANCE DIRECTOR CITY ATTORNEY

Add to the Consent Agenda for Council Meeting date of: September 11, 2007

Yes No

RESOLUTION NO. 1738

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE,
PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A
LOCAL AGENCY AGREEMENT AND PROJECT PROSPECTUS WITH
WSDOT FOR SAFE ROUTES TO SCHOOL AND PEDESTRIAN SAFETY
GRANTS.**

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the Local Agency Agreement and Local Agency Federal Aid Project Prospectus attached hereto and incorporated herein by this reference.

PASSED by the City Council this 11th day of September, 2007.



Neil Johnson Jr., Mayor

ATTEST:



Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:



James Dionne, City Attorney



**Washington State
Department of Transportation**
Paula J. Hammond, P.E.
Secretary of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-47300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

RECEIVED
NOV 02 2007
BY PUBLIC WORKS

October 26, 2007

Mr. Daniel L. Grigsby, P. E.
Public Works Director
City of Bonney Lake
P. O. Box 7380
Bonney Lake, WA 98391-0944

**Bonney Lake
Fennel Creek Trail & 192nd St Sidewalks
SRTS-PB-3161(002)
FUND AUTHORIZATION**

Dear Mr. Grigsby:

We have received FHWA fund authorization, effective October 24, 2006, for this project as follows:

PHASE	TOTAL	FEDERAL SHARE	STATE
Preliminary Engineering	\$538,200	\$172,350	\$172,350

Enclosed for your information and file is a fully executed copy of Local Agency Agreement LA-6505 between the state and your agency. All costs exceeding those shown on this agreement are the sole responsibility of your agency.

WSDOT authorization to proceed with right of way and/or construction is contingent upon receipt and approval of your environmental documents.

You may proceed with the administration of this project in accordance with your WSDOT approved Certification Acceptance agreement.

Sincerely,

For: Stephanie Tax
Manager, Program Management
Highways & Local Programs Division

ST:jg:ac
Enclosure

cc: Neal Campbell, Olympic Region Local Programs Engineer, MS 7440

Agency Bonney Lake	Project Title Fennel Creek Trail and 192nd Street Sidewalks	Date
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Type of Proposed Work		
Project Type (Check all that Apply)		
<input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Reconstruction <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Bridge	<input checked="" type="checkbox"/> Path / Trail <input checked="" type="checkbox"/> Pedestrian / Facilities <input type="checkbox"/> Parking	<input type="checkbox"/> 3-R <input type="checkbox"/> 2-R <input type="checkbox"/> Other
Roadway Width 24 ft +	Number of Lanes 2	

Geometric Design Data		
Description	Through Route	Crossroad
Federal Functional Classification	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural	<input type="checkbox"/> Urban <input type="checkbox"/> Rural
	<input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input checked="" type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road	<input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road
Terrain	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed	25 School Zone 20	
Design Speed	25	
Existing ADT	2400	
Design Year ADT	4400	
Design Year	2028	
Design Hourly Volume (DHV)	400	

Performance of Work		
Preliminary Engineering Will Be Performed By Consultant	Others 90 %	Agency 10 %
Construction Will Be Performed By Contractor	Contract 100 %	Agency %

Environmental Classification	
<input checked="" type="checkbox"/> Final <input type="checkbox"/> Preliminary	
<input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	<input checked="" type="checkbox"/> Class II - Categorically Excluded (CE) <input checked="" type="checkbox"/> Projects Requiring Documentation (Documented CE)
<input type="checkbox"/> Class III - Environmental Assessment (EA) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	

Environmental Considerations

Agency Bonney Lake	Project Title Fennel Creek Trail and 192nd Street Sidewalks	Date
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Right of Way

<input checked="" type="checkbox"/> No Right of Way Required * All construction required by the contract can be accomplished within the existing right of way.	<input type="checkbox"/> Right of Way Required <input type="checkbox"/> No Relocation	<input type="checkbox"/> Relocation Required
---	--	--

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement
 Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency City of Bonney Lake
 Date 9.11.07
 By [Signature]
 Mayor/Chairperson

**City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form**

Department/Staff Contact: Al Juarez – Chief Financial Officer	Council/Wkshp Meeting Date: April 28, 2009	Agenda Item Number AB09 - 70
Ordinance Number:	Resolution Number: 1938	Councilmember Sponsor: Deputy Mayor Swatman
BUDGET INFORMATION		
<u>2009 Budget</u> Utilize existing budget	<u>Expenditure Amount</u> Project Admin Fees 12,704 Project Incentives 17,288 Total (2009) \$ 29,992	<u>Remaining Balance</u>
401-000-034-534-20 Water Department Conservation Program		
Agenda Subject: A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing the Mayor to sign an agreement with Portland Energy Conservation Inc. (PECI) in support of a City of Bonney Lake mail –in residential clothes washer customer purchase incentive program for 2009.		
Administrative Recommendation: Recommend Approval		

Background Summary: Water conservation reduces the amount of additional water supply the City is required to purchase at a high cost, thus saving the City money. Local governments use a wide variety of methods to build retail relationships in the community and educating consumers on water and electric conservation efforts within the region. Community leaders must be passionate about energy efficiency to transform activity initiatives into achieving results and solutions. Portland Energy Conservation Inc. (PECI) mission is to help everyone use energy more effectively. Peci is a leader in the design and promotion of programs focused on increasing consumer awareness of and demands for energy efficient products and implementing programs that achieve swift, measurable market results. Peci designed and implemented the northwest regional ENERGY STAR home products program. This market-transformation program helps northwest retailers lead the country in the adoption of energy-efficient appliances in homes. By leveraging the combined efforts of utility and industry partners, large scale retailer based promotions allow utility partners to maximize their customer incentives in partnership with retailers and manufacturers, reaching consumers with the key message that energy efficient products save energy, resources and money. This proposed incentive program is designed to increase the number of high efficiency clothes washers sold in the service area of the City of Bonney Lake while building retail relationships in the community, educating consumers on water conservation, and reducing dependence on outside water supply requirements.

Council Committee Dates:	Commission Dates:	Board/Hearing Examiner Dates:
Finance Committee: 4/14/09 Public Safety Committee: Community Development & Planning Committee: Council Workshop:	Planning Commission: Civil Service Commission:	Park Board: Hearing Examiner:

Council Action:

Council Call for Hearing:	Council Hearings Date:
Council Referred Back to:	Workshop: Committee
Council Tabled Until:	Council Meeting Dates:

Signatures:

Dept. Dir. 	Mayor 	Date City Attorney reviewed
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FINANCE COMMITTEE

DATE: April 14, 2009

ORIGINATOR: Al Juarez

TITLE: Chief Financial Officer

SUBJECT/DISCUSSION: A resolution of the City Council of the City of Bonney Lake, WA authorizing the Mayor to sign an agreement with Portland Energy Conservation Inc. (PECI) in support of a City of Bonney Lake mail-in residential clothes washer customer purchase incentive program for 2009.

Water conservation reduces the amount of additional water supply the City is required to purchase at a high cost, thus saving the City money. Local governments use a wide variety of methods to build retail relationships in the community and educating consumers on water and electric conservation efforts within the region. Community leaders must be passionate about energy efficiency to transform activity initiatives into achieving results and solutions. The mission of PEGI is to help everyone use energy more effectively. PEGI is a leader in the design and promotion of programs focused on increasing consumer awareness of and demands for energy efficient products and implementing programs that achieve swift, measurable market results. A main focus is to reach consumers with the key message that energy efficient products save energy, resources and money. This proposed incentive program is designed to increase the number of high efficiency clothes washers sold in the service area of the City of Bonney Lake while building retail relationships in the community, educating consumers on water conservation and reducing dependence on outside water supply requirements.

ORDINANCE/RESOLUTION NUMBER: 1938

REQUEST OR RECOMMENDATION BY ORIGINATOR: Approve Proposed Resolution

ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE

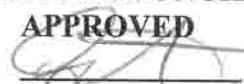
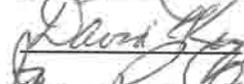
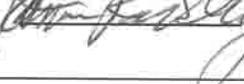
MAYOR X
FINANCE DIRECTOR Yes
CITY ATTORNEY X

BUDGET INFORMATION

<u>2009 Budget Amount</u>	<u>Required Expenditure</u>	<u>Remaining Balance</u>
	Project Admin Fees \$12,704	
	Project Incentives <u>17,288</u>	
	Total (2009) \$29,992	

Explanation: Water Department Conservation Program: 401-000-034-534-20

COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL

	DATE	APPROVED	DISAPPROVED
Dan Swatman, Chair, Finance	<u>4-14-09</u>		_____
David King, Chair, Public Safety	<u>4-14-09</u>		_____
James Rackley, Chair, CDC	<u>4-14-09</u>		_____

COMMITTEE COMMENTS: _____

COMMITTEE'S RECOMMENDATION TO FORWARD TO:

CITY CLERK **FINANCE DIRECTOR** **CITY ATTORNEY**

Please schedule for Council Meeting date of: April 28, 2009

Consent Agenda: Yes

RESOLUTION NO. 1938

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH PORTLAND ENERGY CONSERVATION INC. FOR THE WASH WISE WATER CONSERVATION PROGRAM.

