

**CITY COUNCIL MEETING**

**May 26, 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](http://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:

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. **Accounts Payable Checks/Vouchers:** Accounts Payable checks/vouchers #55494 thru 55568 (including wire transfer # 25041744) in the amount of \$358,842.55; Accounts Payable checks/voucher #55569 for an Accounts Receivable refund in the amount of \$15,880.11; Accounts Payable checks/vouchers #55570 thru 55649 (including wire transfer # 4674205) in the amount of \$285,874.14; Accounts Payable checks/voucher #55650 thru 55683 for Accounts Receivable refunds in the amount of \$55,201.10; Accounts Payable checks/vouchers #55684 thru 55698 for utility refunds in the amount of \$1,241.20.
- B. **Approval of Payroll:** Payroll for May 1st – 15th, 2009 for checks 28202-28237 including Direct Deposits and Electronic Transfers in the amount of \$ 391,611.20
- C. **AB09-82 – Resolution 1945** – A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing the City to Electronically Submit a Grant Proposal to Keep America Beautiful, Inc. Graffiti Hurts National Grant Program.
- D. **AB09-83 – Resolution 1946** - 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 High Efficiency Toilet Rebate Program.

**V. FINANCE COMMITTEE ISSUES:**

- A. **AB09-68 – Ordinance D09-68** - An Ordinance of the City Of Bonney Lake, Pierce County, Washington Amending Chapter 8.04 of the Bonney Lake Municipal Code and the Corresponding Portions of Ordinance Nos. 768 § 2; 389 § 15, and Adding a New Subsection to Chapter 8.04, Regarding Mandatory Refuse Service.
- B. **AB09-87 – Resolution 1947** - A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing a Contract with Sabre Communications Corporation.

**VI. COMMUNITY DEVELOPMENT COMMITTEE ISSUES:** None.**VII. PUBLIC SAFETY COMMITTEE ISSUES:**

- A. **AB09-86** – A Motion of the Bonney Lake City Council to Add to the Planning Commission Work Plan the Issue of Additional Design Standards to Abate Noise, Light and Odors for Residents in Areas of the City Where there is a Mixed Use and/or Where Residential Properties Adjoin Business Zoned Properties, Including but Not Limited to the DM Zone.

**VIII. FULL COUNCIL ISSUES:** None.

**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**

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

5/26/2009

Accounts Payable checks/vouchers #55494 thru 55568 (including wire transfer # 25041744) in the amount of \$358,842.55.

Accounts Payable checks/voucher #55569 for an Accounts Receivable refund in the amount of \$15,880.11.

Accounts Payable checks/vouchers #55570 thru 55649 (including wire transfer # 4674205) in the amount of \$285,874.14.

Accounts Payable checks/voucher #55650 thru 55683 for Accounts Receivable refunds in the amount of \$55,201.10.

Accounts Payable checks/vouchers #55684 thru 55698 for utility refunds in the amount of \$1,241.20.

## **PAYROLL CERTIFICATION**

Payroll for May 1<sup>st</sup> – 15th, 2009 for checks **28202-28237** including Direct Deposits and Electronic Transfers in the amount of \$ **391,611.20**





**RESOLUTION NO. 1945**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY TO ELECTRONICALLY SUBMIT A GRANT PROPOSAL TO KEEP AMERICA BEAUTIFUL, INC. GRAFFITI HURTS NATIONAL GRANT PROGRAM.**

WHEREAS, the Graffiti Hurts National Grant Program requires the governing body to authorize a city representative to electronically submit the grant application; and

WHEREAS, the aforementioned grant program requires the mayor to sign a letter of recommendation as part of the application package;

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the letter of recommendation and application, and designate the executive assistant to electronically submit a grant application for the \$2,500 set forth in the Graffiti Hurts Grant Program.

**PASSED** by the City Council this 26<sup>th</sup> day of May, 2009

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Neil Johnson Jr., Mayor

ATTEST:

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Harwood T. Edvalson, CMC  
City Clerk

APPROVED AS TO FORM:

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James Dionne, City Attorney

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

<b>Department/Staff Contact:</b> Al Juarez – Chief Financial Officer	<b>Council/Wkshp Meeting Date:</b> May 26, 2009	<b>Agenda Item Number</b> AB09 - 83
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<b>Ordinance Number:</b>	<b>Resolution Number:</b> 1946	<b>Councilmember Sponsor:</b> Deputy Mayor Swatman
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<b>BUDGET INFORMATON</b>		
<u>2009 Budget</u>	<u>Expenditure Amount</u>	<u>Remaining Balance</u>
Utilize existing budget	Project Admin Fees 1,632	
	Project Incentives 2,550	
	<b>Total (2009) \$ 4,182</b>	

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 rebate program in 2009 for high efficiency toilets.

**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 and water 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. PEGI designed and implemented the northwest regional ENERGY STAR home products program. This 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 and water efficient products save resources and money. This proposed rebate program is designed to increase the number of high efficiency toilets 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.

<b>Council Committee Dates:</b>	<b>Commission Dates:</b>	<b>Board/Hearing Examiner Dates:</b>
Finance Committee: 5/12/09 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:** May 12, 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 high efficiency toilet rebate 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 PECI 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. A main focus is to reach consumers with the key message that energy efficient products save energy, resources and money. This proposed rebate incentive program is designed to increase the number of high efficiency toilets 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:** 1946

**REQUEST OR RECOMMENDATION BY ORIGINATOR:** Approve Proposed Resolution

**ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE**

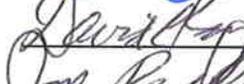
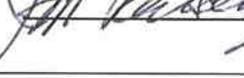
**MAYOR** X  
**FINANCE DIRECTOR** Yes  
**CITY ATTORNEY** X

**BUDGET INFORMATON**

<u>2009 Budget Amount</u>	<u>Required Expenditure</u>	<u>Remaining Balance</u>
	Project Admin Fees \$1,632	
	Project Incentives <u>2,550</u>	
	<b>Total (2009)</b> <b>\$4,182</b>	

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

**COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL**

	<u>DATE</u>	<u>APPROVED</u>	<u>DISAPPROVED</u>
Dan Swatman, Chair, Finance	<u>5-12-09</u>		_____
David King, Chair, Public Safety	<u>5-12-09</u>		_____
James Rackley, Chair, CDC	<u>5-12-09</u>		_____

**COMMITTEE COMMENTS:** \_\_\_\_\_

**COMMITTEE'S RECOMMENDATION TO FORWARD TO:**

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

**Please schedule for Council Meeting date of:** May 26, 2009

**Consent Agenda:** Yes

## **RESOLUTION NO. 1946**

**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 HIGH EFFICIENCY TOILET REBATE 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 26<sup>th</sup> day of May, 2009.**

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Mayor Neil Johnson, Jr.

AUTHENTICATED:

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Harwood T. Edvalson, CMC  
City Clerk

APPROVED AS TO FORM:

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James J. Dionne, City Attorney

# 2009 Bonney Lake Toilet Rebate Program

## 1. Service Contract

This Agreement is made and entered into by and between the City of 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 HET Rebate Program
Contract Period	June 1, 2009 – July 31, 2009
Client Name	Bonney Lake
Client Representative	Al Jaurez
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 <sup>th</sup> Ave. #700
City, State, Zip	Portland, Oregon 97201
Taxpayer Identification Number	93-0770824

## 2. Term

The term of this Agreement (Term) shall commence on June 1, 2009 and continue in effect until July 31, 2010 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 City of Bonney Lake HET Rebate Proposal, 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 A.

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 Attachment A 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 Attachment 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 those 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 attachment, shall be effective immediately upon execution by both parties.

Bonney Lake

Portland Energy Conservation, Inc.

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



ORDINANCE NO. D09-68

AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON AMENDING CHAPTER 8.04 OF THE BONNEY LAKE MUNICIPAL CODE AND THE CORRESPONDING PORTIONS OF ORDINANCE NOS. 768 § 2; 389 § 15, AND ADDING A NEW SUBSECTION TO CHAPTER 8.04, REGARDING MANDATORY REFUSE GARBAGE SERVICE.

