

**COUNCIL WORKSHOP**

**October 4, 2011  
5:30 p.m.**

**AGENDA**



**“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)*

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*The City Council may act on items listed on this agenda, or by consensus give direction for future action.  
The Council may also add and take action on other items not listed on this agenda.*

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**Location:** Bonney Lake Justice Center, 9002 Main Street East, Bonney Lake, Washington.

**I. Call to Order:** Mayor Neil Johnson

**II. Roll Call:**

Elected Officials: Mayor Neil Johnson, Jr., Deputy Mayor Dan Swatman, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis, Councilmember Randy McKibbin and Councilmember James Rackley.

**III. Agenda Items:**

- A. **Council Open Discussion.**
- Page 3 B. **Review of Council Minutes:** September 20, 2011 Council Workshop and September 27, 2011 Council Meeting.
- Page 13 C. **Discussion / Action:** (Tabled from 9/13 Council Meeting and 9/20 Council Workshop): AB11-99 – Resolution 2146 – A Resolution of the City of Bonney Lake, Pierce County, Washington Authorizing the Mayor to Sign a Contract Amendment with Dionne and Rorick for Legal Services.
- Page 17 D. **Discussion:** (Tabled from 9/20 Council Workshop): AB11-112 – Ordinance D11-112 – An Ordinance of the City of Bonney Lake, Pierce County, Washington Amending Chapter 2.08 of the BLMC Relating to the Departments and Offices of the City.
- Page 27 E. **Discussion:** (Tabled from 9/20 Council Workshop): AB11-113 – Ordinance D11-113 – An Ordinance of the City of Bonney Lake, Pierce County, Washington Updating the Position, Classification and Grade Table of Non-Represented Employees.
- Page 31 F. **Discussion:** (Tabled from the 9/27 Council Meeting): AB11-116 – Ordinance D11-116 – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renaming That Portion Of Sumner-Buckley Highway East That Lies Within The City Limits.
- Page 35 G. **Discussion:** AB11-77 – Ordinance D11-77 - Renewing a CATV Franchise Agreement with Comcast and Establishing a Franchise Fee.
- Page 81 H. **Discussion:** AB11-78 – Ordinance D11-78 – Amending the BLMC 5.04.030F to reduce CATV utility tax.

**IV. Executive Session:** Pursuant to RCW 42.30.110(b), the City Council may hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

**V. Adjournment**

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

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**CITY COUNCIL WORKSHOP**

**September 20, 2011  
5:30 P.M.**

**DRAFT MINUTES**

*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)*

**Location:** Bonney Lake Justice Center, 9002 Main Street East, Bonney Lake, Washington.

**I. CALL TO ORDER** – Mayor Neil Johnson, Jr. called the meeting to order at 5:32 p.m.

**II. ROLL CALL:**

Administrative Services Director/City Clerk Harwood Edvalson called the roll. In addition to Mayor Johnson, elected officials attending were Deputy Mayor Swatman, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis, Councilmember Randy McKibbin, and Councilmember Jim Rackley.

Staff members in attendance were Public Works Director Dan Grigsby, Community Development Director John Vodopich, Chief Financial Officer Al Juarez, Assistant Police Chief Dana Powers, Administrative Services Director/City Clerk Harwood Edvalson, City Attorney Jim Dionne, Human Resources Manager Jenna Young, and Records & Information Specialist Susan Duis.

**III. AGENDA ITEMS:**

**A. Council Open Discussion:**

Workshop Agenda Items: Councilmember Rackley suggested that several items be tabled to a later workshop when the City Administrator would be in attendance.

**Councilmember Rackley moved to table items D., F., and G. to the October 4, 2011 Council Workshop for discussion. Councilmember Decker seconded the motion.**

Councilmembers discussed whether to table these items to a later Workshop. Councilmember Carter said other staff members were in attendance who could answer questions on these items. Mayor Johnson said he would prefer to wait until the City Administrator was present, but it was up to the Council. Councilmember Decker asked whether this discussion should be done in an Executive Session.

City Attorney Dionne said he cannot give the Council advice on issues that relate to the contract with his office, and he would not participate in an Executive Session if the Council chose to have one. He said the Council would need to obtain another attorney to provide legal advice on these items. He noted that multiple issues are up for consideration beyond the amendment to his office’s contract, and he would need to know more before he could provide an opinion. Mayor Johnson suggested the Council wait to discuss the item with the City Administrator, and then decide whether it is necessary to obtain an outside legal opinion.

**Motion to table items D., F. and G. approved 6 – 1.  
Councilmember Carter voted no.**

Medical Marijuana Moratorium: Councilmember Carter asked what the next step in the process is for the medical marijuana moratorium, and whether the issue should be added to the Planning Commission's work plan. City Attorney Dionne said the moratorium ordinance leaves it up to the Council to decide how to move forward. He said the Council could opt to deal with the issue through zoning, or by declaring the practice illegal and prosecuting individuals in the City who grow or distribute marijuana. Councilmember Carter noted that the City has denied permits to medical marijuana dispensaries, but community gardens are a new and separate issue. Mayor Johnson said the administration's opinion is to continue denying these applications. City Attorney Dionne said the moratorium gives the City six months to consider its options, see what the federal government and other cities in Washington are doing, and make a plan to move forward. He said some cities have already implemented zoning to address gardens. He said this is one option, but it may make cities complicit in the distribution and use of marijuana. He said he expects there will be legal challenges around the State related to these issues.

Councilmember Rackley said Bonney Lake should not take the lead, and instead wait to see what happens elsewhere in the State. He said in his personal opinion, if marijuana use is against federal law, then it is against the law and should not be allowed. Deputy Mayor Swatman asked whether the City can take action today if someone plants a community garden. City Attorney Dionne said the City can elect to prosecute the resident in court. He said most cities are waiting for the issue to come forward elsewhere at the State or Federal level. He said Bonney Lake was one of the last cities to enact a moratorium, and it seems the Council has both legal and moral concerns related to this issue. Councilmember Hamilton said though he voted 'yes' on the moratorium, he had concerns that this action implies that the Council recognizes the legality of marijuana use. He agreed that the City should wait and see what happens elsewhere before taking action.

Councilmember Decker said the State law refers to collective gardens used by multiple people, not gardens maintained by individuals. He said there is a difference in federal and state laws in the number of marijuana plants an individual can possess, and different standards for when local and State police will take action.

City Attorney Dionne said the Council could vote to direct the City Attorney's office to research the possible effects and negative consequences of taking no action to amend the municipal code. He said his office will work on options and bring information back to the Council prior to the end of the moratorium. The Council can then make a decision, such as directing the Planning Commission to develop zoning amendments. Councilmember Carter said her main concern is that the Planning Commission be given ample time to work on the issue if it is forwarded to them. She thanked the City Attorney for his input.

Beautify Bonney Lake: Mayor Johnson thanked councilmembers and residents who took part in Beautify Bonney Lake on September 17, 2011. Councilmember Hamilton thanked Tom Watson for the signs he donated, and Councilmember Lewis said crew leaders did a great job. Mayor Johnson said the event highlights councilmember's leadership.

Finance Items: Councilmember Decker said he discussed payroll and vouchers at the September 13, 2011 Meeting, and understood it was going to be discussed at the Workshop. Deputy Mayor Swatman said the Chief Financial Officer is putting information together for Councilmember Decker and would share it with him. He asked whether other councilmembers shared Councilmember Decker's concerns and wanted it to be discussed at the Workshop. Mayor Johnson said he will support changes in what

staff presents to the Council if a majority of the Council is interested. Councilmember Decker said the Council is approving items blindly, without understanding what they are. Deputy Mayor Swatman said information is available to Councilmembers, and it is not accurate to state they do not know what they are approving. He noted that the Council does not have the authority to deny payment of specific vouchers, which is why the City code and process is set up as it is currently.

- B. **Review of Council Minutes:** September 6, 2011 Council Workshop and September 13, 2011 Council Meeting.

Councilmember Carter asked that the September 13, 2011 Meeting minutes, p. 5, be amended to “only Comcast customers would have access to a public access channel”.

- C. **Discussion:** (Tabled from the September 6, 2011 Council Workshop) Model Lighting Ordinance.

Deputy Mayor Swatman asked the Council to consider whether to forward this item to the Planning Commission Work Plan. He said he came across the subject some time ago and past-Councilmember King had brought it up as well. A majority of Councilmembers supported forwarding the item to the Planning Commission Work Plan for 2012. Councilmember Carter said she has been interested in this topic for some time as well. Councilmember Hamilton said the Commission should try to also determine additional costs that might be required to comply with this type of ordinance.

City Attorney Dionne confirmed that the Council needs to put its rules in abeyance to add an action item to the agenda and take action.

**Councilmember Hamilton moved to suspend the Council rules to amend the Workshop agenda with an action item. Councilmember Carter seconded.**

**Motion to modify agenda approved 7 – 0.**

**Deputy Mayor Swatman moved to add a Model Lighting Ordinance to the Planning Commission Work Plan during the second quarter of 2012 as a medium priority issue. Councilmember Rackley seconded the motion.**

**Motion approved 7 – 0.**

- D. **Discussion/Action:** (Tabled from the September 13, 2011 Council Meeting) AB11-99 – Resolution 2146 – A Resolution of the City of Bonney Lake, Pierce County, Washington Authorizing the Mayor to Sign a Contract Amendment with Dionne and Rorick for Legal Services.

*The item was tabled to the October 4, 2011 Council Workshop for discussion during Council Open Discussion.*

- E. **Discussion:** (Continued from the September 6, 2011 Council Workshop) AB11-116 – Ordinance D11-116 – An Ordinance of the City of Bonney Lake, Pierce County, Washington Renaming Sumner-Buckley Highway within City Limits.

Councilmember Hamilton said he feels it is a good time to consider naming a ‘memorial highway’, especially since it is the tenth anniversary of 9/11 and the war in Afghanistan. He said changing street names does incur some costs, including amending signs, business

addresses, and letterhead, but this is a small price to pay to honor veterans. He said he hoped the change can go into effect by Veteran's Day, with new signs being unveiled on Memorial Day in May 2012.

Councilmembers reviewed various options for a new street name, including veterans and memorial drive, road, etc. Mayor Johnson said he received emails from area business owners suggesting names. Councilmember Donn Lewis said a longer phase-in time will help businesses make changes to their business information and print materials, without incurring costs in the short term. Deputy Mayor Swatman said it does not cost businesses much to update their materials, and most use a P.O. box for business mail in any case. Councilmember Hamilton said the post office will deliver mail to a changed address for up to two years.

Community Development Director Vodopich confirmed that the City cannot change the name of the highway that lies outside the city limits. Councilmember Carter said the City could place brown 'historic' street signs under the official street signs, to reflect the historic name of the street. Deputy Mayor Swatman said he is favor of naming the road a 'memorial' drive to honor all public servants, such as late East Pierce Fire & Rescue Chief Dan Packer. Councilmember Hamilton said he understands that any road name the Council chooses must have 'East' at the end of the name.

Mayor Johnson asked councilmembers to bring proposed nominations for the street name to the September 27<sup>th</sup> Council Meeting for consideration.

- F. ~~**Discussion:** AB11-112 Ordinance D11-112 An Ordinance of the City of Bonney Lake, Pierce County, Washington Amending Chapter 2.08 of the BLMC Relating to the Departments and Offices of the City. The item was tabled to the October 4, 2011 Council Workshop for discussion during Council Open Discussion.~~
  
- G. ~~**Discussion:** AB11-113 Ordinance D11-113 An Ordinance of the City of Bonney Lake, Pierce County, Washington Updating the Position, Classification and Grade Table of Non-Represented Employees. The item was tabled to the October 4, 2011 Council Workshop for discussion during Council Open Discussion.~~

**IV. EXECUTIVE SESSION:** None.

**V. ADJOURNMENT:**

**At 6:39 p.m., Councilmember Rackley moved to adjourn the Council Meeting. Councilmember Decker seconded the motion.**

**Motion to adjourn approved 7 – 0.**

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Harwood Edvalson, CMC  
City Clerk

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Neil Johnson, Jr.  
Mayor

Items presented to Council at the September 20, 2011 Workshop: None.

**CITY COUNCIL MEETING**

**September 27, 2011  
7:00 P.M.**

**DRAFT MINUTES**

City of



*“Where Dreams Can Soar”*

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Website: [www.ci.bonney-lake.wa.us](http://www.ci.bonney-lake.wa.us)

**Location:** Bonney Lake Justice Center, 9002 Main Street East, Bonney Lake, Washington.

**I. CALL TO ORDER** – Mayor Neil Johnson, Jr. called the meeting to order at 7:00 p.m.

A. Flag Salute: Mayor Johnson led the audience in the Pledge of Allegiance.

B. Roll Call: Administrative Services Director/City Clerk Harwood Edvalson called the roll. In addition to Mayor Johnson, elected officials attending were Deputy Mayor Swatman, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Donn Lewis, Councilmember Randy McKibbin, and Councilmember Jim Rackley.

Staff members in attendance were City Administrator Don Morrison, Public Works Director Dan Grigsby, Community Development Director John Vodopich, Chief Financial Officer Al Juarez, Interim Police Chief Dana Powers, Administrative Services Director/City Clerk Harwood Edvalson, City Attorney Jim Dionne, Facilities & Special Projects Manager Gary Leaf, and Records & Information Specialist Susan Duis.

C. Announcements, Appointments and Presentations:

1. Announcements: None.

2. Appointments: None.

3. Presentations:

a. **Oath of Office:** Interim Police Chief Dana Powers.

Judge Ron Heslop presented the oath of office to Interim Police Chief Powers. Mayor Johnson, Councilmembers, and staff congratulated her on the promotion.

b. **Presentation of Awards:** Merit Awards to Detective Ryan Boyle, Detective Todd Morrow, Detective Brian Byerley, Detective Sergeant Kelly Maras, Officer Chad Kiblinger, and Valor Award to Officer Eric Alfano.

Interim Chief Powers and Mayor Johnson presented the awards to the officers in appreciation for their service. Mayor Johnson said he was glad to see the officers being recognized.

**At 7:10 p.m., Mayor Johnson called for a ten minute recess. The meeting returned to order at 7:20 p.m.**

D. Agenda Modifications: None.

**II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE:**

A. Public Hearings:

1. **AB11-80 – Public Hearing for Ordinance D11-77** – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renewing A Cable Television Franchise Agreement With Comcast Of California/Colorado/Washington I, Inc, Thereby Superseding All Previous Agreements; And Establishing A Franchise Fee Of Five Percent.

**Mayor Johnson opened the public hearing at 7:21 p.m. Seeing no speakers, the hearing was closed at 7:21 p.m.**

B. Citizen Comments:

Ron Lisko, Bonney Lake, said he has lived in the City since the 1960's and spoke against the ordinance renaming Sumner-Buckley Hwy. He said he supports veterans, but the City should not lose the meaning of the old highway. He said a lot of history happened on Old Buckley Road, and the road holds significance for a lot of people. He said it makes more sense to rename another road or a new road to honor veterans.

Connie Swarthout, Bonney Lake, said her parents have lived in Bonney Lake for at least 60 years. She said she agrees with a lot of the changes being made to build a community and Downtown in Bonney Lake, and though she supports having a veteran's highway, the City should not change the name of Sumner-Buckley Hwy. She said a better way to honor the City's history would be to rename the road back to its original name of 'Old Buckley Highway'. She said the Council should not destroy the existing road and start from scratch, and should select a new road to be renamed rather than this historic road.