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the agreement attached hereto and incorporated in "Attachment A."

PASSED by the City Council this 28th day of April, 2009.

Mayor Neil Johnson, Jr.

AUTHENTICATED:

Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney

2009 Bonney Lake Rebate Program

1. Service Contract

This Agreement is made and entered into by and between Bonney Lake, hereinafter called Bonney Lake and Portland Energy Conservation, Inc. (PECI), hereinafter called the Consultant, for specified Services provided by the Consultant to Bonney Lake. This Agreement shall remain in force only for the duration of the period specified below, unless extended in accordance with this Agreement (Term). All obligations incurred under this Agreement shall survive the Term until satisfied.

Project Name	Bonney Lake
Contract Period	January 1, 2009 – December 31, 2009
Bonney Lake Name	Bonney Lake
Bonney Lake Representative	Al Juarez
Telephone Number	253-447-4314
Address	19306 Bonney Lake Blvd
City, State Zip	Bonney Lake, WA 98391
Consultant Name	Portland Energy Conservation, Inc. (PECI)
Telephone Number	503.248.4636
Address	1400 SW 5 th Ave. #700
City, State, Zip	Portland, Oregon 97201
Taxpayer Identification Number	93-0770824

2. Term

The term of this Agreement (Term) shall commence on March and continue in effect until December 31, 2009 unless the Parties agree in writing to extend the Term, or unless this Agreement is earlier terminated in accordance with the Early Termination provisions below.

3. Services

This Agreement covers the services specified in the Scope of Work section of Attachment A, which is hereby included and made a part of this Agreement (hereafter "Services"). The Consultant agrees to perform the Services specified in Attachment A in the manner and within the time specified therein. Except as expressly provided elsewhere in this Agreement, any and all modifications or revisions to Attachment A (including, but not necessarily limited to, additions, deletions and extensions) must be in the form of a written amendment that is signed by both parties.

4. Billing and Payment

The Consultant shall be compensated by Bonney Lake for the performance of the Services in accordance with the payment provisions listed in Attachment A. Compensation for all Services is not to exceed totals listed on Attachment B.

Consultant shall submit all invoices to:

Attn: Al Juarez
Bonney Lake
19306 Bonney Lake Blvd
Bonney Lake, WA 98391

5. Documentation

The Consultant shall maintain records documenting all fees and expenses in excess of \$5.00, incurred either by Consultant or any subcontractor of Consultant in the performance of this Agreement. During regular business hours and upon reasonable notice, Bonney Lake, or its designee, shall have the right to inspect and audit all records required to be maintained under this Agreement.

6. Insurance

The Consultant, and any subcontractor engaged by Consultant in its performance of this Agreement, shall carry and maintain fully paid commercial general liability, automobile liability and workers compensation insurance. All policies shall be written only by insurers admitted to do business in Washington and having a rating of at least "A" and a financial rating of at least "VIII" on the most current edition of Best's Key Rating Guide or comparable rating by another generally recognized rating agency. All policies shall be endorsed to (a) specify Bonney Lake as an additional insured to the full extent of its right to indemnification under this Agreement, and (b) provide that Bonney Lake shall be given no less than thirty (30) days advance written notice of cancellation or material change in coverage. Certificates of insurance shall be sent to Bonney Lake before work begins.

1. Consultant shall obtain the following minimum insurance coverage ("Required Insurance") prior to the Effective Date, at its expense, and keep the Required Insurances in effect during the Term (except with respect to Professional Liability Insurance, when they shall be kept in effect for a period of the Term plus two years):
2. Workers' Compensation Insurance in compliance with statutory requirements;
3. Commercial General Liability Insurance (including contractual liability), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
4. Professional Liability Insurance, including errors and omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by Bonney Lake or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services;
5. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Consultant's vehicles, whether owned, hired, or non-owned, assigned to, or used by Consultant in connection with the Services; and
6. Umbrella coverage in excess of the Workers' Compensation Coverage B (Employers' Liability), Commercial General Liability, and Commercial Automobile Liability insurances specified above of not less than \$5,000,000.

The Required Insurances shall be with insurance companies admitted to do business in the state of Washington and rated "A" or better by Best's Insurance Rating. Consultant shall furnish Bonney Lake with certificates of insurance for each of the Required Insurances.

The Commercial General Liability, Commercial Automobile Liability, and Umbrella Coverage shall (i) name Bonney Lake, its directors, officers, and employees, as additional insured, (ii) provide that it is primary insurance with respect to the interests of Bonney Lake and that any insurance maintained by Bonney Lake is excess and not contributory, and (iii) include a cross-liability and severability of interest clause.

In the event Consultant fails to maintain insurance policies in compliance with this provision, Bonney Lake may in its discretion either purchase such insurance coverage and charge the premium to Consultant or treat such failure as an event of default by Consultant and terminate this Agreement for breach of contract.

7. Governing Law, Venue and Attorney's Fees

The laws of the State of Washington shall govern this agreement. Exclusive venue in case legal suit or action is instituted to enforce compliance with any terms, covenants, or conditions of this agreement shall lie in Pierce County, Washington. Both parties agree to submit to the personal jurisdiction of any court of competent subject matter jurisdiction in Pierce County, Washington. In the event of legal suit or action, including any appeals there from, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall reimburse the prevailing party for its reasonable attorney fees and costs incurred in the suit or action including investigation costs, expert witness fees and all costs of depositions. If any part of this agreement is found to be in conflict with applicable laws, such parts shall be inoperative, null and void so far as it is in conflict with said laws, but the remainder of this agreement shall be in full force and effect.

8. Good Faith Negotiation/Mediation

Prior to filing suit or initiating arbitration on any dispute, which arises between the Parties under or relating to this Agreement, the Parties agree to attempt to resolve the dispute through good faith negotiation. If the dispute cannot be resolved through good faith negotiation, the Parties agree to hire an independent, trained and mutually acceptable mediator to mediate the dispute. The cost of the mediator will be shared equally by the Parties. The mediation shall be conducted in Tacoma, Washington.

9. Suspension of Services

A. Suspension by Bonney Lake

Bonney Lake may suspend, in writing, all or a portion of Consultant's Services under any Attachment in the event unforeseen circumstances make normal progress in the performance of the Consultant's Services inadvisable in the opinion of Bonney Lake. In addition, Consultant may request that the Services be suspended by notifying Bonney Lake, in writing, of circumstances which are interfering with normal progress of the Services. The time for completion of the remaining Services shall be extended by the number of days the Services are suspended by Bonney Lake, unless both parties can

mutually agree upon a new completion time. In the event the period of suspension exceeds 90 days, the terms of this Agreement shall be subject to renegotiation; provided, however, that if such renegotiation of a mutually acceptable replacement contract has not occurred within 180 days after suspension ("Renegotiation Period"), then either party may terminate this Agreement in accordance with the early termination provision hereof, provided further, that the failure to renegotiate this Agreement within the Renegotiation Period shall not be construed as a breach of the Agreement by either Party.

B. Suspension by Consultant

Consultant may suspend, in writing, all or any portion of its Services under this Agreement, but only if and to the extent Bonney Lake fails to make timely payment in accordance with the terms of this Agreement. Bonney Lake shall have a period of ten (10) days from the date on which payment was due ("Cure Period") within which to satisfy any arrearages in payment. Consultant shall resume performance of any suspended Services upon receipt of payment of any arrearages from Bonney Lake within the Cure Period.

10. Early Termination

A. Termination for Convenience

Bonney Lake may cancel or terminate, in writing, all or any portion of Consultant's Services under this Agreement or resulting Attachments at its convenience. Bonney Lake shall provide the Consultant with at least seven (7) days written notice of any early termination of Services pursuant to this provision. In the event of such termination, Consultant shall perform only that additional Services reasonably necessary for the wind down of the project, including orderly filing of documents and closing of the terminated service. The additional time for filing and closing shall not exceed 10 percent of the total time expended on the completed portion of the project prior to the effective date of such termination. Consultant shall thereupon be compensated for the completed portion of the Services terminated on the basis of Services actually performed prior to the effective date of termination, plus the Services required for filing and closing up to the limit specified above. If Bonney Lake cancels all of Consultant's Services under this Agreement in accordance with this provision, then the entire Agreement shall terminate and neither party shall be deemed in breach thereof.

B. Termination for Cause

Bonney Lake shall have the right, but not the obligation, to terminate this Agreement, on seven (7) days written notice, in the event Consultant's Services or performance thereof, fails to conform to the requirements of this Agreement. In accordance with Section 6 (B) above, Consultant shall have the right, but not the obligation, to terminate this Agreement, effective upon expiration of the Cure Period, in the event Bonney Lake fails to pay any arrearage within the Cure Period. Either Party shall have the right but not the obligation, to terminate this Agreement in the event Services is suspended under this Agreement for a period in excess of 90 days and no renegotiation of this Agreement has occurred within the Renegotiation Period. Any right of early termination shall be in addition to, not in replacement of, any and all rights and remedies a party may have for breach of the Agreement by the other Party.