WHEREAS, Chapter 8.04 of the Bonney Lake Municipal Code requires all residents to use the garbage refuse service unless a special exemption is granted; and

WHEREAS, the City of Bonney Lake provides garbage service to its residents through a contract with a private disposal company; and

WHEREAS, pursuant to the contract, the City is responsible for enforcing mandatory garbage refuse service; and

WHEREAS, the contract between the City and the disposal contractor gives the contractor the right to terminate garbage refuse service to customers who fail to pay their bills; and

WHEREAS, some residents fail to re-establish accounts with the garbage refuse contractor after their service has been terminated due to non-payment because they have no incentive to re-establish the service; and

WHEREAS, RCW 35.21.130 gives the City the authority to impose monetary penalties for failure to comply with mandatory garbage refuse service.

NOW THEREFORE, the City Council of the City of Bonney Lake do ordain as follows:

Section 1. Bonney Lake Municipal Code § 8.04.130 and the corresponding portions of Ordinance Nos. 768 § 2 and 389 § 15 are hereby amended to read as follows:

**8.04.130 Accounts - When due.**

Charges for refuse ~~utility~~ services, whether provided by the City or an independent contractor under an agreement with the City, shall be due and payable on or before the tenth day following the date of billing. Amounts unpaid shall become delinquent ~~60~~ 45 days after the billing date. A monthly penalty of ~~two~~ 1.5 percent of the outstanding balance shall be charged to all accounts which have been delinquent for ~~60~~ 45 days or more.

If an account is delinquent for more than ~~60~~ 90 days, service shall be suspended after ten days written notice to the customer. Any suspension shall not relieve the person owing such account from the duty of complying with the provisions of this chapter. The customer

shall contact the refuse contractor to re-establish service within 30 days of the service being disconnected, and shall pay any fees for re-establishing service. Such suspension shall render the premises where such service is suspended subject to condemnation for sanitary reasons. (Ord. 768 § 2, 1998; Ord. 389 § 15, 1973).

Section 2. A new Section, BLMC 8.04.190, is added to Chapter 8.04 BLMC, to read as follows:

**8.04.190 - Violation - Penalties - Enforcement**

Any violation of this Chapter, including but not limited to a failure to re-establish service within 30 days of service suspension pursuant to BLMC 8.04.130, shall be a Class 1 civil infraction under Chapter 7.80 RCW. Each day of violation shall constitute a separate offense. The City Code Enforcement Officer shall have the authority to issue civil infraction notices.

Section 3. This ordinance shall take effect thirty (30) days after its passage, approval, and publication as required by law.

PASSED by the City Council and approved by the Mayor this \_\_\_\_\_ day of April, 2009.

\_\_\_\_\_  
Neil Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
James J. Dionne, City Attorney

Passed:  
Valid:  
Published:  
Effective Date:

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

<b><u>Department / Staff Contact:</u></b> PD / Chief Mike Mitchell	<b><u>Workshop / Meeting Date:</u></b> 26 May 2009	<b><u>Agenda Bill Number:</u></b> AB09-087
<b><u>Ordinance Number:</u></b>	<b><u>Resolution Number:</u></b> 1947	<b><u>Councilmember Sponsor:</u></b>

**Agenda Subject:** Sabre Towers contract

**Proposed Motion:** A motion to authorize Mayor Johnson to sign a contract with Sabre Towers for the fabrication and installation of a 180 ft monopole tower to be used for the public safety 800 MHz radio system, internal city data transfers and possible rental space for another carrier.

**Administrative Recommendation:** Recommend approval for the Mayor to sign this contract with Sabre Towers for fabrication and installation of a monopole tower.

**Background Summary:** The city is in the process of building an 800 MHz radio system for public safety. The need for better radio coverage has initiated this system and a monopole located just off of the gravel boat trailer parking lot was started. Using the GSA contractors list Sabre Towers was chosen to build this tower. Other bids were received from contractors with Sabre being one of the lowest. Because of the low bid and their extensive back ground in building this type of structure they became the leader and most qualified for this contract. The cost for the structure and installation will be \$118,169.05 which includes Washington State sales tax.

<b><u>BUDGET INFORMATION:</u></b>			
<b>Budget Amount</b>	<b>Required Expenditure</b>	<b>Budget Impact</b>	<b>Budget Balance</b>
0	118,169.05	39,169.05	drug seizure fund \$ 354,000.00
<b>Budget Explanation:</b> This project will be funded using several sources. Per contract with the City of Puyallup for dispatch services they will be funding \$ 55,000. A Federal Byrne grant has been applied for and will supply \$ 24,000. The remaining \$ 39,169.05 will be funded out of the drug seizure fund. There will be no impact to the cities budgeted general fund account			

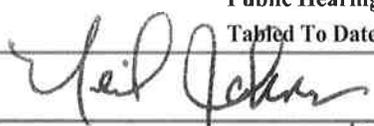
**COMMITTEE/BOARD REVIEW:**

**Subcommittee Review Date:** Finance Committee - 26 May 2009  
**Commission/Board Review Date:** -  
**Hearing Examiner Date:**

**COUNCIL ACTION:**

**Workshop Date(s):** \_\_\_\_\_ **Public Hearing Date(s):** \_\_\_\_\_  
**Meeting Date(s):** 26 May 2009 **Tabled To Date:** \_\_\_\_\_

**Signatures:**

Director Authorization	Mayor 	Date City Attorney Reviewed
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**FINANCE COMMITTEE**

**DATE:** May 26 ,2,008

**ORIGINATOR:** Mike Mitchell

**TITLE:** Chief of Police

**SUBJECT/DISCUSSION:** Award contract for 800 MHz pole

**ORDINACNE/RESOLUTION:** Resolution No. 1947

**REQUEST OR RECOMMENDATION BY ORIGINATOR:** Recommend Approval

**ISSUE AND DOCUMENTS HAVE BEEN REVIEWED AND APPROVED BY THE:**

<b>MAYOR</b>	Yes
<b>FINANCE DIRECTOR</b>	Yes
<b>CITY ATTORNEY</b>	Yes

**BUDGET INFORMATON**

**BUDGETED ITEM:** NA **TOTAL COST:**

<u>2008 Budget Amount</u>	<u>Required Expenditure</u>	<u>Impact</u>	<u>Remaining Balance</u>
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**Explanation:** Required Expenditure: \$118,169.05. Budget Explanation: This project will be funded using several sources. Per contract with the City of Puyallup for dispatch services they will be funding \$ 55,000. A Federal Byrne grant has been applied for and will supply \$24,000. The remaining \$ 39,169.05 will be funded out of the drug seizure fund (which will take a budget amendment prior to the end of the year). There will be no direct impact to the city's budgeted general fund.

This bid award is off the GSA contract and is a very competitive price.

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**COMMITTEE ACTION: RECOMMEND APPROVAL TO COUNCIL**

	<b>DATE</b>	<b>APPROVED</b>	<b>DISAPPROVED</b>
<b>Dan Swatman, Chairperson</b>	_____	_____	_____
<b>Jim Rackley, Chair CDC</b>	_____	_____	_____
<b>Dave King, Chair, Public Safety</b>	_____	_____	_____

**COMMITTEE COMMENTS:** \_\_\_\_\_

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**COMMITTEE'S RECOMMENDATION TO FORWARD TO:**

<b>CITY CLERK</b>	<b>FINANCE DIRECTOR</b>	<b>CITY ATTORNEY</b>
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**Please schedule for Council Meeting date of: May 26, 2009**

**RESOLUTION NO. 1947**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BONNEY LAKE, PIERCE COUNTY, WASHINGTON,  
AUTHORIZING A CONTRACT WITH SABRE  
COMMUNICATIONS CORPORATION.**

The City Council of the City of Bonney Lake, Washington, does hereby authorize the Mayor to sign an agreement with Sabre Communications Corporation for the engineering, manufacture and installation of a 180' monopole tower.

**PASSED** by the City Council this 26<sup>th</sup> day of May, 2009.

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Neil Johnson Jr., Mayor

ATTEST:

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Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

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James Dionne, City Attorney



Guyed and Self-Supporting Towers, Monopoles,  
HF Antenna Systems and Turnkey Installations

May 12, 2009

CITY OF BONNEY LAKE  
18421 OLD BUCKLEY HIGHWAY  
BONNEY LAKE, WA 98391

ATTN: MR. MIKE MITCHELL  
(253) 863-4545

DEAR MR. MITCHELL:

Per your recent request, please find following our quotation 09-7444-RSS-R1 for a 180' Sabre Monopole. Various mounts are included in the quoted price as you have requested.