Connie Decker, Bonney Lake, also spoke about the Sumner-Buckley Hwy. She said the road name provides a sense of history and is unique. She said there are plenty of veterans highways in the area, and suggested the City select another road in the City to be renamed, such as the one-way loop around Lake Bonney or a newly constructed road.

Jo Sexton, 3939 10<sup>th</sup> St, Puyallup, said he grew up in the area and feels Old Buckley Hwy is a historic part of Bonney Lake. He said he believes this highway was the first paved road in Bonney Lake, and it would be a shame to change its name and lose a piece of the community.

Randy Tidball, 7402 Myers Rd, Bonney Lake, said the Council needs to consider the expense to citizens when a street name is changed. He said a lot of things have to be updated, including signs, checkbooks, etc., that must be paid out of resident's pockets.

Carol Wheeler, Bonney Lake, said she agreed with the previous speakers and the City should select another road to be renamed. She said the City is changing quickly in recent years, and renaming this road would take away one more thing from residents that has been around for a long time.

C. Correspondence: None.

### III. COUNCIL COMMITTEE REPORTS

- A. Finance Committee: Deputy Mayor Swatman said the committee met at 5:30 p.m. earlier in the evening and discussed personnel updates, official newspaper bids, a review of minutes, a land exchange in Brookside, mid-biennial budget adjustments and revenue

reports. He said budget projections show a possible increase in expenses for next year which needs to be controlled.

- B. Community Development Committee: Councilmember Rackley said the committee has not met since the last Council Meeting.
- C. Public Safety Committee: Councilmember Hamilton said the committee met on September 19, 2011 and heard a report on the Marine Services Unit from the past summer. He said there was not a lot of activity in the Bonney Lake side of Lake Tapps, and no noise complaints. Interim Police Chief Powers discussed bicycle patrols and homeless issues at the Franciscan Medical Building property. The committee plans to work on an open container ordinance, and discussed office moves at the Puyallup Dispatch Center, which did not affect services. The committee considered the proposed 9-1-1 tax and continued dispatch services with Puyallup. They also discussed marijuana use among youth and national reports of homeless issues at Wal-Mart stores. The committee discussed complaints about Food Bank patrons, specifically how patrons interact with nearby businesses and employees, parking issues, and patron conduct issues.
- D. Other Reports:

Pierce County Regional Council: Councilmember Hamilton and Councilmember Lewis attended the Pierce County Regional Council meeting on September 15, 2011. They heard a presentation on a subcommittee proposing methods to evaluate and score transportation projects for funding.

Families First: Councilmember Carter and Councilmember Lewis attended the White River Families First Coalition meeting on Monday, September 26<sup>th</sup>. The group is invested in resolving issues on the plateau and sharing information across groups. Councilmember Carter said they are looking for new participants to help set goals for next year, and meet on the last Monday of each month at 4:00 p.m. She said upcoming events include an annual fundraising gala in Enumclaw and a Halloween party at the Buckley Youth Activity Center.

Seminar: Councilmember Rackley said he attended a Counterfeit Awareness Seminar at the Public Safety Building on Monday that was sponsored by Key Bank and given by Detective Bob Kocher. He said it was very informative, and could have been useful for City employees to attend.

Food Bank: Mayor Johnson asked whether the Police Department has spoken with Stew Bowen about the concerns about the Food Bank. Interim Chief Powers said she planned to start by providing a visible presence during food distribution hours and see if that makes a difference before they take additional steps. She said if there are any immediate problems, residents should always call 9-1-1. Mayor Johnson said the City has limited options for space for the Food Bank currently. Councilmember Hamilton said he was told that the Food Bank is using the second floor of the building, which is not supposed to be used. He said the city needs to serve those in need but still maintain public safety and serve the local businesses.

**IV. CONSENT AGENDA:**

- A. **Approval of Corrected Minutes**: September 6, 2011 Council Workshop and September 13, 2011 Council Meeting.

- B. **Approval of Accounts Payable and Utility Refund Checks/Vouchers:** Accounts Payable checks/vouchers #61976 thru 61999 (Including Wire Transfer #s 20110817, 20110906, 20110907) in the amount of \$160,856.67; Accounts Payable checks/vouchers #62000 thru 62066 (Including Wire Transfer # 9162011) in the amount of \$317,479.24, for a grand total of \$478,335.91.
- C. **Approval of Payroll:** Payroll for September 1-15 2011 for checks 29999-30027 including Direct Deposits and Electronic Transfers in the amount of \$ 429,662.92. Replacement check issued 29998 replaced check 29992 (damaged in folding) from previous pay period.

**Councilmember Rackley moved to approve the Consent Agenda. Councilmember Lewis seconded the motion.**

**Consent Agenda approved 7 – 0.**

**V. FINANCE COMMITTEE ISSUES:**

- A. **AB11-111 – Resolution 2152** – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A License Agreement With And Sidewalk Right-Of-Way Dedication Deed From The Cascade Water Alliance.

**Councilmember Rackley moved to approve Resolution 2152. Councilmember Decker seconded the motion.**

Administrative Services Director/City Clerk Edvalson explained that the printed agenda packet for the Meeting was missing the attached agreements, which were provided online and via email, with copies provided to Councilmembers and the public at the Meeting. Facilities & Special Projects Manager Gary Leaf said he has been working with permitting agencies and plans to install a ladder instead of steps, which is much less expensive. He noted that permits for the project will take some time to process. Deputy Mayor Swatman said it is helpful that a more economical option is available. He explained that this parcel is on West Tapps Hwy adjacent to Allan Yorke Park, with a grassy area and gravel area, and this agreement provides additional space for residents to enjoy the lake. Councilmember Decker called for the question.

**Resolution 2152 approved 7 – 0.**

**VI. COMMUNITY DEVELOPMENT ISSUES: *None.***

**VII. PUBLIC SAFETY COMMITTEE ISSUES: *None.***

**VIII. FULL COUNCIL ISSUES:**

- A. **AB11-98 – Ordinance D11-98** – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Chapter 3.68 Of The Bonney Lake And Section One Of Ordinance No. 1325 Relating To Land Use Fees.

**Councilmember Decker moved to approve Ordinance D11-98. Deputy Mayor Swatman seconded the motion.**

Councilmember Carter asked how the \$3,000 fee was selected. City Administrator Morrison said they estimated the actual costs for staff and legal time to process and send notices for SEPA determinations. He said the fee is similar to what other cities charge, and may actually be a low estimate. He said the proposed fee is intended only to cover costs, not to generate revenue. Director Vodopich said review is done by the Hearing Examiner, who is not on City staff. Councilmember Carter said she looked at Washington State and Pierce County’s statutes and it appears their fees are much lower. She said from her reading of the Revised Code of Washington, fees for filing an appeal are capped at \$200. She said the City could have a basic filing fee and use a tiered approach for fees based on the actual costs, such as the Hearing Examiner, if the process moves forward.

**Councilmember Rackley moved to table Ordinance D11-98 to a future workshop for discussion. Councilmember Lewis seconded the motion.**

**Motion to table Ordinance D11-98 approved 7 – 0.**

- B. **AB11-116 – Ordinance D11-116** – An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renaming That Portion Of Sumner-Buckley Highway East That Lies Within The City Limits.

**Councilmember Decker moved to approve Ordinance D11-116. Councilmember Hamilton seconded the motion.**

**Councilmember Decker moved to table the Ordinance to a future workshop for discussion. Councilmember Rackley seconded the motion.**

Councilmember Rackley said the Council needs to take more time to hear from residents who oppose the name change.

**Motion to table Ordinance D11-116 approved 5 – 2.  
Councilmember Hamilton and Deputy Mayor Swatman voted no.**

**IX. EXECUTIVE SESSION: *None.***

**X. ADJOURNMENT:**

**At 7:58 p.m., Councilmember Rackley moved to adjourn the Council Meeting. Councilmember Lewis seconded the motion.**

**Motion to adjourn approved 7 – 0.**

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Harwood Edvalson, CMC  
City Clerk

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Neil Johnson, Jr.  
Mayor

Items presented to Council at the September 27, 2011 Meeting: *None.*

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City of Bonney Lake, Washington  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Executive / Don Morrison	<b>Meeting/Workshop Date:</b> 20 September 2011	<b>Agenda Bill Number:</b> AB11-99
<b>Agenda Item Type:</b> Resolution	<b>Ordinance/Resolution Number:</b> 2146	<b>Councilmember Sponsor:</b>

**Agenda Subject:** Modification to Legal Services Agreement with Dionne and Rorick

**Full Title/Motion:** A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Approving A Modification To The Legal Services Contract With Dionne And Rorick..

**Administrative Recommendation:** Approve. Note: It is the Administration's belief that no written modification to the Agreement is necessary.

**Background Summary:** With the City's hiring of its own City Prosecutor as a City employee, Dionne and Rorick has proposed a modification to the legal services agreement to reflect this change.

**Attachments:** Resolution and Exhibit

<b>BUDGET INFORMATION</b>			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
<b>Budget Explanation:</b> NA			

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	Finance Committee Date: 23 August 2011	<i>Approvals:</i> Chair/Councilmember Dan Swatman Councilmember James Rackley Councilmember Mark Hamilton	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>
Forward to: September 13 <sup>th</sup> Regular Meeting		<b>Consent Agenda:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>			
Workshop Date(s):	September 20, 2011	Public Hearing Date(s):	
Meeting Date(s):	September 13, 2011	Tabled to Date:	September 20, 2011

<b>APPROVALS</b>		
<b>Director:</b>	<b>Mayor:</b>	<b>Date Reviewed by City Attorney:</b> (if applicable):

**RESOLUTION NO. 2146**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT AMENDMENT WITH DIONNE AND RORICK FOR LEGAL SERVICES.

The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign a contract amendment with Dionne and Rorick for Legal Services, attached here to as Exhibit "A" and incorporated herein as if fully set forth.

**PASSED** by the City Council this \_\_\_ day of \_\_\_\_\_, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
James Dionne, City Attorney

Exhibit "A" to Resolution No. 2146

AGREEMENT MODIFICATION

For the purpose of providing legal services and in consideration of the following mutual promises and conditions, the law firm of Dionne & Rorick, hereinafter referred to as "Attorney," and the City of Bonney Lake, hereinafter referred to as "City," hereby agree to modify the current contract relationship dated October 12, 1999 by replacing the current section 2 of that contract to read as follows and to begin in effect as of September 1, 2011:

2. (a) Attorney agrees to provide up to 45 retainer hours per month for the flat fee of \$4975 per month to the City of Bonney Lake for all Departments other than Public Works. For purposes of this subsection (a), Criminal Court shall be considered to be a City Department, provided that, Attorney shall only provide backup services to a City-hired and supervised prosecuting attorney/employee of the City. Additional hours will be billed at \$165 per hour; (b) Attorney agrees to provide six (6) retainer hours per month for the Public Works Department for the flat fee of \$900 per month. Additional hours will be billed at \$175 per hour; (c) These amounts and rates shall increase each fiscal year, beginning in January 2012 by that percentage increase set forth in the All-Urban Consumers Index (CPI-U) for the Seattle-Tacoma-Bremerton area for the immediately preceding calendar year.

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City of Bonney Lake, Washington  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Executive / Don Morrison	<b>Meeting/Workshop Date:</b> 20 September 2011	<b>Agenda Bill Number:</b> AB11-112
<b>Agenda Item Type:</b> Ordinance	<b>Ordinance/Resolution Number:</b> D11-112	<b>Councilmember Sponsor:</b>

**Agenda Subject:** Departments and Offices of the City

**Full Title/Motion:** An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Chapter 2.08 Of The Bonney Lake Municipal Code And Ordinance Number 1181 Regarding The Departments And Offices Of The City..

**Administrative Recommendation:** Approve

**Background Summary:** Some changes have been made to the organization structure of the City by other ordinances or by previous discussion and tacit approval. These changes need to be reflected in the basic organizational structure of the City. It is proposed that BLMC 2.08 be amended as contained in Ordinance D11-112.  
**Attachments:** Ordinance D11-112

<b>BUDGET INFORMATION</b>			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
<b>Budget Explanation:</b> NA			

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	Finance Committee Date: September 13, 2011	<i>Approvals:</i> Chair/Councilmember Dan Swatman Councilmember James Rackley Councilmember Mark Hamilton	Yes No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Forward to: 9/20/11 Workshop		<b>Consent Agenda:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

<b>APPROVALS</b>		
<b>Director:</b>	<b>Mayor:</b>	<b>Date Reviewed by City Attorney:</b> 9/7/2011 (if applicable):

**ORDINANCE NO. D11-112**

**AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING CHAPTER 2.08 OF THE BONNEY LAKE MUNICIPAL CODE AND ORDINANCE NUMBER 1181 REGARDING THE DEPARTMENTS AND OFFICES OF THE CITY.**

WHEREAS, RCW 35A.12.090 vests in the Mayor the power of appointment and removal of appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service, and

WHEREAS, RCW 35A.11.020 vests in the City Council the power to organize and regulate the internal affairs of the City within the provisions of RCW 35A.11 and to define the functions, powers, and duties of its officers and employees, and

WHEREAS, changes to the operations of the City adopted by other ordinances or by interim approval need to be reflected in the official organizational structure of the City;

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

Section 1. Chapter 2.08 BLMC and the corresponding portions of Ordinances No. 1181 are hereby amended to read as follows:

**Chapter 2.08.010 – City Appointive Officers.** A. Pursuant to RCW 35A.12.020, the following shall be appointive officers of the City: City Administrator, Administrative Services Director/City Clerk, Police Chief, City Attorney, Public Works Director, ~~Planning and~~ Community Development Director, Community Services Director, and Chief Financial Officer.

B. The general functions, powers and duties of appointive officers shall be as provided in this chapter; provided, however that the general functions, powers and duties of the municipal court judge shall be as provided in Chapter 2.16.

C. Persons appointed by the Mayor to an appointive office described in this section shall be subject to confirmation by a majority vote of the City Council. In the case of vacancies, the Mayor is authorized to employ an interim or acting officer for up to twelve (12) months without Council confirmation. Thereafter, any continued or new interim appointment shall be subject to Council approval.

D. All appointive officers shall serve at the pleasure of the mayor as per the provisions of RCW 35A.12.090.

**Chapter 2.08.020 – City Departments and Offices Created.** A. There is hereby created in the City of Bonney Lake the following offices and departments of city government: Executive Department, Office of the City Attorney, ~~Office of Financial Services~~ Department of Finance, Department of Administrative Services, Department of Public Works, Department of ~~Planning and~~ Community Development, Police Department, ~~Department of Community Services~~, and Municipal Court.

**Chapter 2.08.030 – Executive Department.** A. ~~The executive department shall consist of the Mayor, the City Administrator, and the Office of Financial Services.~~ Offices of the Mayor, City Administrator, Facilities and Special Projects and Events, and Prosecuting Attorney.

B. Salary. The salary for the Mayor shall be established by ordinance of the City Council.

C. Mayoral Powers and Duties.

1. The mayor is the chief executive officer of the city. All departments of the City are under the supervision and control of the Mayor

2. Oath, Affidavit and Signature Powers. The mayor and the deputy mayor shall have power to administer oaths and affirmations, take affidavits and certify them. The mayor, or the deputy mayor when acting as mayor, shall sign all conveyances made by the city and all instruments which require the city seal.