11. Subcontractors

Consultant may contract with one or more qualified subcontractors (Subcontractor Agreement) to perform a portion of the Services specified in the Scope of Work; provided, however, that Consultant shall remain solely responsible to Bonney Lake for all performance under this Agreement and, provided further, that Bonney Lake shall have no responsibility for the review or supervision of the work of any subcontractor or for any payment to any subcontractor. All subcontractor agreements shall require the subcontractor to comply with the invoicing, insurance, suspension of work, audit, documentation, confidentiality and return of records obligations imposed on Consultant by this Agreement. No subcontractor shall be deemed to be a third party beneficiary of this Agreement or to have any other rights under this Agreement

12. Relationship of Parties

Consultant is an independent contractor, and this Agreement is not intended to form a partnership or joint venture between the Parties. Individuals employed by Consultant are not employees or agents of Bonney Lake, nor are Consultant's subcontractors employees or agents of Bonney Lake. Each Party is solely responsible for payment of compensation to its employees and personnel and will withhold and pay to the appropriate authorities all taxes, contributions, and assessments imposed or required under all laws with respect to payments. The Consultant will require these terms in all agreements with subcontractors for work undertaken for this Agreement.

13. Return of Records

On termination of the Agreement, the Consultant will consult with the project manager at Bonney Lake about whether pertinent records should be returned. If requested, the Consultant will deliver to Bonney Lake all records, reports, data memoranda, notes, models or publications whether electronic or hard-copy, equipment and supplies of any nature, and receipts for any and all billing made to Bonney Lake that are in possession or under control of the Consultant, prepared or acquired in the course of the Agreement with Bonney Lake. Further, the Consultant agrees not to keep or withhold such information or data, or reproductions of such information or data that relate to the business activities of Bonney Lake or to parties in a contract relationship with Bonney Lake. Alternatively, if the return of records and equipment or supplies is not requested, Consultant agrees to retain these items for three years after the completion of this Agreement and to notify the Bonney Lake project manager at the end of that time before disposing of them. Consultant shall include a provision substantially identical to the foregoing in all its Subcontractor Agreements.

14. Indemnification

The Consultant will indemnify, hold harmless, and defend Bonney Lake and, its officers, employees, agents, representatives, and affiliates (each an Indemnified Party) against any and all losses, liabilities, damages, claims, suits, proceedings, judgments, assessments, costs, and expenses (including interest and penalties), and including reasonable attorney fees and expenses, incurred by Bonney Lake and arising from (i) negligent or wrongful acts or omissions of the Consultant or of its officers, employees, agents, representatives, or subcontractors, affiliates, (ii) breach by the Consultant or of its officers, employees, agents, representatives, subcontractors, or affiliates of this Agreement, or (iii) any finding,

judgment or other determination or settlement whereby the Consultant is deemed or considered to be the employer of the other Party.

The Parties specifically agree that the provisions of this Section also apply to any claim of injury or damage to the persons or property of the Consultant's employees. Consultant acknowledges and agrees that, as to such claims, the Consultant, with respect to Bonney Lake, hereby waives any right of immunity which Consultant may have under industrial insurance (Title 51 RCW as amended and under any substitute or replacement statute). This waiver was specifically negotiated by the Parties, is solely for the benefit of the Parties and their successors and assigns, and is not intended as a waiver of Consultant's right of immunity under said industrial insurance for any other purpose.

15. Force Majeure

Notwithstanding anything contained in this Agreement to the contrary, neither Party will be deemed liable or to be in default for any delay or failure in performance under this Agreement deemed to result from acts of God, acts of civil and military authority, acts of public enemy, war, or any like cause beyond the Parties' reasonable control.

16. Severability

Should any provision of this Agreement be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect.

17. Notices

Notices required to be made under this Agreement shall be served personally, by facsimile transmission, by overnight courier to the address shown above, or by email, with a duplicate sent by certified mail, return receipt requested. Notice shall be effective only upon receipt by the party being served.

18. Effective Date and Term

This Agreement, including its attachments, shall be effective immediately upon execution by both parties.

Bonney Lake

Portland Energy Conservation, Inc.

By _____

By _____

Name

Name

Date

Date

ATTACHMENT A:

THE CITY OF BONNEY LAKE

2009 SCOPE OF WORK

TASK 1: IMPLEMENTATION

Portland Energy Conservation Inc. (PECI) will conduct the following tasks for The City of Bonney Lake in support of a mail-in residential clothes washer customer purchase incentive. The incentive is designed to increase the number of high efficiency clothes washers sold in the service area of The City of Bonney Lake customers while building retail relationships in the community and educating consumers on water and electric conservation efforts within the region.

- PEGI will be available for communications with The City of Bonney Lake through a specified point of contact. This contact person will maintain regular communications with The City of Bonney Lake throughout the program and will be available to fulfill special requests.
- PEGI will produce promotional materials as needed, to be delivered to all retailers in coordination with any in-field training for The City of Bonney Lake staff. Retailer support materials include the following:
 - Mail-in Rebate Forms – forms will be designed and printed for retail distribution and will be provided in PDF format for placement on The City of Bonney Lake’s web site.
 - Retailer Training Cards:
 - Instructions** – with a listing and explanation of the required rebate fields, customer invoice requirements, qualified models, promotion sale date parameters, zip-code qualifications, and serial number verification. Submittal instructions will also be included.
 - Qualified Models** – a list of all qualifying models and the appropriate incentive amounts.
 - Contact information** – contact sheet will include a direct point of contact at PEGI to answer questions regarding rebate processing, materials reorder and other program information.
- PEGI will offer Program training to train utility personnel who may be conducting retailer visits and delivering retailer materials. Coupled with this training will be a series of site visits to key retailers to offer additional training. Wherever possible, updated retail materials will be delivered by hand and training initiated at that time.
- PEGI will provide City of Bonney Lake customers and retailers with access to a toll free contact line. The contact line will enable retailers to call toll free to order more materials or ask questions. Customers responding to calls regarding missing information from their rebate forms will be able to respond toll free and resolve their rebates quickly.

TASK 2: PROCESSING & PAYMENT

- PEGI will receive, verify and date stamp the incoming rebate applications.
- PEGI will verify rebate eligibility and information based on the following criteria:
 - Copy of invoice – a copy of the customer invoice will be required to verify the validity of the sales and purchase information.
 - Qualified model – the model qualification will be based on the most current version of the Qualified Model List.
 - Date Sold – the sale date must occur during the period of January 1, 2009 to December 31, 2009 and the application and receipts must be received within 90 days of purchase.

- Installation address and zip code – PECI will verify the installation address zip code against the territory zip code list provided by The City of Bonney Lake. If the customer lives in a zip code fully serviced by The City of Bonney Lake, the incentive will be automatically approved and processed. Rebate applications for customers living in partially serviced zip codes will be compiled into a list and forwarded to The City of Bonney Lake for individual approval on a weekly basis. The City of Bonney Lake will approve the applications for rebate within three business days of receiving the weekly list from PECI
 - Serial number – the retailer must provide the machine serial number to prove that each sale is unique. PECI will then set a default tool into the database to prevent duplication.
 - Utility name and account number – the customer will be asked to provide the utility name and account number. This number can be obtained from a utility bill or by calling the utility serving the customer.
- PECI will enter information from the Rebate Form and accompanying invoice into the database and export to accounting.
 - PECI will generate a check for each customer on a weekly basis. Checks will be written and mailed, using first class postage, within 10 working days of receipt and verification of Rebate Forms.
 - A check letter will be sent with each rebate check mailed out to customers thanking them for and enforcing their conservation choice.
 - For 2009 PECI changed the language on the applications to state that applications containing missing information will be returned. Essentially, we hope to encourage quicker and increased redemption by using this stricter guideline which is common in other types of rebate programs. All applications containing missing information will be returned to the customer right away with a letter highlighting what was missing and asking them to reapply.
 - PECI understands the necessity to reimburse customers promptly. This contract will require a cash advance of two forecasted months for rebate funds to ensure that customers are paid in a timely manner.

TASK 3: DATA TRACKING, SUMMARY REPORT & INVOICING

- PECI will customize a detailed database in Microsoft Access for processing rebate submittals and tracking. The database will contain comprehensive information, enabling the program to track all retailer and customer submittal information and provide up-to-date reports on units processed to date through the program. The database will provide snapshot views of market activity in the The City of Bonney Lake territory.
- PECI will invoice the City of Bonney Lake monthly on the 15th of each month, and each invoice will request advance incentive funds projected for the upcoming two months as well as administrative expenses for the prior month. The invoice will clearly reconcile over and under estimates from the prior month cash on hand.
- PECI will include a detailed data report will be included with each monthly invoice. The data report will include customer and model information for all rebates processed in the prior month.

TASK 4: MARKETING POINT OF PURCHASE MATERIALS

- PECI will design and print point of purchase materials, including product clings, easel signs, posters and bill stuffers. Materials will have a consistent look and feel in order to convey a cohesive design theme for the program. Note: As some program materials have already been produced a limited portion will be reprinted to include The City of Bonney Lake logo.
- All materials will be approved by The City of Bonney Lake before final printing.