If you have any questions or require further information, please feel free to contact me at (949) 481-4310

Sincerely,  
**SABRE COMMUNICATIONS**

A handwritten signature in cursive script that reads "Rolli Sexton".

Rolli Sexton  
West Region Sales Manager

Enclosure: Per Above

RSS:



Guyed and Self-Supporting Towers, Monopoles,  
HF Antenna Systems and Turnkey Installations

**PROPOSAL**

Prepared for: **CITY OF BONNEY LAKE**  
**18421 OLD BUCKLEY HIGHWAY**  
**BONNEY LAKE, WA 98391**  
**Attn: MR. MIKE MITCHELL**

Proposal No: **09-7444-RSS-R1**  
**Date: May 12, 2009**  
**Site: 180' Monopole/Bonney Lake, WA**  
**Freight: Origin Payment Terms: TBD**

**SABRE MONOPOLE**

Quantity of one (1) Sabre Monopole. The monopole has an overall height of 180'. The overall height of this monopole includes the foundation projection.

The monopole will be eighteen-sided and tapered in design with a top diameter of 24.00" and a base diameter of 59.97" .

The monopole will be designed for a basic wind speed of 85 mph with 0" radial ice, 30 mph with 0.25" radial ice in accordance with ANSI/TIA-222-G.

**Revision G Parameters:**

- Structure Class II
- Exposure Category C
- Topographic Category 1

**\*\*Refer to Notes section for definitions of Revision G parameters.**

The monopole will be designed to support the following equipment:

QTY	ANTENNA MODEL NUMBER	RADOME		C-Line Elev.	TX. LINE SIZE & TYPE	FREQ. GHz	AZIMUTH TO NORTH	ANTENNA MOUNT (DESIGN)	ANTENNA MOUNT PROVIDED	
		YES	NO						YES	NO
1	8' Omni		X	180'	(1) 1 5/8"	N/A	Unknown	(1) 2' Standoff Arm with Collar Mount	X	
2	RAD 6' Microwave Dish	X		170'	(2) EW63	11 GHz	Unknown	(2) Pipe Mount (up to 6' Dish) with Collar Mount	X	
3	8' Omni		X	160'	(3) 1 5/8"	N/A	Unknown	(3) 2' Standoff Arm with Collar Mount		X
4	RAD 6' Microwave Dish	X		150'	(2) EW63	11 GHz	Unknown	(2) Pipe Mount (up to 6' Dish) with Collar Mount		X

<b>ITEM I</b>	<b>MONOPOLE MATERIALS</b> .....	<b>\$ 52,590.00</b>
	<b>APPLICABLE SALES TAX</b> .....	<b>\$ 4,102.02</b>

Materials to be provided include:

- Complete monopole steel and hardware
- Anchor bolts and templates, (8) bolts 84" long.
- Step Bolts
- Eight (8) 6" x 12" access ports with J hooks (see notes)
- Two (2) 10.5" x 25.5" access ports (see notes)
- 2' Standoff Arm with Collar Mount at the 180' elevation
- Two (2) Pipe Mount (up to 6' Dish) with Collar Mount at the 170' elevation
- 200' DBI Safety Climb without harness
- 8' x 3/4" Lightning Rod Copper Clad and Stiffener
- TIA Grounding Kit
- P.E. certified pole and foundation design (see notes)
- Final erection drawings



Guyed and Self-Supporting Towers, Monopoles,  
HF Antenna Systems and Turnkey Installations

**PROPOSAL**

**Prepared for: CITY OF BONNEY LAKE**  
**18421 OLD BUCKLEY HIGHWAY**  
**BONNEY LAKE, WA 98391**  
**Attn: MR. MIKE MITCHELL**

**Proposal No: 09-7444-RSS-R1**  
**Date: May 12, 2009**  
**Site: 180' Monopole/Bonney Lake, WA**  
**Freight: Origin Payment Terms: TBD**

**ITEM II FOUNDATION INSTALLATION** ..... \$ 32,317.00  
 Install base foundation based on Adapt Engineering's soil analysis provided to Sabre Communications Corporation.

**ITEM III MONOPOLE ERECTION** ..... \$ 17,723.00  
 Offload monopole materials from truck and inventory  
 Erect monopole steel complete  
 Install step bolts  
 Install 2' Standoff Arm with Collar Mount at the 180' elevation  
 Install Two (2) Pipe Mounts (up to 6' Dish) with Collar Mount at the 170' elevation  
 Install 200' DBI Safety Climb without harness  
 Install TIA Grounding Kit  
 Install 8' x 3/4" Lightning Rod Copper Clad and Stiffener

**MONOPOLE FREIGHT TO PIERCE COUNTY, WASHINGTON** ..... \$ 5,553.00  
**APPLICABLE SALES TAX** ..... \$ 433.13

**ANCHOR BOLT FREIGHT TO PIERCE COUNTY, WASHINGTON** ..... \$ 969.00  
**APPLICABLE SALES TAX** ..... \$ 75.58

**OPTIONS:**

Three (3) 2' Standoff Arm with Collar Mount at the 160' elevation ..... \$ 992.00  
**APPLICABLE SALES TAX** ..... \$ 77.38  
 Installation (per elevation) ..... \$ 1,100.00  
 Two (2) Pipe Mount (up to 6' Dish) with Collar Mount at the 150' elevation ..... \$ 730.00  
**APPLICABLE SALES TAX** ..... \$ 56.94  
 Installation (per elevation) ..... \$ 1,450.00

\* With the purchase of options additional freight charges may be incurred.

**NOTES:** Terms will be finalized upon credit approval.

**Classification of Structure:**

Class Two

Structures used for services that may be provided by other means such as: commercial wireless communications, television and radio broadcasting, cellular, PCS, CATV, and microwave communications. Class two is the standard default for structure classification.

**Exposure Category:**

Exposure C

Open terrain with scattered obstructions having heights generally less than 30 feet. This category includes flat, open country, grasslands and shorelines in hurricane prone regions. Exposure C is the standard default for exposure categories.

**Topographic Category:**

Category 1

No abrupt changes in general topography, e.g. flat or rolling, no wind speed-up consideration shall be required. Category one is the standard default for the topographic categories.



Guyed and Self-Supporting Towers, Monopoles,  
HF Antenna Systems and Turnkey Installations

## PROPOSAL

Prepared for: **CITY OF BONNEY LAKE**  
**18421 OLD BUCKLEY HIGHWAY**  
**BONNEY LAKE, WA 98391**  
**Attn: MR. MIKE MITCHELL**

**Proposal No: 09-7444-RSS-R1**  
**Date: May 12, 2009**  
**Site: 180' Monopole/Bonney Lake, WA**  
**Freight: Origin Payment Terms: TBD**

This quotation is based on ANSI/TIA-222-G and Customer provided specifications. Any information not provided by ANSI/TIA-222-G or the Customer has not been considered.

Foundation and anchor bolt designs are based strictly on ANSI/TIA-222-G. Any additional requirements may result in increased foundation size and price increases.

**Dimensional information is preliminary only; it may change based on final engineering.**

All Sabre mounts are designed in accordance with antenna specifications. If different pipe size is required at time of order, additional costs may be incurred.

Cable type safety climbing device provided does not include harness.

Site must be easily accessible for trucks delivering monopole steel and concrete, cranes, drill rigs, and all other equipment required to perform the job.

In the event that the existing soil conditions are found to be other than as depicted in the Soils Report and Sabre's soil parameters, Sabre may ask for an equitable adjustment to the quoted price.

Customer to secure all Permits.

This quote is based on non-union, non-prevailing wages and non-winter working conditions.

All deviations, alterations, field changes, engineering changes or architectural changes to the implied scope of work will be billed accordingly on a time and materials basis.

Sabre Communication's standard access port size is 6" x 12". If access ports other than as specified in this proposal are required, additional costs may be incurred.

Two (2) access ports will be provided. Elevations and azimuths must be specified at the time of order.

Freight charges quoted are for provided materials only. Additional freight charges will be incurred with the order of additional items.