D. City Administrator. The City Administrator shall be responsible to the Mayor for the general coordination and supervision of the activities of the various city departments and offices. subject to the directives of the mayor. The City Administrator shall be generally responsible for promoting efficient and effective service delivery and to see that departments are coordinating their activities.

~~E. Office of Financial Services. The Office of Financial Services shall be under the supervision of a Chief Financial Officer who shall assist the Mayor and City Administrator in the preparation of the annual budget and all work incidental thereto and shall have all duties assigned by state law to a city treasurer; supervise and be responsible for the disbursement of all monies; monitor expenditures to ensure that budget appropriations are not exceeded and as otherwise provided by law and the rules and regulations of the State Auditor's office relating to municipal corporations; maintain a general accounting system for the City government and each of its offices and departments; administer the payroll system of the City; prepare and distribute to the city council and all department heads a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City; prepare, as of the end of each fiscal year, a complete financial statement and report; supervise the collection of all taxes, special assessments, license fees and other revenues of the City; supervise investment of City funds; assist with, and facilitate, the purchase of supplies, materials, equipment and other articles used by any office or department of the City government.~~

E. Office of the Prosecuting Attorney. The Office of the Prosecuting Attorney shall be under the general supervision of the Mayor and City Administrator. The Prosecuting Attorney shall be responsible for managing and prosecuting all misdemeanor criminal cases coming before the Bonney Lake Municipal Court, such as domestic violence, DUI, sexual assault, and child abuse cases; representing the city in bench and jury trials, arraignments, pre-trial hearings, sentencing hearings, appeals, forfeitures, and other court hearings; and coordinating with the public defender and city attorney as needed.

F. Office of Facilities and Special Projects and Events. The Office of Facilities, Special Projects, and Events shall be under the supervision of a Facilities and Special Projects and Events Manager. Said office may be organized into distinct sections including but not necessarily limited to the following: Facilities, Special Projects, and Special Events. The general functions of the office are to coordinate and/or sponsor recreation programs; planning municipal parks, trails, and open spaces; maintaining the buildings and grounds of the City; planning and coordinating community events and festivals, manage the solid waste contract of the City, and undertake special projects as assigned.

**Chapter 2.08.040 – Office of the City Attorney.** A. Duties and Responsibilities. The Office of City Attorney shall be the legal advisor to the Mayor and Council and of all of the officers, commissions and boards of the City in relation to matters pertaining to their operations in a governmental capacity. The City Attorney shall represent the City in all litigation, as assigned, in all courts in which the City is a party or directly interested and shall ~~prosecute all violations of the provisions of this Code and~~ act generally as Attorney for the City and the several departments of the City government, together with such additional duties as the Council may prescribe by ordinance from time to time. In addition to the duties prescribed by the laws of the State of Washington, as hereinabove set forth, the City Attorney shall: attend all regular meetings of the Council, review and approve, as to form, all proposed ordinances, resolutions, leases, instruments of conveyances, contracts and agreements, and such other and similar instruments as may be required by the business of the City when requested to do so by the Council, Mayor, City Administrator, or department head; advise the Council, boards, commissions, department heads and other City officials and officers including the rendering of formal opinions when so requested, or when it appears to the Attorney advisable to do so; ~~attend all sessions of the Municipal Court of the City and prosecute all violations of this Code brought in said Court if so directed;~~ coordinate with the Prosecuting Attorney as required, consult with and participate with other City officials or representatives of the City concerning settlement of claims against the City or its officials, officers and employees while acting in their official, governmental capacities; attend, when requested to do so, official meetings of any board or commission in connection with the proposed drafting of any ordinances, resolutions or contracts.

B. Outside Legal Counsel. Nothing contained in this section shall be construed as to limit the authority of the mayor and city council to retain outside legal counsel when in the judgment of both the mayor and city council such counsel is needed or desirable, subject only to the availability of budgeted funds for such purposes, and subject to the limitations of state law for dealing with conflicts of interest.

~~**Chapter 2.08.050 – Department of Community Services.** A. The Department of Community Services shall be under the supervision of the Community Services Director. Said department may be organized into distinct divisions including but not necessarily limited to the following: Parks, Recreation, Senior Center, and Facilities. The department director may serve as the manager of one or more divisions of the department.~~

~~B. The duties and responsibilities of the Department of Community Services shall include, but not necessarily limited to: providing a variety of services to senior citizens and operating the senior center; coordinating and/or sponsoring recreation programs; planning and maintaining municipal parks, trails, and open spaces; administering a community forestry program; maintaining the buildings and grounds of the City; planning and coordinating community events and festivals; serving as a central point of contact for general citizen service requests.~~

~~C. Senior Services Division. The Senior Services Division shall be under the supervision of the Senior Services Manager who shall have the duty and responsibility to plan, organize and administer a variety of services for senior citizens; manage the Bonney Lake Senior Center; coordinate with the Bonney Lake Area Senior Citizens non-profit corporation and other groups who have a close relationship with the Senior Center; develop, schedule and oversee the programs and services which are offered at the senior center; work with community agencies and resources on the provision of senior services; work with private and public funding sources on continued funding, and develop fund raising ideas for the Senior Center; assist in writing grants~~

~~for specific programs or capital expenditures; provide information and make appropriate referrals for Bonney Lake senior adults needing assistance; and supervise the activities, programs, and classes offered through the senior center.~~

**Chapter 2.08.050 – Department of Finance.** The Department of Finance shall be under the supervision of a Chief Financial Officer who shall assist the Mayor and City Administrator in the preparation of the annual budget and all work incidental thereto and shall have all duties assigned by state law to a city treasurer; supervise and be responsible for the disbursement of all monies; monitor expenditures to ensure that budget appropriations are not exceeded and as otherwise provided by law and the rules and regulations of the State Auditor’s office relating to municipal corporations; maintain a general accounting system for the City government and each of its offices and departments; administer the payroll system of the City; prepare and distribute to the city council and all department heads a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City; prepare, as of the end of each fiscal year, a complete financial statement and report; supervise the collection of all taxes, special assessments, license fees and other revenues of the City; supervise investment of City funds; assist with, and facilitate, the purchase of supplies, materials, equipment and other articles used by any office or department of the City government.

**Chapter 2.08.060 – Department of Public Works.** A. The department of public works shall be under the general supervision of a Public Works Director. The Mayor may organize said department into different divisions including but not necessarily limited to the following: an Engineering Division headed by a City Engineer, and an Maintenance and Operations Division headed by an Assistant Public Works Director. The Public Works Director may serve as the manager of one or more divisions or offices of the department as needed or assigned.

B. The duties and responsibilities of the Department of Public Works shall include, but not necessarily limited to, the construction, operation and maintenance of all public streets, sidewalks, alleys, bridges, viaducts, highways and rights-of-way, including the placement and operation of signs, signals and lighting fixtures; the construction, operation and maintenance of all public water supply, storage and distribution facilities, including water mains, pumping stations, reservoirs, and wells; the construction, operation and maintenance of all sanitary sewers, sewer facilities and appurtenances, including sanitary sewers, and pumping stations; the construction and maintenance of all storm sewer facilities and appurtenances, including storm sewers, drains, ditches, culverts and streams and watercourses under jurisdiction of the city; the construction, maintenance and operation of all public parking lots; the cleaning of all streets and alleys including snow removal operations; the maintenance and repair of the city’s fleet; and the making of necessary surveys, maps, drawings and documents and the preparation of contract drawings, specifications, cost estimates for public works projects.

C. Engineering Division. The Engineering Division shall be under the supervision of a City Engineer. The major purpose of the Engineering Division shall be to oversee the environmental, transportation, utility, and other public work related engineering projects and programs of the City to ensure technical competence and compliance with standards and codes.

D. Operations and Maintenance Division. The Operations and Maintenance Division shall be under the supervision of an Assistant Public Works Director. The general purpose of the Operations and Maintenance Division shall be to maintain and operate the water, sanitary sewer collection, street, and storm water systems of the City. The Operations and Maintenance Division shall also maintain the City’s fleet, City parks and open space, and oversee the community forestry program of the City.

**Chapter 2.08.070 – Department of Community Development.** A. The Department of Community Development shall be under the general supervision of a Community Development Director. The mayor may organize the Community Development Department into different divisions including but not necessarily limited to the following: a Planning Division headed by a Planning Manager, and a Building Division headed by a Building Official. The department director may serve as the manager of one or more divisions or offices of the department as needed.

B. The duties and responsibilities of the Department of Community Development shall include, but not necessarily limited to: supervise, administrate, and generally plan the physical development of the City; prepare the comprehensive and coordinated plans therefore; administrate, inspect, and enforce SEPA and all platting, zoning, environmental, and land use ordinances and regulations, and the establishment of proper liaison and cooperation thereof with other departments, commissions and agencies; prepare and administer department budget; provide information to the public, answer questions, advise clients, and staff the Permit Center; administer central permit issuance system and coordinate the review of permit applications and plans with other City departments or divisions; interpret, administer, and make recommendations for revisions to City building codes and assist the public with construction and development requirements; prepare reports and make presentations at dangerous building hearings; respond to citizen complaints and inquiries regarding code requirements; supervise field inspection of new and modified structures for conformity to codes; examine applications and enforce building codes; recommend revisions to City ordinances pertaining to code enforcement, inspection services, and permit issuance. The Department of Planning and Community Development shall coordinate the geographical information systems (GIS) of the City.

C. Planning Division. The Planning Division shall be under the supervision of a Planning Manager. The general purpose of the planning division shall be to administer the current and long range planning programs of the city related to the development and implementation of land use and related municipal plans and policies, to prepare and administer the official comprehensive plans and land use codes of the City, and to generally plan the physical development of the City.

D. Building Division. The Building Division shall be under the supervision of a Building Official. The general purpose of the building division shall be to administer and enforce the various building and related codes of the City and coordinate plan reviews, inspections, and enforcement actions.

**Chapter 2.08.080 – Police Department.** A. The Police Department shall be under the supervision of the Police Chief, who shall serve as the Chief Law Enforcement Officer of the City as provided in RCW 35A.12.020. The mayor may organize the police department into different divisions including but not necessarily limited to the following: Administration managed by a Lieutenant or similar command position, and Operations managed by a Lieutenant or similar command position. The Police Chief may serve as the manager of one or more divisions or offices of the department as needed.

B. Police Positions Chief Exempted from Civil Service. The positions of Chief of Police, Assistant Police Chief, and Department Assistant shall be excluded from civil service and the Bonney Lake Civil Service Commission Rules and Regulations pursuant to RCW 41.12.050(2).

C. The duties and responsibilities of the Police Department shall include all duties and responsibilities prescribed by city ordinance or resolution, as well as the provisions of state and federal law. The Police Department has all such authority, responsibility, and duties as are

normal to municipal police departments, including, but not limited to, maintenance of the peace, issuance of citations, arrest and detention of persons committing criminal offenses or who are mentally ill, investigation of criminal activity, establishment and maintenance of intelligence files, production of scientific evidence, crime prevention, animal control, and such other duties as are set by ordinance of the City or by the laws of the State.

D. Operations Division. The Operations Division shall be under the supervision of an assistant chief, police lieutenant or similar command position. The general purpose of the Operations Division shall be to carry out the patrol, traffic, school resource, crime prevention, and related operational programs of the police department.

E. Administrative Division. The Administrative Division shall be under the supervision of an assistant chief, police lieutenant or similar command position. The general purpose of the Administrative Division shall be to carry out the investigations, records, property, evidence, training, and support services activities of the police department.

**Chapter 2.08.090 – Department of Administrative Services.** A. The Department of Administrative Services shall be under the supervision of an Administrative Services Director. Administrative Services Director shall supervise the divisions and offices of the department, shall provide administrative assistance to the mayor as needed, and provide legislative support to the Council as requested. The mayor may organize the Department of Administrative Services into various offices and divisions including but not necessarily limited to the following: Office of the City Clerk headed by a City Clerk which may be the Administrative Services Director, Office of Human Resources headed by a Human Resources ~~Officer~~ Manager, Office of Information Services headed by an Information Services ~~Coordinator~~ Manager, and Senior Services Division, headed by a Senior Services Manager. The department director may serve as the manager of one or more divisions or offices of the department as required. If so designated by the mayor, the Administrative Services Director shall also serve as the City’s designated risk manager. The powers, duties and responsibilities of the Department of Administrative Services and its various divisions and offices shall include, but not necessarily limited to the following:

B. Office of the City Clerk. The City Clerk shall be responsible for supervision of all city records, whether printed or electronic. The duties of the City Clerk shall include the performance of all duties as set forth in RCW 35A.42.040 and other statutes and ordinances applicable to the Office of the City Clerk.

C. Office of Human Resources. The Office of Human Resources shall be under the supervision of a Human Resources ~~Officer~~ Manager. It shall be the duty and responsibility of the human resources office to recommend and administer the city’s human resources policies and programs; ensure compliance with statutory requirements and city policies and procedures relative to employment law, collective bargaining, and safety issues; develop, maintain, and administer a comprehensive benefits program for the employees of the city; maintain and update the city’s classification system; maintain the city’s salary schedules; develop recruiting plans and administer the selection and hiring processes for all city employment; coordinate with departments on the use of contract employees and employment agencies; represent the city in all collective bargaining and grievance issues; investigate and resolve employee relations issues; develop and administer the city’s safety programs; administer the city’s equal employment opportunities programs; maintain the data in the city’s human resources information system.

D. Office of Information Services. The Office of Information Services shall be under the supervision of the Information Services ~~Coordinator~~ Manager. It shall be the duty and responsibility of the information services ~~coordinator~~ manager to manage the city-wide information technology/systems and telecommunications systems and activities; lead and

develop technology strategic plans and implementation strategies; provide IT/IS leadership in integrating and aligning technology with city plans, goals and objectives; organize, manage and evaluate the Information Services Office and its operations to ensure effective support for organizational objectives and efficient and effective implementation of initiatives.

E. Senior Services Division. The Senior Services Division shall be under the supervision of the Senior Services Manager who shall have the duty and responsibility to plan, organize and administer a variety of services for senior citizens; manage the Bonney Lake Senior Center; coordinate with the Bonney Lake Area Senior Citizens non-profit corporation and other groups who have a close relationship with the Senior Center; develop, schedule and oversee the programs and services which are offered at the senior center; work with community agencies and resources on the provision of senior services; work with private and public funding sources on continued funding, and develop fund raising ideas for the Senior Center; assist in writing grants for specific programs or capital expenditures; provide information and make appropriate referrals for Bonney Lake senior adults needing assistance; and supervise the activities, programs, and classes offered through the senior center.

**Chapter 2.08.100 – Municipal Court.** A. The Municipal Court shall be organized and operate in accordance with the provisions contained in Chapter 2.16 of the Bonney Lake Municipal Code and the General Rules prescribed by the Washington State Courts system.

B. The Municipal Court shall be under the general direction of the municipal court judge and day-to-day supervision of the Court Administrator who shall manage and oversee all court functions, other than judicial functions.

**Chapter 2.08.110 – Auditing Officer.** Pursuant to the provisions of RCW 42.24.080, the position of auditing officer for the city is hereby established. The City Administrator or his/her designee is hereby designated as the Auditing Officer.