- PECO will design and implement co-branded utility marketing promotions several times during the program period. A fall theme will focus on October being energy efficiency month and a spring theme will focus on Earth Day

2009 Implementation & Incentives Budget - Three Tiers

PECI Services -- Administrative fees are charged on a \$32 per unit fee

Management

- Senior oversight of incentive process*
- Respond to City of Renton requests*
- Fulfill monthly reports and invoicing*

Incentives

- Database development*
- Receipt and review of rebates*
- Verification and data entry of rebates*
- Follow-up on rebate rejections*
- Maintenance of hotline and customer service*
- Accounting payment process*
- In-house retail communications and follow-up*

Marketing

- Oversight of design and production for POP materials*
- Oversight of design and production of Special Promotion materials*

Field Support

- Liason between retailer and utility requests and field personnel*
- On the ground labor, mileage and direct costs*
- Site visits to retail partners on a 7-9 week rotation*
- Attendance at marketing events and limited outreach*
- Delivery of new clothes washer rebate materials to retailers*

Direct Marketing

- Production of general POP including product clings, posters, counter cards etc*

Implementation

- Rebate form design and production*
- Check mail-out - postage, envelopes & checks*
- Retailer training card design and production*
- Shipping, phone, 800 line, travel and misc. supplies*
- Shared Field Support Expenses*

Projected Administrative Fees		\$12,704.00
Flat Administration Fee of \$32 per unit	397 Units	\$12,704

Projected Incentives	397	\$17,287.50
Clothes Washer Incentives @ \$50 (Paid at \$25)	51	\$1,275
Clothes Washer Incentives @ \$75 (Paid at \$37.50)	103	\$3,863
Clothes Washer Incentives @ \$100 (Paid at \$50)	243	\$12,150

Note: All City of Renton rebates would be shared with PSE or SCL

Total Cost **\$29,991.50**

Total Projected Units **397**

Attachment C - Bonney Lake Projections

WashWise Clothes Washer Program Projected Units - 2009

Projections based on 11,000 residential customers

Clothes Washers @ \$50	
Tier One: WF 7.5 - 6.01 MEF 1.80 - 1.99	
Month	Qty
January	4
February	5
March	4
April	4
May	4
June	4
July	4
August	5
September	4
October	4
November	4
December	5

Clothes Washers @ \$75	
Tier Two: WF 6.0 - 4.51 MEF 2.0 - 2.19	
Qty	Incentive Dollars
8	\$300
8	\$300
9	\$338
9	\$338
8	\$300
8	\$300
7	\$263
10	\$375
9	\$338
8	\$300
9	\$338
10	\$375

Clothes Washers @ \$100	
Tier Three: WF 4.5 and Below MEF 2.2 and Above	
Qty	Incentive Dollars
15	\$750
17	\$850
19	\$950
21	\$1,050
20	\$1,000
19	\$950
17	\$850
21	\$1,050
21	\$1,050
24	\$1,200
28	\$1,400

Month	Qty	Incentive Dollars	Gallons Saved
January	4	\$100	31,396
February	5	\$125	39,245
March	4	\$100	31,396
April	4	\$100	31,396
May	4	\$100	31,396
June	4	\$100	31,396
July	4	\$100	31,396
August	5	\$125	39,245
September	4	\$100	31,396
October	4	\$100	31,396
November	4	\$100	31,396
December	5	\$125	39,245

Qty	Incentive Dollars	Gallons Saved
8	\$300	64,400
8	\$300	64,400
9	\$338	72,450
9	\$338	72,450
8	\$300	64,400
8	\$300	64,400
7	\$263	56,350
10	\$375	80,500
9	\$338	72,450
8	\$300	64,400
9	\$338	72,450
10	\$375	80,500

Qty	Incentive Dollars	Gallons Saved
15	\$750	126,990
17	\$850	143,922
19	\$950	160,854
21	\$1,050	177,786
20	\$1,000	169,320
19	\$950	160,854
17	\$850	143,922
21	\$1,050	177,786
21	\$1,050	177,786
24	\$1,200	203,184
28	\$1,400	237,048

Units	Incentive Dollars	Gallons Saved
51	\$1,275	400,299

Units	Incentive Dollars	Gallons Saved
103	\$3,863	829,150

Units	Incentive Dollars	Gallons Saved
243	\$12,150	2,057,238.00

Implementation **\$12,704** \$32.00 per unit (admin)

Total Program Costs **\$29,992**

Price per gallon **\$0.01**

Total Units **397**

Total Gallons Saved **3,286,687**

Note: kWh and gallons savings are based upon a weighted average of units redeemed in the 2007 program.

Action Item #2

COMMUNITY DEVELOPMENT COMMITTEE

DATE: April 20, 2009

ORIGINATOR: Dan Grigsby

TITLE: PW Director

SUBJECT: A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing an agreement with Paramatrix for the design of the Eastown Water Main Extension.

The purpose of this project is to replace and extend the water line along SR 410 as part of the WSDOT SR 410 widening project. This design effort needs to be completed by July to be included in the WSDOT bid package. Construction will take place in 2010.

ORDINANCE/RESOLUTION: 1941

REQUEST OR RECOMMENDATION BY ORIGINATOR:

ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE

FINANCE DIRECTOR _____

CITY ATTORNEY _____

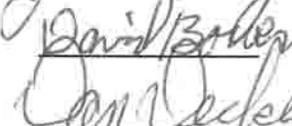
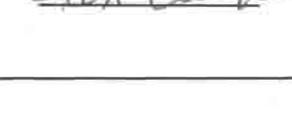
<u>2009 Budget Amount</u>	<u>Current Balance</u>	<u>Required Expenditure</u>	<u>Remaining Balance</u>
2009 CIP \$20,00.00	\$20,000.00	\$33,206.00	2009 -\$13,206.00
2010 CIP \$710,000.00			2010 \$710,000.00
Total \$730,000.00			Total \$696,794.00

Explanation:

2009 Eastown Water Line CIP \$20,000.00

2010 Eastown Water Line CIP \$710,000.00

COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL

	<u>DATE</u>	<u>APPROVED</u>	<u>DISAPPROVED</u>
James Rackley, Chairman	<u>4-20-09</u>		_____
David Bowen	<u>4-20-09</u>		_____
Dan Decker	<u>4-20-09</u>		_____

COMMITTEE COMMENTS: _____

COMMITTEE'S RECOMMENDATION TO FORWARD TO:

CITY CLERK

CITY ATTORNEY

Please schedule for City Council Meeting date of: April 28, 2009

Consent Agenda: Yes No

RESOLUTION NO. 1941

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE,
PIERCE COUNTY, WASHINGTON, AUTHORIZING A CONTRACT WITH
PARAMETRIX FOR THE DESIGN OF THE EASTOWN WATER MAIN
EXTENSION PROJECT**

Whereas, the City recognizes the need to extend the water system in Eastown; and,

Whereas, the City recognizes water line improvements in Eastown can be accomplished more cost effectively and with less effort by including this construction in the WSDOT SR410 Road Widening project in 2009-2010; and,

Whereas, the City has identified this Water Improvement Project in the CIP program; and,

Whereas, the City Council approved 2009-2010 budget includes sufficient funds for design of this project 2009;

Now therefore, be it resolved;

that the City Council of the City of Bonney Lake does hereby authorize the Mayor to sign the attached contract with Parametrix in the amount of \$19,781.

PASSED by the City Council this 28th day of April, 2009.