All antennas, transmission lines, jumpers, ground kits, hangers, and hardware are to be provided and installed by others.

All monopole materials will be hot dip galvanized as outlined in ASTM A-123.

This proposal does not include any sales, use, excise, contractors or any other taxes not specifically detailed in this proposal.

Due to material price fluctuations, Sabre reserves the right to review all material pricing prior to accepting any order. Any structure order placed on hold is subject to a price review at the time of its release from hold status.



Guyed and Self-Supporting Towers, Monopoles,  
HF Antenna Systems and Turnkey Installations

**PROPOSAL**

Prepared for: **CITY OF BONNEY LAKE**  
**18421 OLD BUCKLEY HIGHWAY**  
**BONNEY LAKE, WA 98391**  
**Attn: MR. MIKE MITCHELL**

Proposal No: **09-7444-RSS-R1**  
Date: **May 12, 2009**  
Site: **180' Monopole/Bonney Lake, WA**  
Freight: **Origin**      **Payment Terms:**      **TBD**

The permit package includes a profile drawing of the structure with member sizes; descriptive notes; structural calculations; a table of supported antennas, mounts and feedlines; and a foundation sketch and calculations (if applicable).

Storage charges of \$350.00 per month may apply starting 60 days after original scheduled ship date.

Due to freight price fluctuations Sabre reserves the right to review all freight pricing prior to accepting any order.

Pricing is subject to review at the time of order. Additional costs may be applied at that time.

Title, ownership, risk of loss, risk of material obsolescence and risk of material market value decline shall pass to the Customer upon invoicing or shipment to Customers, whichever occurs earlier in time

**Delivery will be approximately 4 to 6 weeks after receipt of required information and contingent upon backlog at the time of order.**

This proposal is based on the terms and conditions proposed above including the attached standard terms and conditions and is subject to our review and final acceptance of your order. No other terms are valid unless signed by an authorized officer of Sabre Communications.

Submitted By: Sabre Communications Corporation

Acceptance of Customer:

Please enter our order for the above items in accordance with this proposal.

Rolli Sexton  
West Region Sales Manager

Signature \_\_\_\_\_

Name (print) \_\_\_\_\_

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

Purchase Order No. \_\_\_\_\_

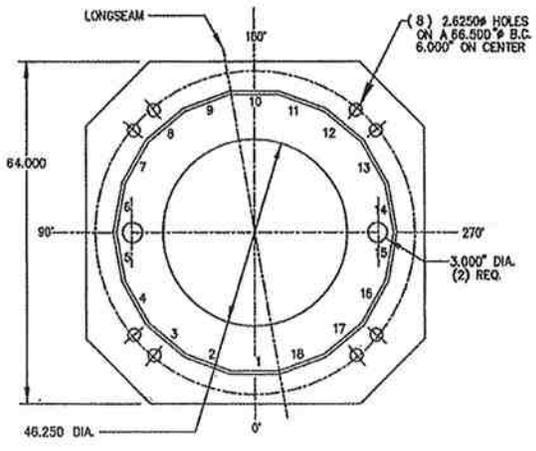
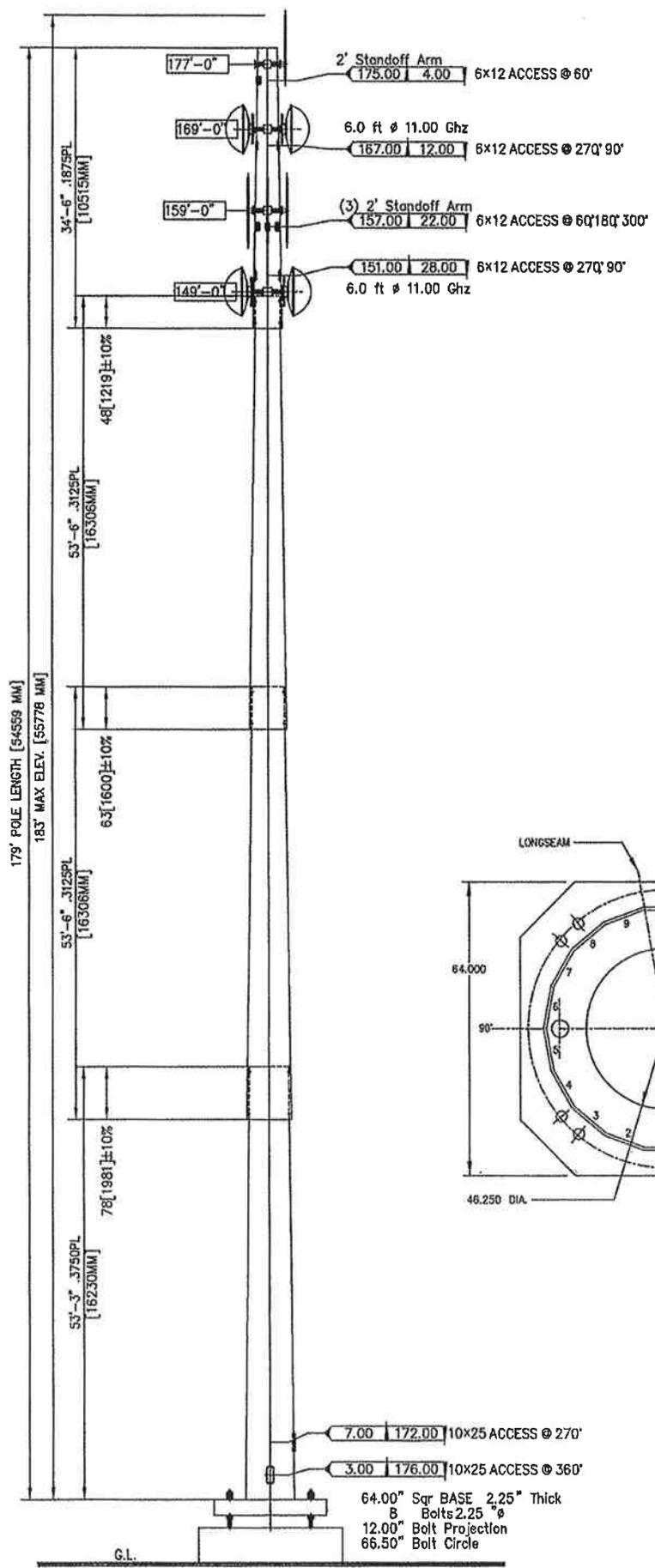
POLE SPECIFICATIONS	
POLE HEIGHT	179.00 FEET
TAPER	.2100 IN/FT
POLE SHAPE	18 SIDED POLYGON
ORIENTATION	FLAT-FLAT

Lev	Qty	Elev ft.	Future	DESCRIPTION
1	1	177.00		2' Standoff Arm
1	1	179.00		8' OMNI
2	2	169.00		Pipe Mount (up to 6' Dish)
2	2	169.00		RAD 6' MICROWAVE 11.00 Ghz
3	3	159.00	F	2' Standoff Arm
3	3	159.00	F	8' OMNI
4	2	149.00	F	Pipe Mount (up to 6' Dish)
4	2	149.00	F	RAD 6' MICROWAVE 11.00 Ghz

Load Case	DESCRIPTION	Wind (mph)	OLF Vert	Rad. Ice	Factors Gust	Factors Cf	Wind (psf)
1)	3s Gusted Wind	85.0	1.20		1.10	.65	30.9
2)	3s Gusted Wind 0.9	85.0	.90		1.10	.65	30.9
3)	3s Gusted Wind&Ice	30.0	1.20	.25	1.10	1.20	2.4
4)	Service Loads	60.0	1.00		1.10	.65	8.6

Load Case	DESCRIPTION	Res. Axial (kips)	Base Shear (kips)	React Mom (ft-k)	Disp DEFL (ft)	@Top SWAY (deg)
1)	3s Gusted Wind	38.1	20.0	2094	5.3	2.89
2)	3s Gusted Wind 0.9	28.7	20.0	2079	5.2	2.86
3)	3s Gusted Wind&Ice	42.9	2.6	259	.6	.34
4)	Service Loads	31.5	5.6	581	1.5	.80

- 1) FULL HEIGHT STEP BOLTS
- 2) ANTENNA FEED LINES RUN INSIDE POLE
- 3) THE MONOPOLE WAS DESIGNED IN ACCORDANCE WITH ANSI/TIA-222-G, STRUCTURE CLASS II, EXPOSURE CATEGORY C, TOPOGRAPHIC CATEGORY 1.