**Chapter 2.08.120 – ~~Position Classifications~~ Job Descriptions.** Under the direction of the Administrative Services Director, the Human Resources ~~Officer-Manager~~ is authorized and directed to establish and maintain ~~position classifications~~ job descriptions for all regular full-time and part-time positions in the City. Said ~~classification specifications~~ job descriptions shall include, at a minimum, the essential duties and responsibilities of the position and the desired minimum qualifications as may be described in this Chapter.

**Chapter 2.08.130. Appointment of Department Heads, Officers and Employees.** A. All department heads, officers and employees of the City shall be appointed on the basis of their knowledge, ability, and skill to perform the essential duties and responsibilities of the position, as required by RCW 35A.12.090.

**Chapter 2.08.140. Limitations.** This Chapter expresses the general organizational structure for the administration of the City, only, and is not intended to create any employment right or benefit for an individual employee or appointive officer.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 4. Effective Date. This Ordinance concerning powers vested solely in the Council, it is not subject to referendum and shall take effect and be in force five days from and after its passage, approval and publication as required by law.

**PASSED by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2011.**

\_\_\_\_\_  
Neil Johnson Jr., Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

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City of Bonney Lake, Washington  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Executive / Don Morrison	<b>Meeting/Workshop Date:</b> 20 September 2011	<b>Agenda Bill Number:</b> AB11-113
<b>Agenda Item Type:</b> Ordinance	<b>Ordinance/Resolution Number:</b> D11-113	<b>Councilmember Sponsor:</b>

**Agenda Subject:** Update of the Position Classification and Grade Table of Nonrepresented Employees

**Full Title/Motion:** An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Attachment A-1 Of Ordinance No. 1299 Relating To The Position Classification And Salary Grades Of Non-Represented Employees.

**Administrative Recommendation:** Approve

**Background Summary:** A number of non-represented City positions have been reclassified or proposed for modification since the December 2008 adoption of the position classification and salary grade table for non-represented employees. It is proposed to amend Attachment "A-1" of Ordinance 1299 to reflect said proposed grade and/or title changes of these position classifications.  
**Attachments:** Ordinance D11-113; Attachment "A-1"

<b>BUDGET INFORMATION</b>			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
<b>Budget Explanation:</b> NA			

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	Finance Committee Date: September 13, 2011	<i>Approvals:</i> Chair/Councilmember Dan Swatman Councilmember James Rackley Councilmember Mark Hamilton	Yes No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Forward to: 9/20/11 Workshop		<b>Consent Agenda:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>	
Workshop Date(s): September 20, 2011	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

<b>APPROVALS</b>		
<b>Director:</b>	<b>Mayor:</b>	<b>Date Reviewed by City Attorney:</b> 9/7/11 (if applicable):

Attachment "A-1" - Non-represented Employee Classification and Grade Matrix Adopted by Ordinance No. D11-113

GRADE	ADMINISTRATION AND EXECUTIVE	PUBLIC SAFETY	PLANNING AND COMMUNITY DEVELOPMENT	PUBLIC WORKS	GRADE
1-9					1-9
10					10
11	Records and Information Specialist; Customer Services Specialist; Special Events Coordinator				11
12	Executive Assistant		Construction Inspector	Support Services Coordinator	12
13	Accountant			Project Manager	13
14	Financial Operations Supervisor ; Senior Services Manager				14
15				Assistant Engineer	15
16	Accounting Manager				16
17	Human Resources <del>Officer</del> <u>Manager</u>	Court Administrator		Transportation Supervisor; Utilities Supervisor	17
18	<u>Prosecuting Attorney</u>		Development Review Engineer		18
19		Police Lieutenant	Planning Manager	Assistant City Engineer - Utilities	19
20	Information Systems <del>Coordinator</del> <u>Manager</u> ;		Building Official		20
21					21
22	<u>Facilities and Special Projects/Events Mgr.</u>			City Engineer; Assistant Public Works Director	22
23		Assistant Police Chief			23
24	Administrative Services Director; Chief Financial Officer <del>Community Services Director</del>				24
25		Police Chief	Planning & Community Development Director	Public Works Director	25
26		Municipal Judge			26
27	City Administrator				27
28					28

**ORDINANCE NO. D11-113**

**AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING ATTACHMENT A-1 OF ORDINANCE NO. 1299 RELATING TO THE POSITION CLASSIFICATION AND SALARY GRADES OF NON-REPRESENTED EMPLOYEES.**

**WHEREAS**, a number of non-represented City positions have been reclassified or added since the December 2008 adoption of the position classification and salary table for non-represented employees; and

**WHEREAS**, the City Council desires to amend Attachment “A-1” of Ordinance 1299 to reflect said grade and/or title changes of these position classifications;

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

**Section 1.** Attachment “A-1” of Ordinance No. 1299 is hereby amended as attached.

**Section 2.** This Ordinance concerning matters set out in RCW 35A.11.090, it is not subject to referendum, and shall take effect five (5) days after its passage, approval and publication as required by law.

**PASSED** by the City Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Neil Johnson, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Woody Edvalson, City Clerk

APPROVED AS TO FORM:

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

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City of Bonney Lake, Washington  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Exec / Don Morrison	<b>Meeting/Workshop Date:</b> 27 September 2011	<b>Agenda Bill Number:</b> AB11-116
<b>Agenda Item Type:</b> Ordinance	<b>Ordinance/Resolution Number:</b> D11-116	<b>Councilmember Sponsor:</b> Hamilton

**Agenda Subject:** Renaming of Sumner-Buckley Highway East

**Full Title/Motion:** An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Renaming That Portion Of Sumner-Buckley Hgihway East That Lies Within The City Limits.

**Administrative Recommendation:** Approve

**Background Summary:** The City of Bonney Lake desires to honor veterans for their dedication and loyal services to our country by renaming Sumner-Buckley Highway East. SBH was chosen because it is no longer relevant as the roadway has been mostly replaced by SR 410 and neither the Cities of Sumner nor Buckley currently have a portion of Sumner-Buckley Highway East within their city limits. Bonney Lake is currently larger than both Sumner and Buckley combined, yet was excluded in the original name of the highway. The City Council desires to add to its local identity and build public support for a Veterans Memorial Park. Thus, Sumner-Buckley Highway East appears an ideal candidate for renaming.  
**Attachments:** Ordinance D11-116

<b>BUDGET INFORMATION</b>			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
<b>Budget Explanation:</b> There will be some cost in replacing the street name signs.			

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	<i>Approvals:</i>		<b>Yes No</b>
Date:	Chair/Councilmember		<input type="checkbox"/> <input type="checkbox"/>
	Councilmember		<input type="checkbox"/> <input type="checkbox"/>
	Councilmember		<input type="checkbox"/> <input type="checkbox"/>
Forward to:	<b>Consent</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>	
Workshop Date(s): 9/20/2011	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

<b>APPROVALS</b>		
<b>Director:</b>	<b>Mayor:</b>	<b>Date Reviewed by City Attorney:</b> (if applicable):

**ORDINANCE NO. D11-116**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, RENAMING THAT PORTION OF SUMNER-BUCKLEY HIGHWAY EAST THAT LIES WITHIN THE CITY LIMITS.**

**WHEREAS**, the City of Bonney Lake desires to honor Veterans for their dedication and loyal service to our country; and

**WHEREAS**, A street name will be a reminder to the public of the daily sacrifice of the men and women in military uniform and without that sacrifice we would not be free; and

**WHEREAS**, the present name of Sumner-Buckley Highway East is no longer relevant because the roadway has been mostly replaced by SR 410; and

**WHEREAS**, neither the Cities of Sumner nor Buckley currently have a portion of Sumner-Buckley Highway East within their City limits; and

**WHEREAS**, the City of Bonney Lake wishes to add to its local identity and build public support for a Veterans Memorial Park; and

**WHEREAS**, the City Council has determined that the public convenience and welfare will be served by a change in the name of Sumner-Buckley Highway East;

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

**Section 1.** That portion of the Sumner-Buckley Highway East within the city limits is hereby renamed (*insert a name from list below*). All current street numbers shall remain as presently addressed.

1. Veterans Highway East
2. Veterans Memorial Drive East
3. Memorial Drive East
4. Veterans Road East
5. Veterans Memorial Road East
6. Other Name

**Section 2.** The Mayor is hereby authorized to cause each residence and business affected by the name change to be given notice of the change, to designate this change on the official maps of the City of Bonney Lake, to notify those affected agencies and utilities of the name change in order for them to effect the change in a timely manner, and to formally request Pierce County to likewise rename Sumner-Buckley Highway East to *Insert New Name* from its westward county limits to 214<sup>th</sup> Avenue East.

***DISCUSSION DRAFT***

**Section 3. Effective Date.** 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 \_\_\_\_<sup>th</sup> day of , 2011.

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Neil Johnson, Jr.  
Mayor

ATTEST:

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Harwood T. Edvalson  
City Clerk, CMC

APPROVED AS TO FORM:

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James Dionne  
City Attorney

Passed:  
Valid:  
Published:  
Effective Date:

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**City of Bonney Lake, Washington**  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Exec / Brian Hartsell	<b>Meeting/Workshop Date:</b> 4 October 2011	<b>Agenda Bill Number:</b> AB11-77
<b>Agenda Item Type:</b> Ordinance	<b>Ordinance/Resolution Number:</b> Ordinance D11-77	<b>Councilmember Sponsor:</b>

**Agenda Subject:** Renew a CABLE TV Franchise Agreement with Comcast and establish a franchise fee of 5%.

**Full Title/Motion:** An Ordinance An Ordinance Of The City Of Bonney Lake, Pierce County, Washington, Renewing A Cable Television Franchise Agreement With Comcast Of California/Colorado/Washington I, Inc Thereby Surperceding All Previous Agreements; And Establishing A Franchise Fee Of Five Percent.

**Administrative Recommendation:**

**Background Summary:** The City's 1990 Franchise Agreement, now with Comcast, expired in 2005. We have since been operating under a "expiration carryover" provision of this 1990 agreement. An updated cable franchise agreement was negotiated between Comcast and Rainier Communications Commission (RCC)--of which the City of Bonney Lake (CBL) is an RCC member. The agreement calls for a 5% franchise fee to be paid to CBL. Ordinance D11-77 is being proposed in tandem with Ordinance D11-78. Since Comcast would pass that 5% fee on to the customers, CBL will offset this fee, per Ord D11-78, by reducing its current cable TV utility tax rate from 6.5% to 1.5%. The franchise fee and cable TV utility tax are both calculated from total gross subscriber revenue. A public hearing was held per AB11-80, and no public comment was received.

**Attachments:** Yes--1) Proposed Ordinance DD11-77 including Exhibit A--Draft Franchise Agreement

<b>BUDGET INFORMATION</b>			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
<b>Budget Explanation:</b> This action is revenue neutral. The current utility tax of 6.5% will be reduced to 1.5% upon implementation of a 5% franchise fee--both tax and fee calculated from the same total gross subscriber revenue.			

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	Finance Committee	<i>Approvals:</i>	<b>Yes No</b>
	Date: 8/23/11	Chair/Councilmember Deputy Mayor Swatman	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Mark Hamilton	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember James Rackley	<input checked="" type="checkbox"/> <input type="checkbox"/>
	Forward to: 10/25/2011 Council Meeting	<b>Consent Agenda:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>	
Workshop Date(s):	Public Hearing Date(s): 9/27/2011

Meeting Date(s):

Tabled to Date:

**APPROVALS**

**Director:**

**Mayor:**

**Date Reviewed  
by City Attorney:** 7/29/11  
(if applicable):

**ORDINANCE D11-77**

**AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY,  
WASHINGTON, RENEWING A CABLE TELEVISION FRANCHISE  
AGREEMENT WITH COMCAST OF  
CALIFORNIA/COLORADO/WASHINGTON I, INC THEREBY  
SURPERSEDING ALL PREVIOUS AGREEMENTS; AND ESTABLISHING A  
FRANCHISE FEE OF FIVE PERCENT**

WHEREAS, the previous franchise agreement established by Ordinance 619, and subsequently updated by Resolutions 745 and 999, has expired, and

WHEREAS, Rainier Communications Commission, of which the City is a member, negotiated an updated cable television franchise agreement on behalf of all member local governments, and

WHEREAS, the franchise agreement calls for a 5 percent franchise fee calculated from total gross subscriber revenue, and

WHEREAS, the City has complied with all federal and state procedural requirements for the renewal of cable franchises,

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

**Section 1.** Ordinance 619 and corresponding Resolutions 745 and 999 are hereby superseded by this Ordinance, D11-77.

**Section 2.** A Franchise Agreement between the City of Bonney Lake & Comcast of California/Colorado/Washington I, Inc. is hereby renewed and established as attached in Exhibit A, and incorporated herein by this reference as if set forth in full.

**Section 3.** This Ordinance shall take effect and be in force 5 days after passage and publication, as required by law.

PASSED by the City Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Neil Johnson, Mayor  
ATTEST:

Ordinance D11-77

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Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:

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James J. Dionne, City Attorney

**DRAFT CABLE TV FRANCHISE AGREEMENT 8/17/2011**  
Between City of Bonney Lake & Comcast of California/Colorado/Washington I, Inc.

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CABLE TV FRANCHISE AGREEMENT

**SECTION 1. DEFINITIONS**

For the purposes of this Franchise and all exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

**"Access"**

means the availability for Noncommercial use by various governmental and educational agencies, including Grantor and its designees, of particular channels on the System to receive and distribute Video Programming to Subscribers, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

(C) "Access" means Educational Access and Governmental Access, collectively.

**"Access Center"**

means a facility or facilities where signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

**"Access Channel"**

means any Channel, or portion thereof, designated for Noncommercial Access purposes or otherwise made available to facilitate or transmit Access programming.

**"Access Fees"**

means the Capital Fee paid to the Grantor by the Grantee in accordance with section 9.1 below.

**"Activation" or "Activated"**

means the status of any capacity on or part of the System wherein the use of that capacity or part thereof may be made available without further installation of system equipment other than Subscriber premise equipment, whether hardware or software.

**"Affiliated Entity" or "Affiliate"**

means when used in connection with Grantee any corporation, Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successor corporations. Affiliated Entity or Affiliate also means any Person with whom Grantee contracts to provide Cable Services on the Cable System.

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1 **"Bad Debt"**

2 means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee,  
3 but not collected after reasonable efforts by Grantee.

4 **"Basic Service"**

5 means any Cable Service tier which includes, at a minimum, the retransmission of local  
6 television Broadcast Signals.

7 **"Broadcast Signal"**

8 means a television signal transmitted over the air to a wide geographic audience, and received by  
9 a System off-the-air by antenna, microwave, satellite dishes or any other means.

10 **"Cable Acts"**

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

14 **"Cable Operator"**

15 means any Person or groups of Persons, including Grantee, who provides Cable Service over a  
16 System and directly or through one or more Affiliates owns a significant interest in such System  
17 or who otherwise control(s) or is(are) responsible for, through any arrangement, the management  
18 and operation of such a System.

19 **"Cable Service"**

20 means the one-way transmission to Subscribers of Video Programming, or other programming  
21 service and Subscriber interaction, if any, which is required for the selection or use of such  
22 Video Programming or other programming service.