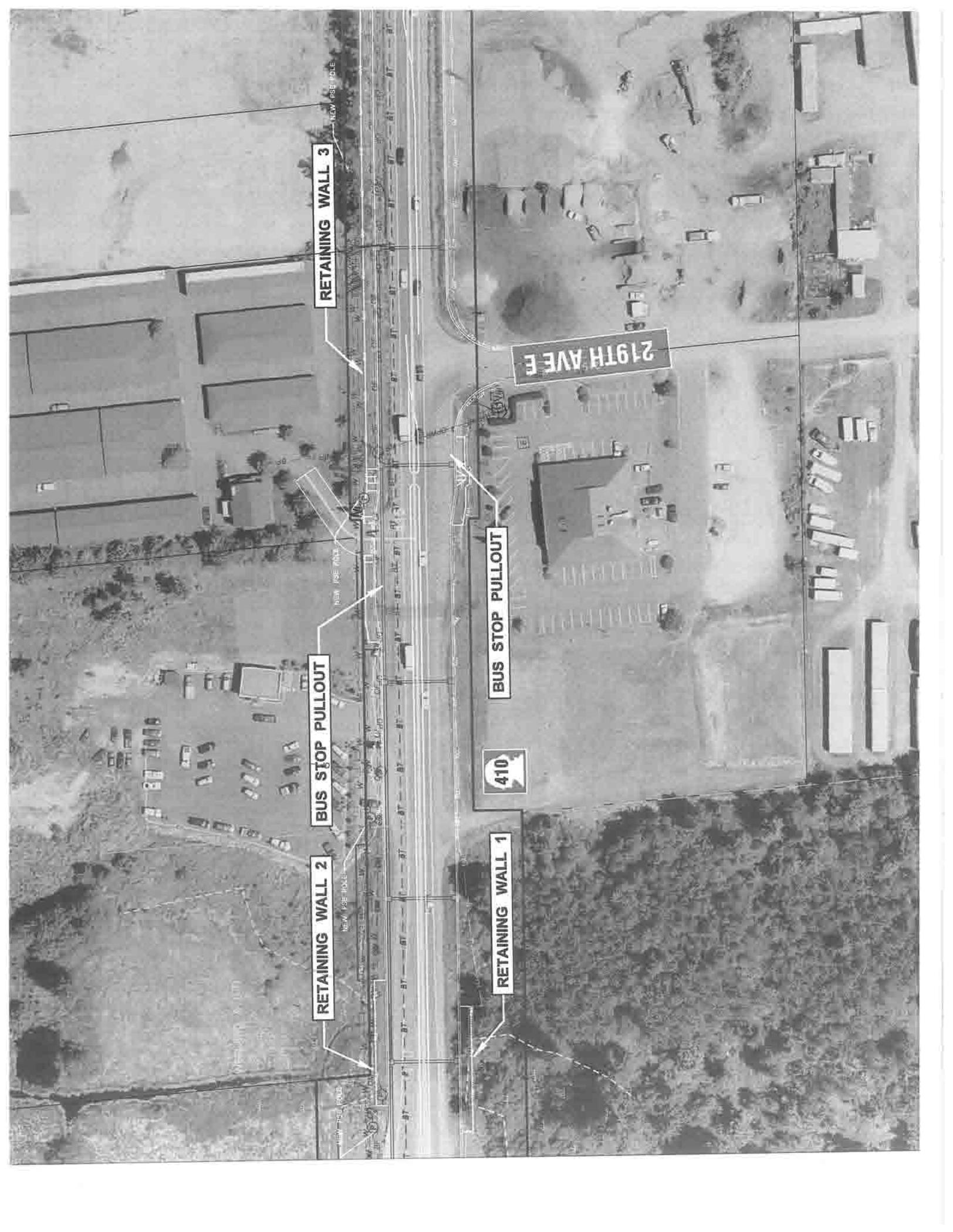
Neil Johnson Jr., Mayor

ATTEST:

Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

James Dionne, City Attorney



RETAINING WALL 3

219TH AVE E

BUS STOP PULLOUT

410

BUS STOP PULLOUT

RETAINING WALL 2

RETAINING WALL 1

NEW PSE POLE

NEW PSE POLE

NEW PSE POLE

NEW PSE POLE

City of Bonney Lake SR 410 Eastown Water Main Replacement
PERSONAL SERVICES AGREEMENT

THIS PERSONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2009, by and between the City of Bonney Lake (" City") and PARAMETRIX, Inc. (" Consultant").

The parties hereby agree as follows:

1. **Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in Exhibit A attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.
2. **Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.
3. **Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in Exhibit B; *provided*, that payment for work within the Scope of Work (Exhibit A) shall not exceed the fee/hour estimate set out in Exhibit B without written amendment to this Agreement, agreed to and signed by both parties.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its subconsultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under this Agreement as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees of Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

8. **Term.** This Agreement shall become effective upon the day of its execution by both parties, and shall terminate upon completion of the work and delivery of all materials described in Exhibit A.

9. **Termination by City.** The City may terminate this Agreement at any time upon not less than ten (10) days written notice to Consultant, subject to the City's obligation to pay Consultant in accordance with subsections A and B below.

A. In the event this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost of work complete at the time of termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized Extra Work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the termination notice. If the accumulated payment(s) made to the Consultant prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Consultant shall immediately reimburse the City for any excess paid.

B. In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable by the City at the time of termination, the cost to the City of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.

12. Indemnification / Hold Harmless

Consultant shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from, injuries, damages, losses and reasonable costs including reasonable attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the negligence of the City. Provided however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the City, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. Except for Professional Liability Insurance, the Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City, except ten (10) days notice of cancellation for non-payment of premium.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

13. **Subletting or Assigning.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

14. **Entire Agreement.** This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the

Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

15. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

16. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

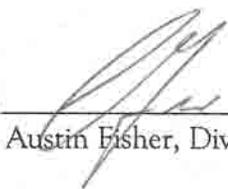
17. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE

CONSULTANT

By: _____
Neil Johnson Jr., Mayor

By:  _____
Austin Fisher, Division Manager

Attachments:

- Exhibit A: Scope of Work/Deliverables
- Exhibit B: Rates

EXHIBIT A - SCOPE OF WORK

City of Bonney Lake SR 410 Eastown Water Main Replacement

PROJECT OVERVIEW

The City of Bonney Lake is preparing to relocate approximately 675 lineal feet of water main that will be impacted by the construction of a retaining wall when SR 410 is widened in the vicinity of 219th Avenue East (between SR 410 STA 415+00 and STA 421+75) as a part of a WSDOT improvement project. The project will include preparing plans and technical specifications in accordance with City of Bonney Lake and WSDOT design guidelines for inclusion in the bid documents prepared by WSDOT.

SCHEDULE

The project is anticipated to take no more than 3 months to complete. Work will begin immediately upon receiving the notice to proceed from the City.

PHASE 01

Task 01 – Project Management and QA/QC

Goal : To provide the tools for continuous tracking of the project schedule and budget, project quality assurance and control, and status of deliverables to ensure that the project is executed as expected by the City.

Assumptions

- A 3-month project schedule is assumed.

Deliverables

- Miscellaneous correspondence to document project management issues.
- Monthly Progress Reports and invoices.
- QA/QC Review of Plans and Specifications.
- Project meeting agendas and notes as applicable.

SCOPE OF WORK (CONTINUED)

Task 02 – Plans, Specifications and Estimate

Goal: To design and prepare plans, specifications and an engineer's opinion of probable cost for advertisement and award of the construction contract by WSDOT.

Approach

The final plans are assumed to include the following sheets:

- Location/Vicinity Map Sheet.
- Quantity Tabulation Sheet.
- General Notes (1 sheet).
- Plan Sheet.
- Profile Sheet.
- Sections and Details (1 sheet).

Assumptions

- Plans will be prepared in MicroStation format, and will be designed in accordance with the *2008 City of Bonney Lake Development Policies and Public Works Design Standards*.
- WSDOT will provide base map and project design information necessary to complete the work including project borders, quantity tabulation spreadsheets, etc.
- WSDOT will provide boiler plate and project specifications for coordination of this work. Specifications will be limited to technical special provisions related to the relocation of the City's water main.

Deliverables

- Three sets of full-size final plans on bond.
- An electronic copy of the Engineer's Opinion of Probable Cost in Microsoft Excel format.
- An electronic copy of the project technical special provisions in Microsoft Word format.
- Electronic copy of all final deliverables will be made available to the City at project closeout.

SCOPE OF WORK (CONTINUED)

Task 03 – Coordination with WSDOT

Goal: To proactively coordinate with the WSDOT project team to ensure efficient incorporation of the City's water relocation project within the WSDOTs planned improvements to SR 410.

Approach

Parametrix will prepare for and attend up to two (2) separate meetings with WSDOT and City staff regarding the project.

Assumptions

- Meeting with WSDOT will be limited to 3 hours for each meeting including preparation and travel time.

EXHIBIT B: RATES

The Consultant's work under this Agreement shall be compensated on a time and materials basis and total compensation shall not exceed \$19,800. Rates shall be in accordance with the enclosed rate sheet.

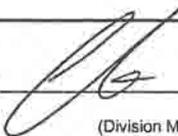
Exhibit B

PROJECT: City of Bonney Lake

CLIENT: SR 410 Eastown Water Main Relocation

PMX #		STAFF	Project Manager (Rick H.)	QA/QC (Austin)	CADD (Teresa)	Project Coordinator (Christy)	Word Processing	TOTAL HOURS	TOTAL COST	Subtotals
999-1611-999										
PHASE	TASK	DRG CODE	BILL RATES	\$195.00	\$190.00	\$115.00	\$95.00	\$90.00		
1	1		Project Management & QA/QC							
	1.1		Project setup, meetings, etc.	4	2				6	\$1,160.00
	1.2		Prog. Letter and Invoice Prep (3)	4			3	3	10	\$1,335.00
	1.3		QA/QC		4				4	\$760.00
2	2		Plans, Specs and Estimate							
	2.1		Location/Vicinity Map	2		4			6	\$850.00
	2.2		Quantity Tabulation Sheet	2		4			6	\$850.00
	2.3		General Notes (1 sheet)	2		4			6	\$850.00
	2.4		Plan Sheet	8		12			20	\$2,940.00
	2.5		Profile Sheet	8		12			20	\$2,940.00
	2.6		Sections/Details (1 sheet)	4		8			12	\$1,700.00
	2.7		Estimate	2					2	\$390.00
	2.8		Specifications	8			4	16	28	\$3,380.00
3	3		Coordination with WSDOT							
	3.1		Meetings (assume 2)	6	6				12	\$2,310.00
Labor Subtotal at Current Salary Rates				50	12	44	7	19	132	\$19,485.00
Salary Escalation								Additional Labor Cost from salary escalation		
In-House Expense	Item	Quantity	Unit Cost	Unit	Direct Cost					
	Mileage	120	\$0.550	mile	\$66.00					
	Photocopies	1000	\$0.10	sheet	\$100.00					
	Check prints	30	\$1.00	sheet	\$30.00					
	Final Plots	6	\$20.00	sheet	\$120.00					
	Misc.		\$1.00	each						
Outside Expenses	Description	Direct Cost	Markup %							
Other Expenses			15%							
			15%							
Subconsultants			15%							
			15%							
PROJECT TOTAL									\$19,781.00	