ESTIMATED STRUCTURE WEIGHT= 33.7 Kips

CITY OF BONNEY LAKE  
Bonney Lake, WA

180.00 MONOPOLE

**Sabre**  
Towers & Poles

CONFIDENTIAL  
Information contained herein is the sole property of Sabre Communications Corporation, constitutes a trade secret as defined by Iowa Code Ch. 563 and shall not be reproduced, copied or used in whole or in part for any purpose whatsoever without prior written consent of Sabre Communications Corporation.

00-00000	SIZE	DRAWING NO.	REV
DATE	12May09	A 09-7444-PE	
DRAWN BY		REFERENCE DRAWING	SCALE
CHECKED BY	JDS	N.T.S.	PAGE 1



CONSTRUCTION CONTRACT  
STANDARD TERMS AND CONDITIONS

PAGE 1 OF 3

1. **ACCEPTANCE:** Proposal valid for thirty (30) days. Acceptance of order/contract by Sabre Communications subject to credit approval. All prices and clerical errors are subject to change and/or correction without notice. The work to be accomplished, as a result of this proposal is limited strictly to the work outlined in this proposal. No changes are valid unless in writing. **SUBMISSION OF A PURCHASE ORDER IN RESPONSE TO A SABRE PROPOSAL IS CONCLUSIVE ASSENT TO AND ACCEPTANCE OF THESE TERMS AND CONDITIONS UNLESS SPECIFIC TERMS ARE OBJECTED TO IN WRITING BY CUSTOMER AND ACCEPTED IN WRITING BY SABRE.**
2. **TERMS:** Net thirty (30) days from date of invoice. Invoices shall be issued, at the sole discretion of Sabre, upon substantial completion of each phase of construction. Invoices not paid within thirty (30) days of invoice date shall, as an additional remedy, accrue interest at the rate of 1 1/2% per month (or maximum legal rate, whichever is greater) from invoice due date until paid in full. No other terms shall apply unless accepted in writing by an authorized representative of Sabre. Payment to Sabre shall not be contingent upon Customer having received payment from the Owner.
3. **TAXES:** Prices do not include excise, sales, use, privilege, import/export duties or any other tax, duty or assessment which may be imposed upon Sabre. However, all such taxes, duties or assessments are the responsibility of the Customer.
4. **CHANGE ORDERS/CANCELLATION:** Purchase Order or contract may not be changed or cancelled without prior written approval by Sabre. Any order canceled after any work has been done by Sabre, will have a cancellation charge to be determined solely at the discretion of Sabre, for whatever work has been performed. Sabre reserves the right to change or modify any construction procedures. Any extra work required because of conditions differing from those stated in this proposal or extra work requested by Customer/Owner will be charged on a time and material basis.
5. **DELAYS:** For any construction delays due to Acts of God, fire, malicious mischief, insurrection, riot, war (declared or undeclared), explosions, epidemics, acts of Customer, its employees, agents or subcontractors, strikes, freight embargoes, unusually severe weather conditions, delivery delays by the carrier, or any other cause whatsoever beyond the control and without fault of Sabre or its subcontractors, whether similar to or dissimilar from causes herein enumerated, Sabre shall not incur any liability consequential or otherwise for such construction delays, and an extension of time within which to complete construction shall be allowed to Sabre.
6. **INDEMNIFICATION:** Customer shall protect, defend and indemnify Sabre and its officers, directors and employees for, from and against all claims, demands, expenses (including reasonable attorney fees) and causes of action of every kind and character that arise out of or are related to the work under this agreement and are caused by or arise out of Customer's negligence, willful misconduct or other acts or omissions which impose upon Customer strict liability, and that result in personal injury, death, property loss or damage. Sabre shall protect, defend and indemnify Customer and Customer's officers, directors and employees for, from and against all claims, demands, expenses (including reasonable attorney fees) and causes of action of every kind and character that arise out of or are related to the work under this agreement and are caused by or arise out of Sabre's negligence, willful misconduct or other acts or omissions which impose upon Sabre strict liability, and that result in personal injury, death, property loss or damage. If such claim, demand, expense or cause of action is caused by or arises out of the joint or concurrent negligence, willful misconduct or acts or omissions of Sabre and Customer, each party shall indemnify the other to the extent of the indemnifying party's negligence, willful misconduct or omissions.
7. **INFRINGEMENT:** In the event Sabre receives a claim that a product or any part thereof installed by Sabre infringes upon the patent, copyright or trademark rights of others, Sabre shall immediately notify Customer in writing of all such claims. Customer shall defend, at its own cost, any and all suits or proceedings, or settle such claims. In any event, Customer will indemnify and hold Sabre harmless completely and at all times for any resulting costs or damages and expenses including reasonable attorney's fees, arising from any suit, claim or demand for actual or alleged infringement. Sabre shall have no liability for any claim based upon the combination, operation or use of any product not supplied by Sabre, or based upon alteration of the product by someone other than Sabre.
8. **CONFIDENTIALITY:** Sabre and Customer agree that each will disclose to the other proprietary information regarding matters dealing with actions necessary to carry out these terms, except information that the party is precluded from disclosing under applicable law or regulation or by valid and binding agreements with third parties. The parties agree that each will keep the other's proprietary information and all related matters confidential and prevent disclosure of said information by its agents, employees or representatives.
9. **WARRANTY:** Sabre warrants that its workmanship will be of good quality and free from defects. All claims for defective work must be made in writing immediately upon discovery and, in any event, within thirty (30) days after the date of completion of the work. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER TYPE, WHETHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED. IN NO EVENT SHALL SABRE BE LIABLE FOR CONSEQUENTIAL DAMAGES, NOR SHALL SABRE'S LIABILITY ON ANY CLAIMS FOR DAMAGES ARISING OUT OF OR CONNECTED WITH THE PROJECT EXCEED THE CONTRACT PRICE.**  

The foregoing warranty is Sabre's only obligation and the Customer/Owner's only remedy for breach of warranty or breach of Sabre's undertaking hereunder. Any action for breach of warranty must be commenced within one (1) year after the cause of action accrues. Sabre's warranty and other obligations and responsibilities hereunder shall terminate upon the Customer/Owner's modification of the work. The above warranty is the only warranty made by Sabre in connection with work performed. Any provisions in any proposals, specifications, correspondence, or other documents, or any statements made in the course of negotiating this proposal are merely descriptive and not to be construed as warranties made by Sabre.
10. **ASSIGNMENT:** Sabre reserves the right to assign, transfer, subcontract or delegate responsibilities of order/contract, in whole or in part, without prior written approval of Customer. Any such transfer does not relieve Sabre from order/contract obligation to Customer.
11. **PROPRIETARY NOTICE:** Title to all drawings, specifications, brochures, proposals, reprints, copies, copies of copies or any other data furnished to Customer remain with Sabre. Customer shall not reproduce, copy or disclose such information in whole or in part for any purpose without prior written permission from Sabre.