23 **"Channel"**

24 means a portion of the frequency band capable of carrying a Video Programming Service or  
25 combination of Video Programming Services, whether by analog or digital signal, on a twenty-  
26 four (24) hour per day basis or a portion thereof.

27 **"Connection"**

28 with regard to connections to public buildings, means installation of fiber optic or coaxial cable  
29 or other System related facilities through the outer wall of the building.

30 **"Designated Access Provider"**

31 means the entity or entities designated by the Grantor to manage or co-manage Educational or  
32 Governmental Access Channels and facilities. The Grantor may be a Designated Access  
33 Provider.

34 **"Designated Distributor"**

35 means any entity authorized by Grantor to distribute Access Programming.

36 **"Downstream Channel"**

37 means a Channel capable of carrying a transmission from the Headend to remote points on the  
38 System.  
39

1 **"Dwelling Unit"**

2 means any residential building, or each portion thereof.

3 **"Expanded Basic Service"**

4 means cable programming services not included in the Basic Service and excluding premium or  
5 pay-per-view services.

6 **"FCC"**

7 means the Federal Communications Commission or its lawful successor.

8 **"Fiber Optic"**

9 means a transmission medium of optical fiber cable, along with all associated electronics and  
10 equipment capable of carrying Cable Service by means of electric lightwave pulses.

11 **"Franchise"**

12 means the document in which this definition appears, which is executed between Grantor and  
13 Grantee, containing the specific provisions of the authorization granted and the contractual and  
14 regulatory agreement created hereby.

15 **"Franchise Area"**

16 means the area within the jurisdictional boundaries of the Grantor, including any areas annexed  
17 by Grantor during the term of this Franchise.  
18

19 **"Franchise Fee"**

20 includes any tax, fee or assessment of any kind imposed by the Grantor on the Grantee or  
21 Subscribers, or both solely because of their status as such. The term Franchise Fee does not  
22 include:

- 23 (A) Any tax, fee or assessment of general applicability, for example a utility tax.  
24 (B) Capital costs which are required by the Franchise to be incurred by the Grantee  
25 for educational or governmental access facilities, including the support required in Section 9.1;  
26 (C) Requirements or charges incidental to the awarding or enforcing of the franchise,  
27 including but not limited to, payments for bonds, letters of credit, insurance, indemnification,  
28 penalties or liquidated damages; or  
29 (D) Any fee imposed under Title 17, United States Code.  
30

31 **"Grantee"**

32 Means Comcast of California/Colorado/Washington I, Inc. or its lawful successor, transferee or  
33 assignee.  
34

35 **"Grantor"**

36 Means the City of Bonney Lake.

37 **"Gross Revenues"**

38 means any and all revenue derived directly or indirectly by the Grantee, or by any other entity  
39 that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation  
40 of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues

1 include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable  
2 Services including Basic Service, any expanded tiers of Cable Service, optional Premium  
3 Services; installation, disconnection, reconnection and change-in-service fees, Leased Access  
4 Channel fees, all Cable Service lease payments from the Cable System, late fees and  
5 administrative fees, revenues from rentals or sales of converters or other Cable System  
6 equipment; advertising sales revenues (including local, regional and a pro rata share of national  
7 advertising carried on the Cable System in the Franchise Area) net of commissions due to  
8 advertising agencies that arrange for the advertising buy; the fair market value of consideration  
9 received by the Grantee for use of the Cable System to provide Cable Service and accounted for  
10 as revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees,  
11 revenue from interactive services to the extent they are considered Cable Services under federal  
12 law, revenue from the sale or carriage of other Cable Services, and revenues from home  
13 shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue  
14 received by any entity other than the Grantee where necessary to prevent evasion or avoidance of  
15 the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include  
16 (i) to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such  
17 Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in  
18 the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services  
19 furnished by the Grantee which are imposed directly on any Subscriber or user by the State,  
20 Town or other governmental unit and which are collected by the Grantee on behalf of said  
21 governmental unit. The Franchise Fee is not such a tax.

22  
23 The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent  
24 with existing applicable law.

25 **"Headend" or "Hub"**

26 means any Facility for signal reception and dissemination on a System, including cable,  
27 antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast  
28 Signals or other signals, equipment for the interconnection of the System with adjacent Systems  
29 and interconnection of any networks which are part of the System, and all other related  
30 equipment and Facilities.

31 **"Leased Access Channel"**

32 means any Channel or portion of a Channel commercially available for programming in  
33 accordance with Section 612 of the Cable Act.

34 **"Noncommercial"**

35 means, in the context of Access Channels, that particular products and services are not promoted  
36 or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer  
37 from soliciting and receiving financial support to produce and transmit video programming on an  
38 Access Channel, or from acknowledging a contribution, in the manner of the Corporation for  
39 Public Broadcasting.

40 **"Normal Business Hours"**

41 means those hours during which most similar businesses in the community are open to serve  
42 customers.

1 **“Normal Operating Conditions”**

2 means those service conditions which are within the control of the Grantee. Those conditions  
3 which are not within the control of the Grantee include, but are not limited to, natural disasters,  
4 civil disturbances, power outages, telephone network outages, and severe or unusual weather  
5 conditions. Those conditions which are ordinarily within the control of the Grantee include, but  
6 are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

7 **"Pay Service" or "Premium Service"**

8 means Video Programming or other programming service choices (such as movie channels or  
9 pay-per-view programs) offered to Subscribers on a per-channel, per-program or per-event basis.

10 **"Person"**

11 means any natural person, sole proprietorship, partnership, joint venture, association, or limited  
12 liability entity or corporation, or any other form of entity or organization.

13 **“RCC”**

14 Rainier Communications Commission, established as an interlocal governmental cooperative,  
15 pursuant to the Interlocal Cooperation Act, RCW 39.34, et. seq., and the general laws of the State  
16 of Washington, its lawful successor, or, if none, that other consortium or interlocal agreement  
17 formed by Grantor and any other municipal corporations that is designed to cooperate on  
18 telecommunications and cable television services.

19 **“RMC”**

20 means the educational and governmental Access Center known as the Rainier Media Center  
21 which is operated by the RCC or its lawful successor, or if none, that consortium formed by  
22 Grantor and other political subdivisions and any other municipal corporations that is designed to  
23 cooperate on Educational and Government Access services.  
24

25 **“Rights-of-Way”**

26 means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys,  
27 bridges, sidewalks, easements and similar public property located within the Franchise area.

28 **“Roads”**

29 means Rights-of-Way.

30 **"School"**

31 means any accredited educational institution including, for example, primary and secondary  
32 schools (K-12), colleges and universities and excluding home schools and residential facilities.

33 **“Service Interruption”**

34 means the loss of picture or sound on one or more cable channels.

35 **"State"**

36 means the State of Washington.

37 **"Subscriber"**

38 means any Person who lawfully receives Cable Services provided by Grantee by means of the  
39 System with Grantee’s express permission.

1 **"System" or "Cable System"**

2 means a facility, consisting of a set of closed transmission paths and associated signal generation,  
3 reception and control equipment that is designed to provide Cable Service which includes video  
4 programming and which is provided to multiple Subscribers within a community, but such term  
5 does not include (1) a facility that serves only to retransmit the television signals of one or more  
6 television broadcast stations; (2) a facility that serves Subscribers without using any public right-  
7 of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions  
8 of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility  
9 shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. §  
10 541(c)) to the extent such facility is used in the transmission of video programming directly to  
11 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4)  
12 an open video system that complies with federal statutes; or (5) any facilities of any electric  
13 utility used solely for operating its electric utility systems. When used herein, the term "Cable  
14 System" or "System" shall mean Grantee's Cable System in the Franchise Area.

15 **"Tier"**

16 means a category of Cable Services provided by the Grantee for which a separate rate is charged.

17 **"Upstream Channel"**

18 means a Channel capable of carrying a transmission to the Headend from remote points on the  
19 System.

20 **"Video Programming"**

21 means programming provided by, or generally considered comparable to programming provided  
22 by, a television broadcast station.  
23

24 **SECTION 2. GRANT OF FRANCHISE**

25 **2.1 Grant**

26 (A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to  
27 make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct,  
28 operate, maintain, reconstruct, and upgrade a System for the purpose of providing Cable  
29 Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall  
30 constitute both a right and an obligation to provide the Cable Services required by, and to fulfill  
31 the obligations set forth in, the provisions of this Franchise.

32 (B) The Grantee, through this Franchise, is granted the right to operate its System  
33 using the Grantor's Rights-of-Way within the Franchise Area in compliance with all lawfully  
34 enacted applicable Grantor construction codes and regulations. Nothing in this Franchise shall be  
35 deemed to waive the requirements of the other codes and ordinances of general applicability  
36 lawfully enacted, or hereafter lawfully enacted, by the Grantor to the extent that the provisions of  
37 the codes and ordinances do not have the effect of materially limiting the benefits or materially  
38 expanding the obligations of the Grantee that are granted by this Franchise. The Grantee  
39 specifically agrees to comply with the provisions of Grantor ordinances provided that in the  
40 event of a conflict between the provisions of ordinances and the Franchise, the express  
41 provisions of the Franchise shall govern. Grantee reserves the right to challenge provisions of

1 any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with  
2 its contractual right granted herein.

3 (C) This Franchise shall not be interpreted to prevent the Grantor from imposing  
4 additional conditions, including additional compensation conditions for use of the Rights-of-  
5 Way, should Grantee provide service other than Cable Service, to the extent permitted by law.

6 (D) Grantee promises and guarantees, as a condition of exercising the privileges  
7 granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of  
8 Cable Service in the Franchise Area, or directly involved in the management or operation of the  
9 System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

10 (E) No rights shall pass to Grantee by implication.

11 (F) This Franchise is intended to convey limited rights and interests only as to those  
12 Rights-of-Ways in which the Grantor has an actual interest. It is not a warranty of title or  
13 interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular  
14 location within the Rights-of-Way; and it does not confer rights other than as expressly provided  
15 in the grant hereof.

16 **2.2 Use of Rights-of-Way**

17 (A) Subject to Grantor's supervision and control, Grantee may erect, install, construct,  
18 repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-  
19 Way within the Franchise Area, such wires, cables (both coaxial and fiber optic), conductors,  
20 ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other  
21 property and equipment as are necessary and appurtenant to the operation of a System for the  
22 provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable  
23 construction codes, laws, ordinances, and regulations, now in effect or enacted hereafter. This  
24 grant does not include the installation, maintenance or construction, repair or replacement of any  
25 wireless telecommunications facilities or equipment within Rights-of-Way or otherwise on  
26 Grantor owned property or on property held in trust or used by the Grantor.

27 (B) Grantee must follow Grantor-established written requirements including all  
28 Grantor codes, ordinances and other regulations regarding placement of System facilities in  
29 Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any  
30 event install System facilities in a manner that minimizes interference with the use of the Rights-  
31 of-Way by others, including others that may be installing communications facilities. The  
32 Grantor may require that System facilities be installed at a particular time, at a specific place or  
33 in a particular manner as a condition of access to a particular Right-of-way; may deny access if  
34 Grantee is not willing to comply with Grantor's requirements; and may remove, or require  
35 removal of, any facility that is not installed in compliance with the requirements established by  
36 Grantor, or which is installed without prior Grantor approval of the time, place or manner of  
37 installation and charge Grantee for all the costs associated with removal; and may require  
38 Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through  
39 joint trenching and other arrangements. Grantee shall assume all Grantee's costs associated with  
40 any requirement of Grantor in the exercise of its police powers or in furtherance of any public  
41 improvement to move its System located in the Right-of-way.

42

1 **2.3 Duration**

2 The term of this Franchise and all rights, privileges, obligations and restrictions pertaining  
3 thereto shall be five (5) years from the effective date of this Franchise, unless terminated sooner  
4 as hereinafter provided. This Franchise may be extended by mutual agreement of the parties for  
5 five (5) additional years.

6 **2.4 Effective Date**

7 The provisions of this Franchise shall be effective upon the written acceptance of this Franchise  
8 by the Grantee, signed by its proper officers, filed with the Clerk of the Grantor within sixty days  
9 from \_\_\_\_\_, 2011.

10 **2.5 Franchise Nonexclusive**

11 This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or  
12 licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-  
13 Way, easement, right, interest or license for any purpose whatsoever, including the right of  
14 Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed  
15 Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for  
16 any purpose not incompatible with Grantee's authority under this Franchise and for such  
17 additional Franchises for Systems as Grantor deems appropriate.

18 **2.6 Grant of Other Franchises**

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

32  
33 (B) In the event an application for a new cable television franchise is filed with the  
34 Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide  
35 notice of such application.

36  
37 (C) In the event that a wireline multichannel video programming distributor provides  
38 video service to the residents of the Grantor under the authority granted by federal or State  
39 legislation or other regulatory entity, the Grantee shall have a right to request Franchise  
40 amendments that relieve the Grantee of regulatory burdens that create a competitive  
41 disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking  
42 to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline  
43 competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise  
44 place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be

1 amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not  
2 unreasonably withhold consent to the Grantee's petition.  
3

4 **2.7 Familiarity with Franchise**

5 The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement  
6 granted herein, that it has carefully read and fully comprehends the terms and conditions of this  
7 Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions,  
8 terms and conditions herein. The Grantee further acknowledges and states that it has fully  
9 studied and considered the requirements and provisions of this Franchise, and finds that the same  
10 are commercially practicable at this time and consistent with all local, state and federal laws and  
11 regulations currently in effect, including the Cable Act.

12 **2.8 Effect of Acceptance**

13 By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right  
14 to issue and enforce the Franchise; (2) agrees that it will not oppose the Grantor's intervening in  
15 any legal or regulatory proceeding affecting the System; (3) accepts and agrees to comply with  
16 each and every provision of this Franchise; and (4) agrees that the Franchise was granted  
17 pursuant to processes and procedures consistent with applicable law, and that it will not raise any  
18 claim to the contrary.

19 **2.9 Police Powers**

20 Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce  
21 ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to  
22 comply with all applicable laws, ordinances and regulations enacted pursuant to the police  
23 powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-  
24 constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any  
25 conflict between the provisions of this Franchise and any other present or future lawful exercise  
26 of Grantor's police powers shall be resolved in favor of the latter.  
27

28 **2.10 Franchise Area**

29 Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise  
30 Area.  
31

32 **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

33 **3.1 Franchise Fee**

34 As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a  
35 Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five  
36 (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in  
37 the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of  
38 this Franchise.

1 **3.2 Payments**

2 Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding  
3 calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly  
4 payment shall be due and payable no later than forty-five (45) days after said dates.

5 **3.3 Acceptance of Payment**

6 No acceptance of any payment shall be construed as an accord by Grantor that the amount paid  
7 is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of  
8 any claim Grantor may have for further or additional sums payable or for the performance of any  
9 other obligation of Grantee.

10 **3.4 Quarterly Franchise Fee Reports**

11 Each payment shall be accompanied by a written report to Grantor, verified by an officer of  
12 Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's  
13 Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross  
14 Revenues of the System and shall be drafted in accordance with generally accepted accounting  
15 principles.