Prepared By: 
 (Project Manager)

Reviewed By: 
 (Division Manager)

Approved By: 
 (Principal)

Exhibit 'B'

A.1 - Parametrix Sumner Office Category Billing Rates - April 2009 through March 2010

Classification	Grade	Rate for Billing	Classification	Grade	Rate for Billing
Principal	19	\$205	Environmental Technician III	10	\$100
Project Delivery Officer	19	\$215	Environmental Technician II	9	\$70
Program Manager	19	\$210	Environmental Technician I	8	\$65
Principal Consultant	19	\$210			
Division Manager	19	\$210	Construction Mgr. IV	14	\$145
Division Manager	18	\$190	Construction Mgr. III	13	\$130
Division Manager	17	\$185	Construction Mgr. II	12	\$110
			Constr Technician III	11	\$100
Sr Consultant	18	\$195	Constr Technician II	10	\$95
Sr Engineer	17	\$175			
Sr Engineer	16	\$170	CADD Supervisor	12	\$110
Sr Engineer	15	\$150	CADD Tech Lead	12	\$115
Engineer IV	14	\$135	CADD Operator III	11	\$105
Engineer III	13	\$125	CADD Operator II	9/10	\$90
Engineer III	12	\$120	CADD Operator I	8	\$75
Engineer II	11	\$110			
Engineer I	10	\$95	Sr. GIS Analyst	11	\$105
			GIS Technician	10	\$95
Sr. Designer	15	\$145	GIS Technician	9	\$85
Designer IV	14	\$140			
Designer III	12/13	\$125	Survey Supervisor	14	\$130
Designer II	11	\$105	Sr Surveyor	12	\$120
Designer I	10	\$90	Surveyor III	11	\$100
			Surveyor II	10	\$80
Sr Planner	17	\$175	Surveyor I	9	\$70
Sr. Planner	16	\$160	Jr Surveyor	8	\$65
Sr. Planner	15	\$140			
Planner IV	14	\$120	Production Manager	12	\$125
Planner III	12/13	\$105	Production Manager	11	\$100
Planner II	11	\$100	Word Proc Mgr/Editor	11	\$100
Planner I	10	\$85	Word Processing Specialist	9	\$90
			Sr Word Processor	8	\$75
Sr. Scientist/Biologist	16	\$160	Word Processor	7	\$65
Sr. Scientist/Biologist	15	\$145			
Scientist/Biologist IV	14/15	\$135	Sr. Graphic Artist	10	\$105
Scientist/Biologist III	13	\$110			
Scientist/Biologist III	12	\$105	Project Controls Specialist	11	\$100
Scientist/Biologist II	11/12	\$100	Project Coordination Supervisor	11	\$95
Scientist/Biologist I	10	\$80	Sr Project Coordinator	10	\$90
			Project Coordinator	9	\$85
Sr Hydrogeologist	17	\$165	Sr Technical Aide	8	\$75
Sr Hydrogeologist	16	\$160	Technical Aide	7	\$70
Sr Hydrogeologist	15	\$145			
Hydrogeologist IV	14	\$115	Office Admin Manager	12	\$125
Hydrogeologist III	12/13	\$110	Office Administrator	10	\$90
Hydrogeologist II	11	\$90	Sr Admin Assist	8	\$70
Hydrogeologist I	10	\$80	Admin Assistant	6/7	\$65
			LAN Admin I	11	\$95
			Library Specialist	9	\$80

**City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form**

Department/Staff Contact: Gary Leaf, Comm. Svcs. Dir.	Council/Wrkshp Mtg Date: April 28, 2009	Agenda Bill Number: AB09-71
Ordinance Number:	Resolution Number: 1939	Councilmember Sponsor:

BUDGET INFORMATION			
2009 Budget Amount	Required Expenditure	Impact	Remaining Balance
\$390,000.00	\$390,000.00	\$390,000.00	\$0-

Explanation:
These two agreements allow Pierce County to assign their contract rights for the Cimmer parcel to the City of Bonney Lake, subject to the restrictions listed in the Stewardship Agreement

Agenda Subject: A resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing the Mayor to sign the Stewardship Agreement and the accompanying Assignment of Contract Rights.

Administrative Recommendation: Approve

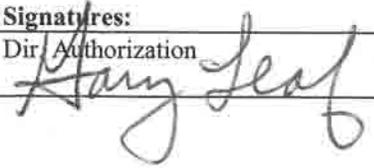
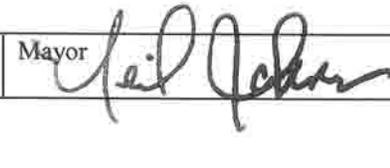
Background Summary: This action involves two agreements with Pierce County that together will consummate the acquisition of the Cimmer parcel by the City of Bonney Lake under the Conservation Futures program. Pierce County has already signed a purchase and sale agreement with the Cimmers; at closing the City of Bonney Lake will provide a check for \$390,000 plus a portion of the closing costs. The two agreements between the City and Pierce County are: an Assignment of Contract Rights and Agreement wherein Pierce County assigns its rights and duties to the City of Bonney Lake; and a Stewardship Agreement and Restrictive Covenant which restricts future alterations to the property by the City. The Stewardship Agreement lists as permissive alterations "trails, picnic tables, viewpoints, rest areas, benches, restrooms, parking lots, exercise stations, fencing and signs and... a small playground." Other alterations not listed will need prior approval from Pierce County. The alterations listed have been negotiated specifically for this parcel by staff and the City Attorney and are generally more liberal than most acquisitions funded by Pierce County under the Conservations Futures program due to the City providing more matching funds than most sponsors.

Council Committee Dates: Finance Committee: 4/28/09 Public Safety Committee: Community Development & Planning Committee: Council Workshops:	Commission Dates: Planning Commission: Civil Service Commission:	Board/Hearing Examiner Dates: Park Board: Hearing Examiner:
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Council Action:

Council Call for Hearing:	Council Hearings Date:
Council Referred Back to:	Workshop: Committee:
Council Tabled Until:	Council Meeting Dates:

Signatures:

Dir. Authorization 	Mayor 	Date City Attorney Reviewed: January 27, 2009
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FINANCE COMMITTEE

DATE: April 28, 2009

ORIGINATOR: Gary Leaf

TITLE: Community Services Director

SUBJECT/DISCUSSION: A resolution of the City Council of the City of Bonney Lake, authorizing the Mayor to sign an Assignment of Contract Rights and Agreement and a Stewardship Agreement and Restrictive Covenant pursuant to the acquisition of the Cimmer parcel under the Conservation Futures program. This action involves two agreements with Pierce County that together will consummate the acquisition of the Cimmer parcel by the City of Bonney Lake under the Conservation Futures program. Pierce County has already signed a purchase and sale agreement with the Cimmers; at closing the City of Bonney Lake will provide a check for \$390,000 plus a portion of the closing costs. The two agreements between the City and Pierce County are: an Assignment of Contract Rights and Agreement wherein Pierce County assigns its rights and duties to the City of Bonney Lake; and a Stewardship Agreement and Restrictive Covenant which restricts future alterations to the property by the City. The Stewardship Agreement lists permissive alterations as "trails, picnic tables, viewpoints, rest areas, benches, restrooms, parking lots, exercise stations, fencing and signs and...a small playground." Other alterations not listed need prior approval from Pierce County. The alterations listed have been negotiated for this parcel by staff and the City Attorney and are more liberal than most acquisitions funded by Pierce County under the Conservations Futures program due to the City providing more matching funds than usual. RESOLUTION 1939

REQUEST OR RECOMMENDATION BY ORIGINATOR: Discuss and forward to council with a recommendation to approve.

ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE

MAYOR X
FINANCE DIRECTOR X
CITY ATTORNEY X

BUDGET INFORMATON

BUDGETED ITEM: TOTAL COST: N/A

(Note: If budgeted item, attach copy of budget page and identify)

Table with 4 columns: 2009 Budget Amount, Required Expenditure, Impact, Remaining Balance. Values: \$390,000.00, \$390,000.00, \$390,000.00, -0-

Explanation: Budgeted amount.

COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL

Table with 4 columns: Name, DATE, APPROVED, DISAPPROVED. Rows for Dan Swatman, Dave King, James Rackley.

COMMITTEE COMMENTS:

COMMITTEE'S RECOMMENDATION TO FORWARD TO:

CITY CLERK FINANCE DIRECTOR CITY ATTORNEY

Please schedule for Council Meeting date of: April 28th, 2009

Consent Agenda - [] Yes [] - No

RESOLUTION NO. 1939

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AN ASSIGNMENT OF
CONTRACT RIGHTS AND A STEWARDSHIP AGREEMENT
WITH PIERCE COUNTY**

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the attached agreements with Pierce County (Assignment of Contract Rights and Agreement and Stewardship Agreement and Restrictive Covenant).