CONSTRUCTION CONTRACT  
STANDARD TERMS AND CONDITIONS

PAGE 2 OF 3

12. **LIGHTING REQUIREMENTS:** Customer agrees to comply with the latest standards set forth by the Federal Aviation Administration, the Federal Communications Commission, and any other local, state or federal regulations or ordinances for tower erection and lighting. Customer confirms that the lighting kit ordered for installation on the tower conforms to all such standards and indemnifies Sabre for any loss or expense, including attorney fees, for noncompliance or nonconformance with such standards.
13. **SITE/JOB CONDITIONS:** Customer shall provide a level cleared site with the exact location and orientation of the tower properly marked. Site(s) shall be made readily accessible to standard transit mix trucks, semi-tractor and trailers with adequate space for material delivery, storage, assembly/erection and have adequate space for equipment operation and equipment turn around during construction. Unless otherwise stated in Sabre's proposal, the concrete installation is based on normal soil (4000 psf) as defined by E.I.A. Specification, responsibility of determining soil conditions rest with Customer. Site shall be free from overhead and underground obstructions for placement of guys, anchors and foundations. A 75 foot radius in all directions from the tower base (and a 20 foot wide strip to each anchor point, if applicable) must be cleared by Customer/Owner. Sabre's crews shall have access to the site during all daylight hours, seven (7) days per week, including holidays (if required). Antenna height and orientation must be specified by Customer/Owner.
14. **EXCLUSIONS FROM PROPOSAL PRICE:** Proposal prices do not include the following, unless specifically stated otherwise:
- a. Blasting, drilling, use of jack hammer, sheet piling, pumping of water or other condition requiring special material or equipment for foundation installation;
  - b. Hauling in backfill;
  - c. Site clearing of any nature;
  - d. Restoration of any landscaping, fencing, crops, or other improvements damaged or removed as a result of the performance of our work;
  - e. Permits, fees or licenses of any nature;
  - f. Winter installation of foundations or erection;
  - g. Union labor;
  - h. Standby time while waiting for Customer deliveries during construction or inspections after completion;
  - i. Engineering certifications, special insurance coverage or bonds;
  - j. Special erection equipment, rigging, scaffolding, netting, barricades, protective coverings or other requirements promulgated by local, state or federal requirements;
  - k. Path alignment;
  - l. Hauling of antennas, feedline and assembly at site;
  - m. For towers that require lighting it shall be the Customer's responsibility to provide adequate electrical supply at the base of the tower.
  - n. Deviations from Customer-provided information including but not limited to, soils condition reports.
- Inclusion of any of the above constitutes a change which shall be invoiced as an extra to Customer.
15. **PHOTOGRAPHS:** Sabre at all times reserves the right to take pictures of any or all of its work for advertising purposes, except those which are under classified government control.
16. **DISPUTE RESOLUTION:**
- a. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to arbitration. Issues to be mediated are subject to the exceptions in subparagraph 16.(b) for arbitration. The location of the mediation shall be the location of the project. Once one party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing the request.
  - b. Any controversy or claim arising out of or relating to this Agreement or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notwithstanding paragraph 17, this agreement to arbitrate shall be governed by the Federal Arbitration Act.
  - c. A written demand for arbitration shall be filed with the American Arbitration Association and the other party to this Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run.
  - d. The arbitration award shall be final. Judgment upon the award may be confirmed in any court having competent jurisdiction.
  - e. Unless otherwise agreed in writing, Sabre shall continue the work and maintain approved schedules during any arbitration proceedings. If Sabre continues to perform, Customer shall continue to make payments in accordance with the agreement. Nothing herein shall prohibit Sabre from filing a mechanics' lien against the real estate on which the work was or is being performed.
  - f. The parties agree that all parties necessary to resolve a claim shall be the parties to the same arbitration proceedings. Appropriate provisions shall be included in all other contracts relating to the work to provide for the consolidation of arbitrations.
  - g. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.



CONSTRUCTION CONTRACT  
STANDARD TERMS AND CONDITIONS

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PAGE 3 OF 3

17. **GOVERNING LAW:** Contracts formed as a result of this proposal and the performance thereof shall be governed by principals of contract law under the laws of the State of Iowa. Jurisdiction to resolve any dispute arising hereunder is agreed to be in the Federal and/or State District Courts located in Woodbury County, Iowa.
18. **ENTIRE AGREEMENT:** These terms and conditions are solely for the benefit of Sabre Communications Corporation and Customer hereto and, in addition to the proposal attached hereto, represent the entire and integrated agreement between the parties, and, unless specifically referenced herein, supersedes all prior negotiations, representations or agreements, either written or oral.
19. **WAIVER:** No waiver of any provision shall be deemed or constitute a waiver of any other provision herein nor shall a waiver be construed as a continuing waiver.
20. **SURVIVAL OF OBLIGATIONS:** The termination of this Agreement shall not affect the obligations of either party to the other that arises under the terms and conditions of this Agreement, rights arising from this Agreement, or causes of action which have accrued prior to the date of the termination.

**SABRE COMMUNICATIONS CORPORATION  
TOWERS, ACCESSORIES AND MODIFICATION MATERIALS  
STANDARD TERMS AND CONDITIONS**

1 **OVERVIEW:** The written offer to the customer named ("Customer") in the written proposal ("Proposal") by Sabre Communications Corporation ("Sabre") that describes the products ("Products") and/or Services ("Services") to be provided by Sabre, the prices for the same, the anticipated delivery or commencement date and such additional information as may be included in the Proposal are made subject exclusively to these standard terms and conditions ("Standard Terms and Conditions") stated herein and are valid for acceptance by Customer in writing within thirty (30) days of the date of the Proposal. All prices and clerical errors are subject to change and/or correction without notice. The Products to be furnished and/or Services to be accomplished as a result of the Proposal are limited strictly to the Products and/or Services outlined in the Proposal. **CUSTOMER'S SUBMISSION OF A PURCHASE ORDER OR OTHER SIMILAR DOCUMENT IN RESPONSE TO THE PROPOSAL IS CONCLUSIVE ASSENT TO AND ACCEPTANCE OF THESE STANDARD TERMS AND CONDITIONS UNLESS SPECIFIC TERMS ARE OBJECTED TO IN WRITING BY CUSTOMER AND ACCEPTED IN WRITING BY SABRE.** The provisions of the Proposal and these Standard Terms and Conditions shall constitute the entire contract and agreement between Customer and Sabre ("Agreement").

2 **PAYMENT:** If Sabre extends credit to Customer, payment is due net thirty (30) days from the date of the invoice. Invoices for towers shall be issued upon the completion of fabrication regardless of whether Products have been shipped. Unless Customer shall have provided Sabre with a valid and effective tax exemption certificate or satisfactory evidence of the same, all federal, state and local taxes (other than those based upon Sabre's net income) imposed upon the Products or Services performed hereunder shall be paid by Customer. Time is of the essence with respect to payments to Sabre. Past due amounts are subject to an interest charge of the lower of one and one-half per cent (1-1/2%) per month or the highest rate permitted by law plus all reasonable fees and expenses of collection. Payment to Sabre is not contingent upon Customer having received payment from any other party.

3. **DELIVERY:** All Products are delivered F.O.B. Sabre's facility upon completion of fabrication. Title, ownership, risk of loss, risk of material obsolescence as well as risk of material market value decline shall pass to the Customer upon invoicing or shipment to Customer, whichever occurs earlier in time; provided, however, as an accommodation to the Customer Sabre will maintain insurance coverage against the risk of loss for property damage on all material awaiting shipment.

4. **SHIPMENT:** Off-loading at point of destination not included unless specifically stated otherwise in the Proposal. Sabre will ship Products by common carrier. The carrier (through its driver) shall determine whether the site is accessible for its equipment. If the carrier determines that it is impractical to reach the site without injury/damage to the load, truck, or driver, the Customer will be responsible for finding an alternative site for unloading. No costs shall be incurred by Sabre as a result of the carrier's determination that access to the site is impractical. Customer must make careful inspection of Products when received. Customer must note on the bill of lading any claim that the shipment is not complete or that the Products are warped, bent, scraped, dented, or damaged in any other way, or not in all respects in proper condition prior to off-loading and shall make all claims pertaining to the shipment to Sabre in writing within forty-eight (48) hours of receipt of the Products or Sabre shall have no responsibility with respect to the shipment and such claims will be declined. In addition to the freight charges agreed to by the parties in the Proposal, additional freight charges may be assessed as follows: (i) Customer will have two (2) hours from the scheduled arrival time to unload the shipment, however, if the carrier is delayed more than the free time allowed, an additional rate per hour or maximum charge per day may apply; (ii) if the Customer requests the carrier to hold a delivery overnight to accommodate unloading, layover charges may be incurred in addition to any other unloading delays; (iii) if a load is diverted to a new location by the Customer, a new point-to-point rate will be established as well as additional mileage fees, if required; and/or (iv) if the Customer cancels a shipment on the same day the shipment was scheduled to leave Sabre's facility and the truck has been dispatched to load, a "truck not used" fee may be applied in addition to charges for material handling, however, if notice to cancel the shipment is given not less than one (1) business day prior to the scheduled departure date, no additional fees will apply.

5 **STORAGE:** If Customer declines to accept shipment of the Products immediately upon completion of fabrication, Sabre may agree to store the Products at its facility at Sabre's standard daily storage rate or Sabre may arrange for storage at another location at the expense of Customer.