16 **3.5 Audits**

17 On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to  
18 conduct an independent audit of Grantee's records related to this Franchise and to re-compute  
19 any amounts determined to be payable under this Franchise. Provided Grantee cooperates in  
20 making all relevant records available upon request, Grantor will in good faith attempt to  
21 complete each audit within six (6) months, and the audit period shall not be any greater than the  
22 previous three (3) years, unless Grantor has information relating to previous years beyond the  
23 three (3) which raises doubt as to the accuracy of payments made under this or previous  
24 Franchises. Any additional amounts due to the Grantor as a result of the audit shall be paid  
25 within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall  
26 include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid,  
27 by three percent (3%) in a calendar year or more, Grantee shall pay the total cost of the audit.

28 **3.6 Financial Records**

29 Grantee agrees to meet with a representative of the Grantor upon written request to review  
30 Grantee's method of record-keeping, financial reporting, the computing of Franchise Fee  
31 obligations and other procedures, the understanding of which the Grantor deems necessary for  
32 reviewing reports and records that are relevant to the enforcement of this Franchise.

33 **3.7 Interest on Late Payments**

34 In the event any payment is not received within forty-five (45) days from the end of the calendar  
35 quarter, Grantee shall pay, in addition to the payment or sum due, interest from the due date at an  
36 interest rate of 1%, beginning on the forty-sixth (46<sup>th</sup>) day after the end of the calendar quarter  
37 and continuing every day thereafter until the seventy-sixth (76<sup>th</sup>) day after the end of the calendar  
38 quarter, or until payment is made, whichever is earlier. If any payment is not received within  
39 seventy-six (76) days after the end of the calendar quarter, Grantee shall be assessed a late fee in  
40 the additional amount of two hundred dollars (\$200.00) per day, beginning on the seventy-sixth  
41 (76<sup>th</sup>) day after the end of the calendar quarter and continuing every day thereafter until paid.

1 **3.8 Maximum Franchise Fee**

2 The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a  
3 Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the  
4 duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent  
5 (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide  
6 that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor  
7 hereunder, provided that all providers of Cable Service in the Franchise Area over which the  
8 Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60)  
9 days prior written notice from Grantor of such amendment.

10 **3.9 Additional Commitments Not Franchise Fees**

11 No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to  
12 pay Franchise Fees. Although the total sum of Franchise Fee payments and additional  
13 commitments set forth elsewhere in this Franchise may total more than five percent (5%) of  
14 Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional  
15 commitments herein are not Franchise Fees, nor are they to be offset or credited against any  
16 Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be  
17 passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset  
18 against and are not Franchise Fees.

19 **3.10 Payment on Termination**

20 If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety  
21 (90) calendar days of the date of the termination, a financial statement, certified by an  
22 independent certified public accountant, showing the Gross Revenues received by the Grantee  
23 since the end of the previous fiscal year. Within sixty (60) days of the filing of the certified  
24 statement with the Grantor, Grantee shall pay any unpaid amounts as indicated. If the Grantee  
25 fails to satisfy its remaining financial obligations as required in this Franchise, the Grantor may  
26 do so by utilizing the funds available in a Letter of Credit or other security provided by the  
27 Grantee.

28 **SECTION 4. ADMINISTRATION AND REGULATION**

29 **4.1 General Provisions**

30 (A) Grantor shall be vested with the power and right to administer and enforce the  
31 requirements of this Franchise and the regulations and requirements of applicable law, including  
32 the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted  
33 under State and local law.

34 (B) Grantee shall comply with all applicable federal and state laws and regulations,  
35 including regulations of any administrative agency thereof, as well as all Grantor ordinances,  
36 resolutions, rules and regulations heretofore or hereafter adopted or established during the term  
37 of the Franchise. Nothing in this Franchise shall limit or expand the Grantor's right of eminent  
38 domain under State law.

39 (C) The Grantee and Grantor shall be entitled to all rights and be bound by all  
40 changes in local, State and federal law that occur subsequent to the effective date of this  
41 Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this  
42 Franchise are explicitly subject to all such changes. However, should such changes in law

1 substantially reduce Grantee's obligation to pay or provide Franchise Fees, or any other support  
2 required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for  
3 a six (6) month period, at the request of either party, to resolve the issues. If resolution is not  
4 reached within the six (6) month period, and the period has not been extended by mutual  
5 agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall  
6 commence the renewal process in accordance with the Cable Act.

7 **4.2 Rates and Charges**

8 All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation  
9 by Grantor to the full extent authorized by applicable federal, State and local laws.

10 **4.3 Rate Discrimination**

11 All Grantee rates and charges shall be published (in the form of a publicly-available rate card),  
12 made available to the public, and shall be non-discriminatory as to all Persons of similar classes,  
13 under similar circumstances and conditions. Grantee shall apply its rates in accordance with  
14 governing law. Grantee shall permit Subscribers to make any in-residence connections the  
15 Subscriber chooses without additional charge and without penalizing the Subscriber therefore.  
16 However, if any in-home connection requires service from Grantee due to signal quality, signal  
17 leakage or other factors, caused by improper installation of such in-home wiring or faulty  
18 materials of such in-home wiring, the Subscriber may be charged appropriate service charges by  
19 Grantee. Nothing herein shall be construed to prohibit:

- 20 (A) The temporary reduction or waiving of rates or charges in conjunction with valid  
21 promotional campaigns;
- 22 (B) The offering of reasonable discounts to similarly situated Persons.
- 23 (C) The offering of rate discounts for either Cable Service generally, or data  
24 transmission to governmental agencies or educational institutions; or
- 25 (D) The offering of bulk discounts for Multiple Dwelling Units.

26 **4.4 Filing of Rates and Charges**

27 (A) Throughout the term of this Franchise, Grantee shall maintain on file with Grantor  
28 a complete schedule of applicable rates and charges for Cable Services provided under this  
29 Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and  
30 charges under temporary reductions or waivers of rates and charges in conjunction with  
31 promotional campaigns. As used in this subsection, no rate or charge shall be considered  
32 temporary if Subscribers have the ability over a period greater than twelve (12) consecutive  
33 months (or such other period as may be approved by Grantor) to purchase Cable Services at such  
34 rate or charge.

35 (B) On an annual basis, Grantee shall provide a complete schedule of current rates  
36 and charges for any and all Leased Access Channels, or portions of such Channels, provided by  
37 Grantee.

38 **4.5 Late Fees**

39 If the Grantee assesses any kind of penalty fee for late payment, such fee shall comply with  
40 applicable law.  
41

1 **4.6 Time Limits Strictly Construed**

2 Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall  
3 be deemed to be of the essence, and any failure of Grantee to perform within the allotted time  
4 may be considered a material breach of this Franchise. However, in the event that Grantee is  
5 prevented or delayed in the performance of any of its obligations under this Franchise by reason  
6 beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the  
7 circumstances, to perform the affected obligation under this Franchise or to procure a substitute  
8 for such obligation which is satisfactory to Grantor.

9 **4.7 Performance Evaluation**

10 (A) Special evaluation sessions may be held at any time upon request by Grantor  
11 during the term of this Franchise.

12 (B) All evaluation sessions shall be open to the public and announced at least one  
13 week in advance in a newspaper of general circulation in the Franchise Area. Grantor may  
14 notify its Subscribers of evaluation sessions by announcement on its Access Channel.

15 (C) Topics which may be discussed at any evaluation session may include, but are not  
16 limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted  
17 Cable Services; application of new technologies; system performance; Cable Services provided;  
18 programming offered; customer complaints; privacy; amendments to this Franchise; judicial and  
19 FCC rulings; line extension policies; and Grantor's or Grantee's rules; provided that nothing in  
20 this subsection shall be construed as requiring the renegotiation of this Franchise.

21 (D) During evaluations under this Section, Grantee shall fully cooperate with Grantor  
22 and shall provide such information and documents as Grantor may require to perform the  
23 evaluation.  
24

25 **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

26 **5.1 Indemnification**

27 (A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its  
28 officers, officials, boards, commissions, authorized agents and employees, harmless from any  
29 action or claim for injury including death, damage, loss, liability, cost or expense, including  
30 court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to  
31 Person or property, including, without limitation, copyright infringement, defamation, and all  
32 other damages in any way arising out of, or by reason of, any construction, excavation,  
33 operation, maintenance, reconstruction, or any other act done under this Franchise, by or for  
34 Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its  
35 agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting  
36 its defense of the Grantor.  
37

38 (B) Indemnification for Relocation. Grantee shall indemnify Grantor for any  
39 damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to,  
40 arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or  
41 relocate any of its facilities in the Streets in a timely manner in accordance with any relocation  
42 required by Grantor.  
43

1 (C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor  
2 harmless for any claim for injury, damage, loss, liability, cost or expense, including court and  
3 appeal costs and attorneys' fees or expenses in any way arising out of:

4 (1) The grant of this Franchise;

5 (2) Any failure by Grantee to secure consents from the owners, authorized  
6 distributors or licensees/licensors of programs to be delivered by the System.  
7

8 (D) Procedures and Defense. If a claim or action arises, Grantor or any other  
9 indemnified party shall tender the defense of the claim to Grantee, which defense shall be at  
10 Grantee's expense. Grantor may participate in the defense of a claim and, in any event, Grantee  
11 may not agree to any settlement of claims affecting Grantor without Grantor's written approval.  
12

13 (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise  
14 through independent contractors shall not constitute an avoidance of or defense to Grantee's duty  
15 of defense and indemnification under this Section.  
16

17 (F) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee  
18 timely written notice of any claim or of the commencement of any action, suit or other  
19 proceeding covered by the indemnity in this Section. In the event any such claim arises, the  
20 Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the  
21 Grantee shall have the obligation and duty to defend any claims arising thereunder, and the  
22 Grantor shall cooperate fully therein.  
23

24 (G) If separate representation to fully protect the interests of both parties is necessary,  
25 such as a conflict of interest between the Grantor and the counsel selected by Grantee to  
26 represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself  
27 with regard to any action, suit or proceeding indemnified by Grantee. The Grantor's expenses  
28 shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the  
29 reasonable value of any services rendered by the Grantor attorney or his/her assistants or any  
30 employees of the Grantor or its agents but shall not include outside attorneys' fees for services  
31 that are unnecessarily duplicative of services provided the Grantor by Grantee.  
32  
33  
34

## 35 **5.2 Insurance Requirements**

36 (A) General Requirement. Grantee must have adequate insurance during the entire  
37 term of this Franchise to protect the Grantor against claims for injuries to Persons or damages to  
38 property which in any way relate to, arise from or are connected with this Franchise, or involve  
39 Grantee, its agents, representatives, contractors, subcontractors and their employees.

40 (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance  
41 with the minimum insurance limits herein set forth by the Grantor from time to time. The  
42 Grantee shall obtain policies for the following initial minimum insurance limits:

43 (1) Commercial General Liability: Five million dollars (\$5,000,000)  
44 aggregate limit per occurrence for bodily injury, personal injury and property damage;

45 (2) Automobile Liability: Three million dollars (\$3,000,000) combined single  
46 limit per accident for bodily injury and property damage; and

1 (3) Employer's Liability: One million dollars (\$1,000,000).

2 (C) Endorsements.

3 (1) All policies shall contain, or shall be endorsed so that:

4 (a) The Grantor shall be designated as additional insured.

5 (b) The Grantee's insurance coverage shall be primary insurance with  
6 respect to the Grantor, its officers, officials, boards, commissions, employees and  
7 duly authorized agents. Any insurance or self-insurance maintained by the  
8 Grantor, its officers, officials, boards, commissions, employees and agents shall  
9 be in excess of the Grantee's insurance and shall not contribute to it; and

10 (c) Grantee's insurance shall apply separately to each insured against  
11 whom a claim is made or lawsuit is brought, except with respect to the limits of  
12 the insurer's liability.

13 (2) The insurance shall provide that the insurance shall not be cancelled or  
14 materially altered so as to be out of compliance with the requirements of this Section  
15 without thirty (30) days' written notice first being given to Grantor. If the insurance is  
16 cancelled or materially altered so as to be out of compliance with the requirements of this  
17 Section within the term of this Franchise, Grantee shall provide a replacement policy.  
18 Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts  
19 required, for the duration of this Franchise.

20 (D) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with  
21 insurers with a Best's rating of no less than "A."

22 (E) Verification of Coverage. The Grantee shall furnish the Grantor with certificates  
23 of insurance or a copy of the page of the policy reflecting blanket additional insured status. The  
24 certificates for each insurance policy are to be signed by a Person authorized by that insurer to  
25 bind coverage on its behalf. The certificates for each insurance policy are to be on standard  
26 forms or such forms as are consistent with standard industry practices, and are to be received and  
27 approved by the Grantor prior to the commencement of activities associated with this Franchise.  
28 The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

29 **5.3 Security**

30 Upon the effective date of this Franchise, Grantee shall provide a performance bond in the  
31 amount of \$25,000.00 to ensure the faithful performance of its responsibilities under this  
32 Franchise and applicable law, including, by way of example and not limitation, its obligations to  
33 relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.  
34

35 **SECTION 6. CUSTOMER SERVICE**

36 **6.1 Subscriber Contracts**

37 Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with  
38 the terms of this Franchise.

39 **6.2 Subscriber Privacy**

40 Grantee will comply with privacy rights of Subscribers in accordance with applicable federal,  
41 State and local laws.

1 **6.3 Customer Service Center**

2 Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer  
3 service center located within Pierce County that will be open during Normal Business Hours, to  
4 provide Subscribers the opportunity to receive and pick up Subscriber equipment and to make  
5 bill payments and complaints.

6 **6.4 Customer Service Agreement and Manual**

7 (A) Grantee shall provide to Subscribers an accurate, comprehensive service  
8 agreement and customer installation packet for use in establishing Subscriber service. This  
9 material shall, at a minimum, contain the following:

- 10 (1) Grantee's procedure for investigation and resolution of Subscriber service  
11 complaints.
- 12 (2) Services to be provided and rates for such services.
- 13 (3) Billing procedures.
- 14 (4) Service termination procedure.
- 15 (5) A description of the manner that will be used to provide notice of changes  
16 in rates, service or service terms and conditions.
- 17 (6) A complete statement of the Subscriber's right to privacy.
- 18 (7) Converter and cable modem equipment policy.
- 19 (8) The name, address and phone number of the Person identified by the  
20 Grantor as responsible for handling cable questions and complaints for the Grantor. This  
21 information shall be prominently displayed in the installation packet.

22 (B) A copy of the installation packet shall be provided to each Subscriber at the time  
23 of initial installation and any reconnection (excluding reconnections to the same Subscriber  
24 within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee  
25 shall make reasonable efforts to advise customers of any material changes in cable operation  
26 policies.  
27

28 **SECTION 7. REPORTS AND RECORDS**

29 **7.1 Open Records**

30 Grantor shall have access to, and the right to inspect, any books and records of Grantee, its  
31 parent corporations and Affiliated entities, necessary for the enforcement of the terms of this  
32 Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that  
33 Grantee's records are under the control of any parent corporation, Affiliated entity or a third  
34 party. Grantor may, in writing, request copies of any such records or books, and Grantee shall  
35 provide such copies within thirty (30) days of the transmittal of such request. One copy of all  
36 reports and records required under this or any other Section shall be furnished to Grantor at the  
37 sole expense of Grantee. If the requested books and records are too voluminous, or for security  
38 reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days,  
39 that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not  
40 kept in a local office and not made available in copies to Grantor upon written request as set  
41 forth above, and if Grantor determines that an examination of such records is necessary for the

1 enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in  
2 making such examination shall be paid by Grantee.