PASSED by the City Council this 28th day of April, 2009.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, CMC
City Clerk

APPROVED AS TO FORM:

James Dionne, City Attorney

PIERCE COUNTY CONSERVATION FUTURES ASSIGNMENT OF CONTRACT RIGHTS AND AGREEMENT

THIS PIERCE COUNTY CONSERVATION FUTURES ASSIGNMENT OF CONTRACT RIGHTS AND AGREEMENT (hereinafter "Agreement") is made and entered into as of the Effective Date (defined in Section 22 below) by and between PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Pierce County") and the CITY OF BONNEY LAKE, a Washington municipal corporation (hereinafter "Bonney Lake"). Pierce County and Bonney Lake may collectively be referred to hereinafter as "the Parties" or individually as a "Party."

RECITALS

WHEREAS on April 3rd, 2009, Pierce County entered into an agreement (hereinafter "Purchase Agreement") with Lavern G. Cimmer and Juanita J. Cimmer, husband and wife and their marital community to purchase the real property legally described therein (hereinafter "Subject Property"). A true and correct copy of the Purchase Agreement is attached hereto as **Exhibit A** and by this reference incorporated herein; and

WHEREAS pursuant to Section 9 of the Purchase Agreement, Pierce County has the right to assign to Bonney Lake some or all of its rights and/or duties under the Purchase Agreement; and

WHEREAS Pierce County now desires to assign some of its rights and duties under the Purchase Agreement to Bonney Lake and Bonney Lake desires to accept such assignment from Pierce County, upon the terms, covenants and conditions set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Pierce County and Bonney Lake agree as follows:

AGREEMENT

1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.
2. **Definitions.** Terms defined in the Purchase Agreement shall have the same meaning in this Agreement.
3. **Assignment of Contract Rights.** Pierce County hereby assigns to Bonney Lake, and Bonney Lake hereby accepts from Pierce County, the following rights and duties under the Purchase Agreement: (a) Pierce County's right under Section 7 of the Purchase Agreement to receive title to the Subject Property at Closing as grantee

under the Statutory Warranty Deed, together with any duties associated therewith; (b) Pierce County's right under Section 4 of the Purchase Agreement to conduct a Due Diligence Review of the Subject Property, together with any duties associated therewith; and (c) Pierce County's right under Section 5 of the Purchase Agreement to the review of the Preliminary Commitment, together with any duties associated therewith. Pierce County shall retain all other rights and duties allocated to it under the Purchase Agreement not expressly assigned to Bonney Lake herein including, without limitation, the obligation to pay the Purchase Price at Closing.

4. Due Diligence Review. Pierce County shall deliver the Due Diligence Materials to Bonney Lake within five (5) business days after receipt thereof from Seller. Bonney Lake shall conduct the Due Diligence Review of the Subject Property at its sole cost and expense in accordance with Section 4 of the Purchase Agreement.

5. Review of Preliminary Commitment. Pierce County shall deliver the Preliminary Commitment to Bonney Lake within five (5) business days after receipt thereof from Closing Agent. Bonney Lake shall conduct the review of the Preliminary Commitment at its sole cost and expense in accordance with Section 5 of the Purchase Agreement.

6. Stewardship Agreement. On or before Closing, Bonney Lake shall execute and deliver to Closing Agent the Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenant attached hereto as **Exhibit B** and by this reference incorporated herein (hereinafter "Stewardship Agreement").

7. Closing Costs. Pierce County shall pay from its Conservation Futures Fund all closing costs allocated to Purchaser under Sections 17.2 and 17.3 of the Purchase Agreement and the cost of recording the Stewardship Agreement.

8. Release, Indemnity and Hold Harmless. As of the Effective Date, Bonney Lake shall release, indemnify and forever hold harmless Pierce County, and its elected and appointed officials, employees, agents, attorneys, successors and assigns, of and from all claims, demands, damages, actions or causes of action, costs, attorney fees and expenses of any kind, type or nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or in any way relating to the Purchase Agreement, this Agreement, the Stewardship Agreement and/or the Subject Property, except for any claims, demands, damages, actions or causes of action, costs, attorney fees and expenses of any kind, type or nature whatsoever caused by intentional, reckless, or negligent action or omission of Pierce County, or its elected and appointed officials, employees, agents, attorneys, successors and assigns. The release, indemnity and hold harmless set forth in this Section 8 shall survive closing and shall not be deemed merged in the Statutory Warranty Deed.

9. Notices. Wherever in this Agreement notice is required to be given, such notice shall be in writing, addressed to the person entitled to such notice, and shall be sent by either: (a) United States mail, return receipt requested; (b) recognized overnight

express service which customarily maintains a contemporaneous permanent delivery record; or (c) fax to the address of such person as set forth in this Agreement, or such address or addresses designated in writing from time to time. The notice shall be deemed delivered on the earlier of: (a) three (3) business days after deposited in the United States mail; (b) the delivery date as shown in the regular business records of the overnight courier service; or (c) the date of automatic confirmed receipt by the recipient's fax, as the case may be. Notices shall be sent to:

Pierce County: Pierce County Facilities Management Department
Attn: Real Estate Specialist
Columbia Bank Building, Suite 302
1102 Broadway
Tacoma, WA 98402
Telephone: 253-798-7223
Facsimile: 253-798-7401

Copy to: Pierce County Prosecutor's Office/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-6732
Facsimile: 253-798-6713

To Bonney Lake: Gary Leaf, Community Services Director
City of Bonney Lake
19306 Bonney Lake Blvd.
P.O. Box 7380
Bonney Lake, WA 98391
Telephone: 253-862-8602
Facsimile: 253-862-8538

Copy to: Kathleen Haggard, Attorney at Law
Law Offices of Dionne & Rorick
900 Two Union Square
601 Union Street
Seattle, WA 98101
Telephone: 206-622-0203
Facsimile: 206-233-2003

Closing Agent: Ticor Title Insurance Company
437 - 29th Street NE, Suite B
Puyallup, WA 98372
Telephone: 253-840-2560
Facsimile: 253-840-1767

Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

10. Attorneys' Fees/Venue. The substantially prevailing party in any action or proceeding between the parties for the enforcement of this Agreement shall be entitled to recover costs and reasonable attorney fees including, without limitation, reasonable attorney fees and expenses incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

11. Negotiation and Construction. This Agreement was negotiated by the parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either party. This Agreement shall be construed according to the laws of the state of Washington.

12. Time. Time is of the essence of this Agreement and of every term and provision hereof.

13. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all written or oral agreements or understandings, if any. This Agreement may be modified only in writing signed by both parties.

14. Date of Performance. If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

15. Cost of Performance. Except as otherwise expressly provided in this Agreement, all covenants, agreements and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

16. Counterparts. This Agreement may be signed in two or more counterparts, which taken together shall constitute the complete Agreement.

17. Recording. Neither this Agreement, nor a memorandum hereof, shall be recorded.

18. Survival of Provisions. The covenants, representations, agreements, terms and provisions contained herein shall survive Closing and shall not be deemed to have merged with or into the Statutory Warranty Deed.

19. **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

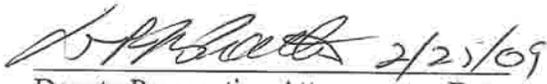
20. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors and assigns.

21. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the Pierce County Executive shall have signed this Agreement as indicated opposite his name below.

PIERCE COUNTY:

CITY OF BONNEY LAKE:

Approved as to legal form only:

 2/25/09 By: _____
Deputy Prosecuting Attorney Date Its _____ Date

Recommended:

Director, Facilities Management Date

Director, Budget & Finance Date

Final Action:

Pierce County Executive Date

[ACKNOWLEDGEMENTS APPEARS ON FOLLOWING PAGE]

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ___ day of _____, 2009, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Pat McCarthy, known to me to be the Executive of Pierce County, Washington, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ___ day of _____, 2009, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared _____, known to me to be the _____ of the City of Bonney Lake, a Washington municipal corporation, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

EXHIBIT A
(Purchase Agreement)

EXHIBIT B
(Stewardship Agreement)

WHEN RECORDED RETURN TO:
Pierce County Facilities Management
Columbia Bank Building, Suite 302
1102 Broadway
Tacoma, WA 98402

**WASHINGTON STATE COUNTY AUDITOR'S/RECORDERS
INDEXING FORM**

Document Title: Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenant

Grantor: City of Bonney Lake, a Washington municipal corporation

Grantee: Pierce County, a municipal corporation and political subdivision of the state of Washington

Abbreviated Legal:

Tax Parcel Number(s):

PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND RESTRICTIVE COVENANT

THIS PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND RESTRICTIVE COVENANT (hereinafter "Agreement") is made and entered into as of the Effective Date (defined in Section 20 below) by and between the CITY OF BONNEY LAKE, a Washington municipal corporation (hereinafter "Bonney Lake") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Pierce County"). Bonney Lake and Pierce County may hereinafter be referred to collectively as "the Parties" or individually as a "Party."