6 **CHANGE ORDERS:** Customer shall notify Sabre in writing of any requested change(s) to an existing purchase order and Sabre will prepare and submit to Customer a change order incorporating the changes Sabre will agree to and any change in the price(s) associated with said changes (the "Change Order"). If Customer agrees in writing to the changes, Customer will sign and return the Change Order. If additional payments are due Sabre as a result of the changes Sabre will invoice Customer for such changes.

7. **TOWER MODIFICATION PRODUCTS AND/OR SERVICES:** If the Proposal is for tower modification Products, Sabre will not participate to any extent in the physical modification of any existing communication tower structure unless specifically stated in the Proposal. Sabre's sole responsibility shall be the design, drafting, engineering and fabrication of the Products needed for modification of the existing communication tower.

8. **PRODUCT RETURNS:** Prior written authorization from Sabre is required for all returned Products which Sabre may decline in its sole discretion. Requests for return authorization must be received by Sabre within thirty (30) days of original shipment. When a Product return is authorized by Sabre, it must be received within fifteen (15) days of the date the return material authorization number ("RMA") is issued by Sabre, bear the RMA number, be shipped freight prepaid to a destination of Sabre's choice, and be in new and unused condition. All returned Products are subject to a restocking charge of 25% of the purchase price unless the Products are returned due to a defect in which case, no restocking charge shall apply. Unsalable Products returned to Sabre will be scrapped and no credit will be given.

9 **DELAYS:** Sabre shall not be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including, without limitation, lack of cooperation or assistance by Customer, labor difficulties, fire, accident, act of the public enemy, war, public disturbances, sabotage, transportation delay, shortage of raw material, energy, or machinery, or act of God, government or the judiciary or any disruption caused by a third party that materially impairs Sabre's performance hereunder.

10 **EXCLUSIVE WARRANTIES AND REMEDIES:** Sabre's exclusive limited warranty relating to the Products is that the Products will comply with the applicable Product specifications in the Proposal in all material respects and will be free of material defects in materials and workmanship when delivered. The warranty period is for one (1) year from the earlier of the date of Sabre's invoice or shipment of Products to Customer. Sabre reserves the right to change or modify the design or construction of any of its Products and to substitute material equal to or superior to that originally specified. In the event Sabre determines that the Products do not conform with this warranty, Customer's exclusive remedy shall be, at Sabre's option and expense: (i) Sabre shall correct any material defect; (ii) Sabre shall furnish a replacement Product and shall be responsible for labor costs involved in the reinstallation of such Product only if Sabre installed the Product; or (iii) Sabre shall refund the price paid to Sabre for the Product provided that Customer agrees to return the Product (freight prepaid by Sabre) within thirty (30) days of the discovery of the discrepancy during the warranty period. With respect to Services, Sabre's exclusive limited warranty is that the Services shall be performed in a workmanlike fashion. In the event Sabre breaches this

warranty, Customer's exclusive remedy shall be, at Sabre's option and expense: (i) Sabre shall correct such Services within thirty (30) days of the performance of the Services; or (ii) Sabre shall refund the price paid for the applicable portion of the Services. Sabre does not make any warranty as to any services, materials or goods furnished by third parties (e.g., light kits); however, Sabre will assign to Customer any rights it has against such third parties. These warranties shall be effective only if the Products are installed and maintained in accordance with Sabre's recommendations and specifications and that Customer, during the warranty period, shall regularly (not less than semi-annually) inspect and properly maintain the Products.

**THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED. IT SHALL BE THE CUSTOMER'S SOLE RESPONSIBILITY TO VERIFY THAT THE PRODUCTS MEET THE SUITABILITY AND USABILITY REQUIREMENTS OF THE INTENDED APPLICATION OF CUSTOMER.**

**11. LIMITATION OF LIABILITY: IN NO EVENT SHALL SABRE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE OR DOWNTIME, EVEN IF SABRE HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOREGOING. IN NO EVENT SHALL SABRE'S LIABILITY ON ANY CLAIMS FOR DAMAGES ARISING OUT OF OR CONNECTED WITH THE PRODUCTS AND/OR SERVICES OR OTHERWISE EXCEED THE LESSER OF CUSTOMER'S DIRECT DAMAGES OR THE PRICE PAID BY CUSTOMER FOR THE PRODUCTS AND/OR SERVICES.**

**12. CUSTOMER PRODUCT SELECTION AND USE RESPONSIBILITIES:** Customer represents and warrants to Sabre that Customer possesses all necessary expertise to properly select, install and/or use the Products or that Customer has secured the services of a competent professional with respect to the foregoing and acknowledges that the Proposal is based upon the design, information and specifications provided by the Customer being complete, correct, and accurate. Customer agrees to be responsible for all claims, losses, expenses, fines, penalties, damages, demands, judgments, actions, causes of action, suits and liability caused by Customer's improper selection, use, installation or dealings with the Products or the failure of the design, information and specifications provided by the Customer to be complete, correct, and accurate. Customer shall specify any specific design parameters required to conform to local, state or federal requirements which may affect the price in the Proposal prior to Sabre accepting an order from Customer. Plot plans with tower orientation and antenna mounting elevations and azimuths shall be provided by Customer with the Purchase Order.

**13. INDEMNIFICATION:** To the fullest extent allowed by law, each party will indemnify, defend and hold the other party and its respective parents, subsidiaries, affiliates, directors, officers, partners, stockholders, associates, employees and agents (collectively, "Indemnitees") harmless from and against all claims, losses, expenses, fines, penalties, damages, demands, judgments, actions, causes of action, suits and liability claimed by a third party for personal injury, death or damage to tangible property (collectively, "Liabilities") proximately caused by the party from which indemnification is sought ("Indemnitor") provided the Indemnitees give the Indemnitor prompt written notice of any of the foregoing and provide full cooperation and assistance to the Indemnitor in the investigation and defense of such claim and grants the Indemnitor exclusive control of the defense and settlement thereof. No indemnification will be requested by or provided to a party whose actions are a contributing cause in whole or in part to the Liabilities.

**14. CONFIDENTIALITY:** The parties agree that if either party provides the other party with non-public written documentation which the disclosing party wants treated as being confidential, the disclosing party will clearly mark the documentation with a legend stating that the documentation is considered confidential by the disclosing party. The recipient will use at least the same effort to avoid disclosure of the confidential documentation as the recipient uses with respect to the recipient's confidential documentation but in no event less than due care. Notwithstanding the foregoing, the recipient shall not be required to protect or hold in confidence any information in the confidential documentation which was or is: (a) part of the public domain, (b) known to the recipient prior to the disclosure to the recipient, (c) disclosed to a third-party by the disclosing party without a written obligation of confidence; (d) rightly received by the recipient from a third party; or (e) independently developed by the recipient without access to the confidential documentation.

**15. INFRINGEMENT:** Sabre's exclusive warranty regarding infringement is that for one (1) year from the earlier of the date of Sabre's invoice or shipment of Products to Customer, the Products created by Sabre or the Services or any works created as a result of the Services solely in accordance with Sabre's plans, drawings, specifications or instructions, will not infringe any United States patent, copyright or trade secret. Sabre agrees to defend Customer against a lawsuit and pay all damages, costs and reasonable attorney's fees finally awarded against Customer resulting from any claim that any Products created by Sabre or the Services performed by Sabre or the works created as a result of the Services infringe any of the foregoing provided that Customer: (a) gives Sabre prompt written notice of any claim; (b) provides reasonable cooperation to Sabre in the investigation and defense of such claim; and (c) grants Sabre exclusive control of the defense and settlement thereof. In the event of any such infringement, Sabre shall, at its option and expense, either (i) replace or modify the Products or the works created as a result of the Services so that they become non-infringing, or (ii) accept return of the Products and refund an amount equal to Customer's depreciated value of the returned Products or works found to be infringing. Sabre shall have no liability for infringements caused in whole or in part by Customer, third parties not hired by Sabre or alterations or combinations not reviewed and approved in writing in advance by Sabre or that are not performed or provided by Sabre. The foregoing constitutes the exclusive warranty of Sabre and exclusive remedy of Customer with respect to any claim or action for infringement. Customer may fully participate in the defense and/or settlement or compromise of any claim of infringement at Customer's expense. Customer shall provide Sabre with the same warranty and defense of claims of infringement with regard to Products created by Sabre in compliance with Customer's plans, drawings, specification or instructions. Sabre does not warrant against infringement any materials or goods furnished by third parties (e.g., light kits); however, Sabre will assign to Customer any rights it has against such third parties.