3 **7.2 Confidentiality**

4 Grantor agrees to keep confidential any proprietary or confidential books or records to the extent  
5 permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the  
6 work confidential or proprietary, and shall provide a brief written explanation as to why such  
7 information is confidential and how it may be treated as such under State or federal law. If  
8 Grantor receives a demand from any Person for disclosure of any information designated by  
9 Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee  
10 and provide Grantee with a copy of any written request by the party demanding access to such  
11 information within a reasonable time. If Grantee believes that the disclosure of such documents  
12 by Grantor would interfere with Grantee's rights under federal or state law, Grantee shall  
13 institute an action in the Pierce County Superior Court to prevent the disclosure by Grantor of  
14 such documents. Grantee shall join the Person requesting the documents to such an action.  
15 Grantee shall defend, indemnify and hold Grantor harmless from any claim or judgment  
16 including, but not limited to, any penalties or costs under RCW 42.56.

17 **7.3 Records Required**

18 Grantee shall at all times maintain:

- 19 (A) A full and complete set of plans, records and "as built" maps showing the  
20 exact location of all System equipment installed or in use in the Franchise Area, which is  
21 generated in Grantee's normal course of business;
- 22 (B) A copy of all FCC filings on behalf of Grantee, its parent corporations or  
23 Affiliates which relate to the operation of the System in the Franchise Area;
- 24 (C) A list of Grantee's Cable Services, rates and Channel line-ups;
- 25 (D) A statistical compilation of Subscriber complaints, actions taken and  
26 resolution, and a log of service calls.

27 **7.4 Copies of Federal and State Reports**

28 Upon written request, Grantee shall submit to Grantor copies of any pleading, applications,  
29 notifications, communications and documents of any kind, submitted by Grantee or its Affiliates  
30 to any federal, State or local courts, regulatory agencies and other government bodies if such  
31 documents directly relate to the operations of Grantee's System within the Franchise Area.  
32 Grantee shall submit such documents to Grantor no later than thirty (30) days after receipt of  
33 Grantor's request. Grantee shall not claim confidential, privileged or proprietary rights to such  
34 documents unless under federal, State, or local law such documents have been determined to be  
35 confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all  
36 other reports, documents and notifications provided to any federal, State or local regulatory  
37 agency as a routine matter in the due course of operating Grantee's System within the Franchise  
38 Area, Grantee shall make such documents available to Grantor upon Grantor's written request.

39 **7.5 Complaint File and Reports**

40 Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the  
41 System, and Grantee's actions in response to those complaints, in a manner consistent with the

1 privacy rights of Subscribers. Those files shall remain open to Grantor during normal business  
2 hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report  
3 to the Grantor which can, at Grantor's option, include the following information:

- 4 (A) Nature and type of customer complaints;
- 5 (B) Number, duration, general location and customer impact of unplanned service  
6 interruptions;
- 7 (C) Any significant construction activities which affect the quality or otherwise  
8 enhance the service of the System;
- 9 (D) Average response time for service calls;
- 10 (E) New areas constructed and available for Cable Service;
- 11 (F) Video programming changes (additions/deletions); and
- 12 (G) Such other information as reasonably requested by Grantor.

13 **7.6 Inspection of Facilities**

14 Grantor may inspect any of Grantee's cable system facilities and equipment in the Rights-of-Way  
15 at any reasonable time during business hours upon at least forty-eight (48) hours notice, or, in  
16 case of emergency, upon demand without prior notice.

17 **7.7 False Statements**

18 Any intentional false or misleading statement or representation in any report required by this  
19 Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,  
20 legal or equitable, which are available to Grantor under this Franchise or otherwise.

22 **SECTION 8. PROGRAMMING AND CHANNEL CAPACITY**

23 **8.1 Grantee Compliance**

24 Grantee will provide the broad categories of programming and Channel capacity required in this  
25 Franchise, and in all applicable federal, State or local laws, statutes, regulations or standards.

26 **8.2 Broad Programming Categories**

27 Grantee shall provide or enable the provision of at least the following initial broad categories of  
28 programming to the extent such categories are reasonably available:

- 29 (A) Educational programming;
- 30 (B) Sports programming;
- 31 (C) General entertainment programming;
- 32 (D) Children's programming;
- 33 (E) Information/news programming;
- 34 (F) National and local government programming.

1 **8.3 Obscenity**

2 Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its  
3 editorial control any programming which is obscene.

4 **8.4 Parental Control Device**

5 Upon request by any Subscriber, Grantee shall make available a parental control or lockout  
6 device traps or filters to enable a Subscriber to control access to both the audio and video  
7 portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the  
8 lockout device at the time of their initial subscription and periodically thereafter.

9 **8.5 Complimentary Cable Service**

10 Grantee, upon written request, shall provide without charge, a Standard Installation and one  
11 outlet of Basic and Expanded Basic Service to those administrative buildings owned and  
12 occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-  
13 12 public school(s) that are within 125 feet aerial or 60 feet underground of its Cable System. In  
14 the case of leased facilities, recipient of service is responsible for securing approval for  
15 appropriate right of entry suitable to the Grantee at its sole discretion. The Cable Service  
16 provided shall not be distributed beyond the originally installed outlet without authorization from  
17 Grantee. The Cable Service provided shall not be used for commercial purposes, and such  
18 outlets shall not be located in areas open to the public. The Grantor shall take reasonable  
19 precautions to prevent any use of the Grantee's Cable System in any manner that results in the  
20 inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the  
21 Grantee harmless from any and all liability or claims arising out of the provision and use of  
22 Cable Service required by this Section. The Grantee shall not be required to provide an outlet to  
23 such buildings where a non-Standard Installation is required, unless the Grantor or building  
24 owner/occupant agrees to pay the incremental cost of any necessary Cable System extension  
25 and/or non-Standard Installation. If additional outlets of Cable Service are provided to such  
26 buildings, the building owner/occupant shall pay the usual installation and service fees  
27 associated therewith.

28 **8.6 New Developments**

29 If there is a new technology which in Grantor's opinion would enhance substantially the quality  
30 or quantity of programming available to Subscribers on the System, Grantee shall, at the request  
31 of the Grantor, investigate the feasibility of implementing said technology and report to Grantor  
32 the results of such investigation.  
33

34 **SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS**

35 **9.1 Capital Fee**

36 ~~Effective~~ Within sixty (60) days ~~after the acceptance of this Franchise of written request from~~  
37 Grantor, and continuing during the remaining term of this Franchise, Grantee shall pay to  
38 Grantor a Capital Fee for educational and government access capital expenditures in the amount  
39 up to thirty-five cents (\$.35) per Subscriber per month. Grantee shall make such payments  
40 quarterly, no later than thirty (30) days following the end of the quarter. The Grantor agrees that  
41 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Fee to the price of Cable  
42 Services and to collect the Capital Fee from Subscribers. In addition, as permitted in 47 C.F.R.

1 §76.985, all amounts paid as the Capital Fee may be separately stated on Subscriber's bills as a  
2 government access capital equipment fee.

3 **9.2 Access Reporting**

4 Upon Grantee's written request the Grantor shall submit a report annually on the use of Access  
5 Channels and Capital Fee. The Grantor shall submit a report to Grantee within one hundred  
6 twenty (120) days of a written request. Grantee may review the records of the Grantor regarding  
7 the use of the Capital Fee.

8 **9.3 Management and Control of Access Channels**

9 (A) Grantor may authorize Designated Access Providers to control, operate, and  
10 manage the use of any and all Access facilities provided by Grantee under this Franchise,  
11 including, without limitation, the operation of Access Channels. The Grantor or its designee  
12 may formulate rules for the operation of the Access Channels, consistent with this Franchise.  
13 Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access  
14 Provider.

15 (B) Grantee shall cooperate with Grantor and Designated Access Providers in the use  
16 of the System and Access facilities for the provision of Access Channels.

17 **9.4 Access Channels**

18 (A) Grantee shall provide at no charge commencing within one hundred eighty (180)  
19 days after acceptance of this Franchise, and continuing throughout the term of this Franchise,  
20 One (1) Channel for use by Grantor (said Channel to be capable of cable-casting both live and  
21 recorded programming only within the geographic territory of Grantor).

22 (B) Grantee shall provide immediately at no charge after acceptance of this Franchise,  
23 and continuing throughout the term of this Franchise the following:

- 24 (1) One (1) Channel for use by the RCC; and
- 25 (2) Three (3) Channels for Educational Access programming.

26 (C) All assigned Access Channels can be used to transmit programming in any format  
27 which is technically compatible with the Cable System, including, by way of example and not  
28 limitation, video, audio only, secondary audio and/or text (character generated) messages. Such  
29 uses must be in furtherance of Access purposes. Each of the above five (5) Channels may be  
30 digitized by the Grantee and must be capable of transmitting one standard analog or one digital  
31 video signal. Any Access Channels provided via digital or compressed video technology shall  
32 have at least the same transmission quality as is used to carry any of the commercial Channels  
33 that deliver programming on the System and shall be full motion video. The provision of Access  
34 Channels via digital or compressed video technology will not reduce the total Access Channel  
35 requirement herein.

36 **9.5 Change in Technology**

37 In the event Grantee makes any change in the System and related equipment and facilities or in  
38 Grantee's signal delivery technology, which directly or indirectly affects the signal quality or  
39 transmission of Access programming, Grantee shall at its own expense take necessary technical  
40 steps or provide necessary technical assistance, including the acquisition of all necessary  
41 equipment, and full training of Access personnel to ensure that the capabilities of Access

1 channels are not diminished or adversely affected by such change. For example, this provision  
2 shall apply if Basic Service on the Cable System is converted from an analog to a digital format,  
3 such that the Access Channels must also be converted to digital in order to be received by  
4 Subscribers.

5 **9.6 Access Channels on Lowest Level of Service**

6 All Access Channels provided to Subscribers under this Franchise shall be included by Grantee,  
7 without limitation, as a part of the lowest level of service, subject to applicable law.

8 **9.7 Access Channel Location/Relocation**

9 Grantee will carry Designated Access channels as follows: the C-RCC channel shall be on 22,  
10 the educational and other Grantor channels shall be together on adjacent channels, if technically  
11 feasible; provided that if Grantee places similar access channels in other jurisdictions on these  
12 numbered channels, then feasibility shall be presumed. Grantee will carry Grantor's  
13 programming on the channel designated for local government programming on its regional  
14 channel line-up, currently channel 21, so that the Grantor will receive the same benefits from  
15 such carriage as other jurisdictions in western Washington Furthermore, Grantee will use  
16 reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall  
17 provide three (3) months notice to the Grantor prior to any relocation and shall reimburse  
18 Grantor for its costs incurred for any promoting, marketing, advertising and notice of the  
19 Channel change up to three thousand dollars (\$3,000).  
20

21 **9.8 Return Line**

22 Within sixty (60) days of written request, Grantee shall meet with Grantor to discuss the  
23 feasibility of -constructing within twelve (12) months of written request by the Grantor one (1)  
24 fiber optic Return Line, to enable the distribution of Access programming to Subscribers on the  
25 Access Channels. The Return Line shall run between the demarcation points identified in  
26 Exhibit I, Access Origination Points. Grantor and Grantee shall split the total cost of  
27 constructing the return line at fifty percent (50%) each.  
28  
29

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30 **9.9 Technical Quality**

31 The Grantee shall maintain Access channels at the same or better level of technical quality and  
32 reliability required by this Franchise and all other applicable laws, rules and regulations for other  
33 Channels. The Grantee shall provide routine maintenance and shall repair and replace, if  
34 necessary, all Grantee's transmission equipment, including fiber transmitters and receivers,  
35 channel modulators, associated cable and equipment, required to carry a quality signal to and  
36 from the Grantor's Designated Distributor's facilities (and Designated Access Providers') and the  
37 Grantee's facilities for the Access channels provided under this Franchise.  
38  
39

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40 **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

41 **10.1 Construction**

42 (A) Subject to applicable laws, regulations and ordinances of Grantor and the  
43 provisions of this Franchise, Grantee may perform all construction necessary for the operation of

1 its System. All construction and maintenance of any and all Grantee's facilities within Rights-  
2 of-Way shall, regardless of who performs the construction, be and remain Grantee's  
3 responsibility.

4 (B) Prior to beginning any construction, Grantee shall provide Grantor with a  
5 construction schedule for work in the Rights-of-Ways.

6 (C) Grantee may make excavations in Rights-of-Way for any facility needed for the  
7 maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply  
8 for, and obtain, appropriate permits from Grantor, and give appropriate notices to Grantor. As a  
9 condition of any permits so issued, Grantor officials may impose such conditions and regulations  
10 as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper  
11 restoration of such Rights-of-Way and structures, protection of the public and the continuity of  
12 pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire in writing about  
13 other construction currently in progress, planned or proposed, in order to investigate thoroughly  
14 all opportunities for joint trenching or boring. Whenever it is possible and reasonably  
15 practicable to joint trench or share bores or cuts, Grantee shall work with other providers,  
16 licensees, permittees and franchisees so as to reduce so far as possible the number of Rights-of-  
17 Way cuts within the Franchise Area.

18 (D) In the event that emergency repairs are necessary, Grantee shall immediately  
19 notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and  
20 shall apply for appropriate permits within forty-eight (48) hours after discovery of the  
21 emergency.

22 (E) Repair and Restoration of Property.

23 (1) The Grantee shall protect public and private property within the Rights-of-  
24 Way from damage.

25 (2) If public property is disturbed or damaged, the Grantee shall restore the  
26 property to its former condition. Public right-of-way or other Grantor property shall be  
27 restored in a manner and within a timeframe approved by the Grantor's Director of Public  
28 Works. If restoration of public right-of-way or other property of the Grantor is not  
29 satisfactorily performed within a reasonable time, the Director of Public Works may,  
30 after prior notice to the Grantee, or without notice where the disturbance or damage may  
31 create a risk to public health or safety, or cause delay or added expense to a public project  
32 or activity, cause the repairs to be made at the Grantee's expense and recover the cost of  
33 those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list  
34 of those costs, including the costs of labor, materials and equipment, the Grantee shall  
35 pay the Grantor. If suit is brought by Grantor upon Grantee's failure to pay for repair or  
36 restoration, the reasonable costs and expenses of the prevailing party will be paid by the  
37 non-prevailing party.

38 (F) Movement for Other Permittees.

39  
40 At the request of any Person holding a valid permit and upon reasonable advance notice,  
41 Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a  
42 building, vehicle, equipment or other item. The expense of such temporary changes must be paid  
43 by the permit holder, and Grantee may require the estimated payment in advance.

44 **10.2 Relocation**

1 (A) Facilities Relocation – Upon the receipt of a demand by the Grantor, within thirty  
2 days, or in the event of an emergency, upon such shorter notice period as the Grantor deems  
3 reasonable under the circumstances, Grantee, at its sole cost and expense, shall remove or  
4 relocate any Facilities, if and when the removal or relocation of such Facilities is made necessary  
5 by the Grantor acting pursuant to any lawful governmental or proprietary purpose, including,  
6 without limitation, engaging in any lawful change of grade, alignment or width of any Rights-of-  
7 Way in the Franchise Area pursuant to any concern regarding health, safety and welfare, or in the  
8 installation or replacement of any street light pole. Whenever Grantee is required to remove  
9 Facilities or if Grantee desires to relocate Facilities, then the Grantor shall use its best efforts to  
10 accommodate Grantee by making another functionally equivalent property available for use in  
11 accordance with and subject to the terms and conditions of this Franchise. However, nothing in  
12 this Agreement shall be construed as creating an obligation of the Grantor to provide Grantee  
13 with such property.