RECITALS

WHEREAS Bonney Lake is sole owner in fee simple of certain real property in Pierce County, Washington, legally described in **Exhibit A** attached hereto and by this reference incorporated herein (hereinafter "Subject Property"); and

WHEREAS the Subject Property contains features consistent with the purposes and values described in chapter 84.34 of the Revised Code of Washington and chapters 2.96 and 2.97 of the Pierce County Code (hereinafter "Conservation Characteristics").

WHEREAS Bonney Lake received and accepted title to the Subject Property through Pierce County's Conservation Futures Program in exchange for its promise to hold the same in perpetuity as open space land for and on behalf of the general public in accordance with the terms, covenants, conditions and restrictions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Bonney Lake and Pierce County agree as follows:

AGREEMENT

1. **Recitals.** The above recitals are incorporated herein by this reference.
2. **Intent of Agreement.** The Parties intend by this Agreement: (a) Bonney Lake shall hold title to the Subject Property in perpetuity as park and open space land for and on behalf of the general public in accordance with the terms of this Agreement; (b) Bonney Lake shall forever protect, preserve, maintain, conserve, enhance and improve the Conservation Characteristics of the Subject Property; and (c) the terms of this Agreement shall, pursuant to chapter 84.34 RCW and chapters 2.96 and 2.97 of Pierce County Code: (i) constitute a covenant and/or equitable servitude running with the Subject Property in perpetuity in fulfillment of the legal and contractual requirements of Bonney Lake and Pierce County with respect thereto; and (ii) forever bind Bonney Lake

and Pierce County and their respective heirs, devisees, executors, administrators, grantees, assigns and successors in interest.

3. Use of Subject Property.

3.1 By Bonney Lake. Bonney Lake shall use and manage the Subject Property in accordance with all applicable federal, state, county and local laws, rules, regulations and standards so as to forever protect, preserve, maintain, conserve, enhance and improve the Conservation Characteristics thereof.

3.2 By General Public. Bonney Lake shall permit the general public to have access to the Subject Property at reasonable hours and times of year for passive recreational activities consistent with the intent of this Agreement including, without limitation: (a) trail-walking; (b) wildlife viewing; (c) exercise stations; and (d) wetland vegetation identification.

3.3 No Discrimination. Uses by the general public as provided in this Section 3 shall be without regard to race, creed, color, gender, religion, national origin or residence of the user.

3.4 Lease. The provisions of this Section 3 notwithstanding, Bonney Lake shall lease the single family residence located on the Subject Property to the former owners thereof, Lavern G. Cimmer and Juanita J. Cimmer, husband and wife, for a period of not less than one (1) year from the date Bonney Lake acquires title thereto upon terms, covenants and conditions consistent with the intent of this Agreement as set forth in Section 2 above. Moreover, at the conclusion of the lease to Lavern G. Cimmer and Juanita J. Cimmer, Bonney Lake shall have the exclusive right to lease the single family residence located on the Subject Property in any manner it, in its sole discretion, deems appropriate until such time that the residence is demolished; provided, however, any such lease shall be upon terms, covenants and conditions consistent with the intent of this Agreement as set forth in Section 2 above.

4. Maintenance. Bonney Lake shall keep and maintain the Subject Property, together with any improvements or alterations in, on, under or about the Subject Property, in a neat, clean, safe and sanitary condition in accordance with all applicable federal, state, county and local laws, rules, regulations and standards.

5. Improvements and Alterations. Bonney Lake shall submit any plans for proposed improvements or alterations to the Subject Property to Pierce County for prior review and written approval to assure compliance and consistency with the intent of this Agreement. The term "improvements or alterations" shall not include routine maintenance or passive recreation improvements or alterations such as trails, picnic tables, viewpoints, rest areas, benches, restrooms, parking lots, exercise stations, fencing and signs and shall not include construction and maintenance of a small playground; but shall include all other improvements not enumerated herein. Approval shall be given if the proposal is consistent with the use contemplated in this Agreement. In all instances

approval or disapproval of plans shall be given within 30 days of the date plans are submitted by the City. If disapproval is not received in writing by the City within 30 days, the proposal shall be deemed approved by Pierce County. Bonney Lake's obligation to permit access to the general public does not include an affirmative duty to develop trails, parking for vehicles and/or bicycles, restroom facilities or any other facilities or infrastructure.

6. Fees and Charges. Bonney Lake may charge user or other types of fees in connection with the public use of the Subject Property; provided, however, that such fees and charges shall be commensurate with the value of the recreational services or opportunities furnished and are within the prevailing range of public fees and charges within the state of Washington for the particular activity involved.

7. Indemnification. Bonney Lake, for itself, its successors and assigns, shall defend, indemnify and hold Pierce County, and its elected and appointed officials, employees and agents, harmless to the maximum extent allowed by law from and against any and all liabilities, claims, demands, suits, judgments, costs and attorney fees of any kind, type or nature whatsoever arising out of or relating in any way relating to the Subject Property or to the subject matter of this Agreement, except for any claims, demands, damages, actions or causes of action, costs, attorney fees and expenses of any kind, type or nature whatsoever caused by intentional, reckless, or negligent action or omission of Pierce County, or its elected and appointed officials, employees, agents, attorneys, successors and assigns. The release, indemnity and hold harmless set forth in this Section 8 shall survive closing.

8. Notices. Notices required or desired to be given under this Agreement shall be in writing and sent by either: (a) United States mail, return receipt requested; (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record; or (c) fax to the address of such person as set forth in this Agreement, or such address or addresses designated in writing from time to time. The notice shall be deemed delivered on the earlier of: (a) Three (3) business days from deposit in the United States mail; (b) the delivery date as shown in the regular business records of the overnight courier service; or (c) the date of automatic confirmed receipt by the recipient's fax, as the case may be. Notices shall be addressed as follows:

To Bonney Lake: Gary Leaf, Community Services Director
City of Bonney Lake
19306 Bonney Lake Blvd.
P.O. Box 7380
Bonney Lake, WA 98391
Telephone: 253-862-8602
Facsimile: 253-862-8538

Copy to: Kathleen Haggard, Attorney at Law
Law Offices of Dionne & Rorick
900 Two Union Square
601 Union Street
Seattle, WA 98101
Telephone: 206-622-0203
Facsimile: 206-233-2003

To Pierce County: Pierce County Facilities Management Department
Attn: Real Estate Specialist
Columbia Bank Building, Suite 302
1102 Broadway
Tacoma, WA 98402
Telephone: 253-798-7223

Copy to: Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-6732
Facsimile: 253-798-6713

Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

9. Enforcement; Remedies. If Bonney Lake fails in any material respect to perform its obligations under this Agreement with respect to the Subject Property, Pierce County may seek: (a) specific performance of this Agreement; or (b) any other remedy available at law or in equity.

10. Attorney Fees; Venue. The substantially prevailing party in any action or proceeding between the parties for the enforcement of this Agreement shall be entitled to recover costs and reasonable attorney fees including, without limitation, reasonable attorney fees and expenses incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

11. Negotiation and Construction. This Agreement was negotiated by the parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either party. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington.

12. Time. Time is of the essence of this Agreement and of every term and provision hereof.

13. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all written or oral agreements or understandings, if any. This Agreement may be modified only in writing signed by both Parties.

14. **Date of Performance.** If the date of any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

15. **Cost of Performance.** Except as otherwise expressly provided in this Agreement, all covenants, agreements and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

16. **Counterparts.** This Agreement may be signed in two or more counterparts, which taken together shall constitute the complete Agreement.

17. **Binding Effect.** The terms, covenants, conditions and restrictions set forth in this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors and assigns.

18. **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

19. **Recording.** This Agreement shall be recorded in its entirety with the Auditor of Pierce County, Washington.

20. **Effective Date.** "Effective Date" shall mean the date upon which County's Executive has executed this Agreement as indicated opposite her name below.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CITY OF BONNEY LAKE:

PIERCE COUNTY:

Approved as to legal form only:

By: _____
Its _____ Date

 2/25/09
Deputy Prosecuting Attorney Date

Recommended:

Director, Facilities Mgmt Date

Director, Budget & Finance Date

Final Action:

Pierce County Executive Date

[ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE]

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ____ day of _____, 2009, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared _____, known to me to be the _____ of the City of Bonney Lake, a Washington municipal corporation, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ____ day of _____, 2009, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Pat McCarthy, known to me to be the executive of Pierce County, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

EXHIBIT A
(Legal Description of Subject Property)

That portion of the Southeast Quarter of the Southwest Quarter of Section 33, Township 20 North, Range 5 East of the W.M., in Pierce County, Washington, lying Easterly of the Angelina Elhi Hill County Road and Northerly of State Primary Highway No. 5 as conveyed to State of Washington be deed recorded under recording number 1249188.

Except that portion conveyed to State of Washington by deed recorded under recording number 8211080022; and

Except that portion conveyed to City of Bonney Lake by deeds recorded under recording number 8509270022 and 8510250298.



The following are the official
2009 VOTING DELEGATES for:

City/Town of _____

	Name	Title
1.	_____	_____
2.	_____	_____
3.	_____	_____

Mayor's Signature: _____

Please return by Monday, June 15, 2009
Fax to April Petersen at (360) 753-0149