**16. SABRE'S DRAWINGS & MATERIALS:** Title to all drawings, specifications, brochures, reprints, copies, copies of copies or any other data furnished to Customer are copyrighted by Sabre and title thereto shall remain with Sabre. Customer shall not reproduce, copy or disclose such information in whole or in part for any purpose without prior written permission from Sabre.

**17. LIGHTING REQUIREMENTS:** Customer agrees to comply with the latest standards set forth by the Federal Aviation Administration, the Federal Communications Commission, and any other local, state or federal regulations or ordinances for tower erection and lighting. Customer confirms that the lighting kit ordered for installation on the tower conforms to all such standards and indemnifies Sabre for any loss or expense, including attorney fees, for noncompliance or nonconformance with such standards. It shall be the Customer's responsibility to provide adequate electrical supply at the base of the tower.

**18. EXCLUSIONS FROM PROPOSAL PRICE:** Unless otherwise stated in the Proposal, the prices in the Proposal do not include antennas, transmission lines, jumpers, ground kits, hangars and hardware.

19 **PHOTOGRAPHS:** Sabre at all times reserves the right to take pictures of any or all of its Products after installation for advertising purposes, except those which are under classified government control.

20 **SABRE'S EMPLOYEES:** Sabre reserves the right to determine which of its employees will be assigned to a particular project, to replace or reassign such employees and/or subcontract to qualified third persons part or all of the performance of any Services requested hereunder. Customer may request the removal or reassignment of Sabre's employees on a nondiscriminatory basis at any time and Sabre will promptly provide a suitable replacement. Sabre's employees will comply with all generally applicable work and security rules of Customer.

21 **INDEPENDENT CONTRACTORS:** The parties' relationship during the term of this Agreement shall be that of independent contractors. Neither party shall have, nor shall represent that it has, any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in such other party's name, except as herein expressly provided. Nothing stated in this Agreement shall be construed as constituting a partnership, joint venture or as creating the relationships of employer/employee or principal/agent between the parties.

22 **NOTICES:** All notices, requests, demands, claims and other communications hereunder will be in writing. Any notice, request, demand, claim or other communication hereunder will be deemed duly given if it is received and/or sent by facsimile, receipted delivery or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient at the address set forth in the Proposal. Either party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth. Each party agrees to promptly provide written notice of any suspected breach of this Agreement, the specifics of any claim of breach or for damages and to provide the other with a reasonable opportunity to investigate and cure any curable matter. In order to bring an action against Sabre for damages, Customer must give notice to Sabre of any claim for damages within six (6) months of the date the claim arises. No claim of breach of this Agreement shall be made by Customer unless and until all uncontested amounts are paid to Sabre.

23 **WAIVER:** Any waiver of any breach of this Agreement shall not be effective unless set forth in a writing signed by an officer of the waiving party.

24. **SURVIVAL:** The termination of this Agreement shall not affect the obligations of either party to the other that arises under the terms and conditions of this Agreement, rights arising from this Agreement or causes of action which have accrued prior to the date of the termination.

25. **DISPUTES:** The parties agree that any controversy or claim (whether such controversy or claim is based upon statute, contract, tort or otherwise) arising out of or relating to this Agreement, any performance or dealings between the parties, or any dispute arising out of the interpretation or application of this Agreement or any dealings between the parties and/or their respective directors, managers, partners, officers, employees or agents ("**Dispute**") which the parties are not able to resolve shall be resolved as follows:

a. The parties will endeavor to settle the Dispute through mediation under the Construction Industry Mediation Rules of the American Arbitration Association ("**AAA**") before recourse to arbitration. Any action for breach of warranty must be commenced within one (1) year after the cause of action accrues. Once one party files a request for mediation with the other party and with the AAA, the parties agree to conclude the mediation within thirty (30) days of filing the request. The mediation shall be conducted in the city where the party commencing the mediation is located. The parties agree to share the fees and expenses of mediation equally.

b. Any Dispute not resolved by mediation, shall be decided by a single arbitrator pursuant to the Construction Industry Arbitration Rules of the AAA then in effect and shall be conducted in the city where the party commences the arbitration. The arbitrator will have the authority to grant injunctive relief in a form similar to that which a court of law would otherwise grant. Judgment upon the award rendered by the arbitrator shall be entered in any court having jurisdiction thereof. The arbitrator will be mutually chosen from a panel of licensed attorneys familiar with the subject matter of this Agreement having at least fifteen (15) years of professional experience and will be appointed within thirty (30) days of the date the demand for arbitration was sent to the other party. Discovery will be permitted in accordance with the Federal Rules of Civil Procedure of the United States of America. If an arbitration proceeding is brought pursuant to this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, costs and necessary disbursements incurred in addition to any other relief to which such party may be entitled except that, by the express agreement of the parties, the arbitrator shall not have the power to award incidental, consequential, special, indirect, punitive or exemplary damages. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration except as necessary to enforce award or to comply with legal or regulatory requirements. Before making any such disclosure, the party intending to make the disclosure shall give the other party written notice of such intention and shall afford the other party a reasonable opportunity to protect its interests, which such period shall not be less than twenty (20) days from the non-disclosing party's receipt of the aforementioned written notice. The parties agree that all parties necessary to resolve the claim shall be the parties to the same arbitration proceedings. Appropriate provisions shall be included in all other contracts relating to the work to provide for the consolidation of arbitrations. If Sabre continues to perform, Customer shall continue to make payments in accordance with this Agreement. Nothing herein shall prohibit Sabre from filing a mechanics lien against the real estate or the real estate interest on which any Services are performed. This agreement to arbitrate shall be governed by the Federal Arbitration Act.

26 **SEVERABILITY:** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws during the term hereof, 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 hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible.

27. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Iowa. Jurisdiction to enforce the mediation and arbitration provisions of this Agreement is agreed to be in the Federal and/or State District Courts located in Woodbury County, Iowa.

28 **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and may only be modified by a written instrument executed by an authorized officer of both parties. All negotiations and representations (if any) made prior, and with reference to the subject matter of this Agreement, are merged herein. Neither Sabre nor Customer shall be bound by any oral agreement or representation, irrespective of when made. Sabre and Customer agree that Customer's preprinted forms including Customer's Purchase Order are for convenience only and all terms and conditions stated thereon which are inconsistent with these Standard Terms and Conditions are void and of no effect and are hereby expressly rejected by Sabre.

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

<b><u>Department/Staff Contact:</u></b> Community Development /John P. Vodopich	<b><u>Council/Wrkshp Mtg Date:</u></b> May 26, 2009	<b><u>Agenda Bill Number:</u></b> AB09-86
<b><u>Ordinance Number:</u></b>	<b><u>Resolution Number:</u></b>	<b><u>Councilmember Sponsor:</u></b> Laurie Carter

**BUDGET INFORMATON**

<b><u>2009 Budget Amount</u></b>	<b><u>Required Expenditure</u></b>	<b><u>Impact</u></b>	<b><u>Remaining Balance</u></b>
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None

**Explanation:** Not applicable.

**Agenda Subject:** Motion of the Council to add to the Planning Commission Work Plan the issue of additional design standards to abate noise, light and odors for residents in areas of the City where there is mixed use and/or where residential properties adjoin business zoned properties, including but not limited to the DM zone.

**Administrative Recommendation:** Approval.

**Background Summary:**

Residents living in mixed use areas along the transportation corridor and particularly in the downtown mixed use area must coexist with businesses. This means that the noises of doing business, traffic noise, light and odors need to be abated to allow peaceful and quiet enjoyment for residents of these areas, but also allow business to be conducted. Suggested priority: Medium.

<b><u>Council Committee Dates:</u></b>	<b><u>Commission Dates:</u></b>	<b><u>Board/Hearing Examiner Dates:</u></b>
Finance Committee:	Planning Commission:	Park Board:
Public Safety Committee: 5/4/09	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:
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