14 (B) Relocation Costs – Whenever the removal or relocation of Facilities is required  
15 under this Franchise or otherwise by order of Grantor, and such removal or relocation shall cause  
16 the Rights-of-Way to be damaged, Grantee, at its sole cost and expense, shall promptly repair  
17 and return the Rights-of-Way, in which the Facilities are located, to the same condition as  
18 existed prior to such work in the sole determination of Grantor. If Grantee does not return the  
19 affected site to a safe and satisfactory condition, then Grantor shall have the option to perform or  
20 cause to be performed such reasonable and necessary work and charge Grantee for the proposed  
21 costs to be incurred or the actual cost incurred by Grantor. Upon the receipt of a demand for  
22 payment by the Grantor, Grantee shall reimburse Grantor for such costs within thirty days.

### 23 **10.3 Location of Facilities**

24 Within five (5) business days, unless otherwise specified in Grantee’s regulations, after the  
25 Grantor or any franchisee, licensee or permittee of the Grantor notifies Grantee of a proposed  
26 Right-of-Way excavation, Grantee shall, at Grantee's expense:

27 (A) Mark on the surface all of its located underground facilities within the area of the  
28 proposed excavation;

29 (B) Notify the excavator of any unlocated underground facilities in the area of the  
30 proposed excavation; or

31 (C) Notify the excavator that Grantee does not have any underground facilities in the  
32 vicinity of the proposed excavation.

### 33 **10.4 Restoration of Rights-of-Way / Grantor Owned Property**

34 (A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned  
35 property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned  
36 property to a condition as good or better than its prior condition in Grantor’s sole determination.  
37 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way or  
38 Grantor owned property, Grantee shall promptly refill the opening and restore the surface to a  
39 condition satisfactory to Grantor.

40 (B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned  
41 property, Grantee shall be responsible for restoration in accordance with applicable regulations  
42 of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may,  
43 after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-

1 Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor  
2 may, after providing notice to Grantee, remove and repair any work done by Grantee which, in  
3 the determination of Grantor, does not conform to applicable code. The cost thereof, including  
4 the costs of inspection and supervision shall be paid by Grantee. All excavations made by  
5 Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the  
6 prevention of accidents. All of Grantee's work under this Franchise, and this Section in  
7 particular, shall be done in strict compliance with all rules, regulations and ordinances of  
8 Grantor.

9 **10.5 Maintenance and Workmanship**

10 (A) Grantee's System shall be constructed and maintained in such manner as not to  
11 interfere with sewers, water pipes or any other property of Grantor, or with any other pipes,  
12 wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way  
13 by, or under, Grantor's authority.

14 (B) Grantee shall provide and use any equipment and appliances necessary to control  
15 and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to  
16 any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to  
17 keep them in good repair and safe and presentable condition.

18 (C) The Grantee's transmission and distribution system, wires and appurtenances shall  
19 be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or  
20 to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public  
21 property.

22 **10.6 Acquisition of Facilities**

23 Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or  
24 annexation to the Grantor of any area in which Grantee owns or operates any facility, Grantee  
25 shall, at Grantor's request, submit to Grantor a statement describing all facilities involved,  
26 whether authorized by franchise, permit, license or other prior right, and specifying the location  
27 of all such facilities to the extent Grantee has possession of such information. Such facilities  
28 shall immediately be subject to the terms of this Franchise.

30 **10.7 Discontinuing Use of Facilities**

31 Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee  
32 shall submit for Grantor's approval a complete description of the facility and the date on which  
33 Grantee intends to discontinue using the facility. Grantee may remove the facility or request that  
34 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility  
35 remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or  
36 modify the facility to protect the public health, welfare, safety and convenience, or otherwise  
37 serve the public interest. Grantor may require Grantee to perform a combination of modification  
38 and removal of the facility. Grantee shall complete such removal or modification in accordance  
39 with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as  
40 directed by Grantor, or until the rights to and responsibility for the facility are accepted by  
41 another Person having authority to construct and maintain such facility, Grantee shall be  
42 responsible for all necessary repairs and relocations of the facility, as well as maintenance of the  
43 Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee

1 shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to  
2 use such facilities for any purpose whatsoever including, but not limited to, Access Channel  
3 purposes.

4 **10.8 Hazardous Substances**

5 (A) Grantee shall comply with all applicable State and federal laws, statutes,  
6 regulations and orders concerning hazardous substances relating to Grantee's System in Rights-  
7 of-Way.

8 (B) Grantee shall maintain and inspect its System located in Rights-of-Way. Upon  
9 reasonable notice to Grantee, Grantor may inspect Grantee's facilities in Rights-of-Way to  
10 determine if any release of hazardous substances has occurred, or may occur, from or related to  
11 Grantee's System. In removing or modifying Grantee's facilities as provided in this Franchise,  
12 Grantee shall also remove all residues of hazardous substances related thereto.

13 **10.9 Undergrounding of Cable**

14 (A) Where electric and telephone utility wiring is installed underground at the time of  
15 System construction, or when such wiring is subsequently placed underground, all System lines,  
16 wiring and equipment shall also be placed underground with other wire line service at no  
17 expense to the Grantor. Related System equipment, such as pedestals, must be placed in  
18 accordance with applicable code requirements and rules as interpreted by the Grantor's Director  
19 of Public Works. In areas where either electric and telephone utility wiring are aerial, the  
20 Grantee may install aerial cable, except when a property owner or resident requests underground  
21 installation and agrees to bear the additional cost in excess of aerial installation.

22 (B) The Grantee shall utilize existing poles and conduit wherever possible.

23 (C) This Franchise does not grant, give or convey to the Grantee the right or privilege  
24 to install its facilities in any manner on specific utility poles or equipment of the Grantor or any  
25 other Person.

26 (D) The Grantee and the Grantor recognize that situations may occur in the future  
27 where the Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or  
28 bores opened by the Grantee. If the Grantee upgrades in the future, the Grantee shall submit  
29 these plans to the Grantor in accordance with the Grantor's permitting process so that such  
30 opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to  
31 slow the progress of the upgrade of the System to accommodate the Grantor. In addition, the  
32 Grantee agrees to cooperate with the Grantor in any other construction by the Grantee that  
33 involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow  
34 the Grantor to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores,  
35 provided the Grantor shares in the cost of the trenching and boring on the same terms and  
36 conditions as the Grantee at that time shares the total cost of trenches and bores. The Grantor  
37 shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in  
38 the Grantee's trenches and bores under this paragraph.

39 (E) The Grantor shall not be required to obtain easements for the Grantee.

40 (F) The Grantee shall participate with other providers in joint trench projects to  
41 relocate its overhead facilities underground and remove its overhead facilities in areas where all  
42 utilities are being converted to underground facilities.

1 **10.10 Construction Codes**

2 Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect.  
3 Grantee shall arrange its lines, cables and other appurtenances, on both public and private  
4 property, in such a manner as to cause no unreasonable interference with the use of said public or  
5 private property by any Person. In the event of such interference, Grantor may require the  
6 removal or relocation of Grantee's lines, cables and other appurtenances from the property in  
7 question.

8 **10.11 Construction and Use of Poles**

9 Whenever feasible, Grantee shall use existing poles when the installation of facilities above-  
10 ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities  
11 pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for  
12 Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying,  
13 maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any  
14 other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee  
15 shall be erected between the curb and the sidewalk unless otherwise designated by the proper  
16 authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line.  
17 Grantor shall have the right to require Grantee to change the location of any pole, conduit,  
18 structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public  
19 convenience requires such change, and the expense thereof shall be paid by Grantee.

20 **10.12 Tree Trimming**

21 Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or  
22 cause to be pruned, using proper pruning practices in accordance with such permit, any tree in  
23 the Rights-of-Way which interferes with the System.  
24

25 **10.13 Standards**

26 (A) All work authorized and required hereunder shall be done in a safe, thorough and  
27 worker-like manner. The Grantee must comply with all federal, State and Grantor safety  
28 requirements, rules, regulations, laws and practices, and employ all necessary devices as required  
29 by applicable law during construction, operation and repair of its System. By way of illustration  
30 and not limitation, the Grantee must comply with the National Electric Code, National Electrical  
31 Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

32 (B) Grantee shall ensure that all cable drops are properly bonded to the electrical  
33 power ground at the home, consistent with applicable code requirements. All non-conforming or  
34 non-performing cable drops shall be replaced by Grantee as necessary.

35 (C) All installations of equipment shall be permanent in nature, durable and installed  
36 in accordance with good engineering practices and of sufficient height to comply with all  
37 existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with  
38 the right of the public or individual property owner, and shall not interfere with the travel and use  
39 of public places by the public during the construction, repair, operation or removal thereof, and  
40 shall not obstruct or impede traffic.

41 (D) In the maintenance and operation of its System in Rights-of-Way, alleys and other  
42 public places, and in the course of any new construction or addition to its facilities, the Grantee  
43 shall proceed so as to cause the least possible inconvenience to the general public; any opening

1 or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of  
2 its operations shall be guarded and protected at all times by the placement of adequate barriers,  
3 fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly  
4 designated by warning lights.

5 (E) In the event the Grantor shall relocate a Rights-of-Way, raise or lower a bridge, or  
6 make any other changes requiring the removal of utility installations, the Grantee shall remove or  
7 relocate its installations at said locations at no cost to the Grantor.

#### 8 **10.14 Stop Work**

9 On notice from Grantor that any work is being conducted contrary to the provisions of this  
10 Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the  
11 terms of any applicable permit, laws, regulations, ordinances or standards, the work may  
12 immediately be stopped by Grantor. The stop work order shall:

- 13 (A) Be in writing;
- 14 (B) Be given to the individual doing the work, or posted on the work site;
- 15 (C) Be sent to Grantee by mail at the address given herein;
- 16 (D) Indicate the nature of the alleged violation or unsafe condition; and
- 17 (E) Establish conditions under which work may be resumed.

#### 18 **10.15 Work of Contractors and Subcontractors**

19 Grantee's contractors and subcontractors shall be licensed and bonded in accordance with  
20 Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is  
21 subject to the same restrictions, limitations and conditions as if the work were performed by  
22 Grantee. Grantee shall be responsible for all work performed by its contractors and  
23 subcontractors and others performing work on its behalf as if the work were performed by it, and  
24 shall ensure that all such work is performed in compliance with this Franchise and other  
25 applicable law, and shall be jointly and severally liable for all damages and correcting all damage  
26 caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other  
27 persons performing work on Grantee's behalf are familiar with the requirements of this Franchise  
28 and other applicable laws governing the work performed by them.  
29

### 30 **SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY**

#### 31 **11.1 Equal and Uniform Service**

32 The Grantee shall provide access to equal and uniform Cable Service offerings throughout the  
33 Franchise Area along public rights-of-way, provided that nothing shall prohibit the Grantee from  
34 activating additional Cable Services to Subscribers on a node by node basis during an upgrade of  
35 its Cable System.

#### 36 **11.2 Cable System Upgrade**

37 Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its  
38 Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from  
39 the Headend to the node and tying into a hybrid fiber-coaxial system already serving  
40 Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the

1 Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical  
2 quality standards regardless of a particular manner in which signal is transmitted. During the  
3 term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent  
4 with, or in excess of these specifications.  
5

6 **11.3 Technical Performance**

7 The technical performance of the Cable System shall meet or exceed all applicable federal  
8 (including, but not limited to, the FCC), State and local technical standards, as they may be  
9 amended from time to time, regardless of the transmission technology utilized. Grantor shall  
10 have the full authority permitted by applicable law to enforce compliance with these technical  
11 standards.

12 **11.4 Cable System Performance Testing**

13 (A) Grantee shall, at Grantee's expense, perform the following tests on its Cable  
14 System:

- 15 (1) All tests required by the FCC;
- 16 (2) All other tests reasonably necessary to determine compliance with  
17 technical standards adopted by the FCC at any time during the term of this Franchise; and
- 18 (3) All other tests as otherwise specified in this Franchise.

19 (B) At a minimum, Grantee's tests shall include:

- 20 (1) Cumulative leakage index testing of any new construction;
- 21 (2) Semi-annual compliance and proof of performance tests in conformance  
22 with generally accepted industry guidelines;
- 23 (3) Tests in response to Subscriber complaints;

24  
25 (4) Cumulative leakage index tests, at least annually, designed to ensure that  
26 one hundred percent (100%) of Grantee's Cable System has been ground or air tested for  
27 signal leakage in accordance with FCC standards.

28 (C) Grantee shall maintain written records of all results of its Cable System tests,  
29 performed by or for Grantee. Copies of such test results will be provided to Grantor upon  
30 request.

31 (D) The FCC semi-annual testing is conducted in January/February and July/August  
32 of each year. If Grantor contacts Grantee prior to the next test period (*i.e.*, before December 15  
33 and June 15 respectively of each year), Grantee shall provide Grantor with no less than seven (7)  
34 days prior written notice of the actual date(s) for FCC compliance testing. If Grantor notifies  
35 Grantee by the December 15th and June 15th dates that it wishes to have a representative present  
36 during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative  
37 can be present. Notwithstanding the above, all technical performance tests may be witnessed by  
38 representatives of the Grantor.

39 (E) Grantee shall be required to promptly take such corrective measures as are  
40 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as  
41 possible. Grantee's failure to correct deficiencies identified through this testing process shall be  
42 a material violation of this Franchise. Sites shall be re-tested following correction.

1 **11.5 Additional Tests**

2 Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability  
3 or technical quality of Cable Service, the Grantor shall have the right and authority to require  
4 Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully  
5 cooperate with the Grantor in performing such testing and shall prepare the results and a report,  
6 if requested, within thirty (30) days after testing. Such report shall include the following  
7 information:

- 8 (A) the nature of the complaint or problem which precipitated the special tests;
  - 9 (B) the Cable System component tested;
  - 10 (C) the equipment used and procedures employed in testing;
  - 11 (D) the method, if any, in which such complaint or problem was resolved; and
  - 12 (E) any other information pertinent to said tests and analysis which may be required.
- 13

14 **SECTION 12. SERVICE EXTENSION**

15 **12.1 Service Availability**

16 (A) In general, except as otherwise provided herein, Grantee shall provide Service  
17 within seven (7) days of a request by any Person within its Franchise Area. For purposes of this  
18 Section, a request shall be deemed made on the date of signing a service agreement, receipt of  
19 funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified  
20 verbal request. Grantee shall provide such service:

- 21 (1) At a non-discriminatory installation charge for a standard installation,  
22 consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall,  
23 with additional charges for non-standard installations computed according to a non-  
24 discriminatory method for such installations, adopted by Grantee and provided in writing  
25 to Grantor.
  - 26 (2) At non-discriminatory monthly rates for all Subscribers, excepting  
27 commercial customers, MDU Bulk customers and other lawful exceptions to uniform  
28 pricing.
- 29

30 **SECTION 13. STANDBY POWER AND EAS**

31 **13.1 Standby Power**

32 Grantee shall provide standby power generating capacity at the System Headend capable of  
33 providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby  
34 power system supplies, rated for at least two (2) hours duration, throughout the trunk and  
35 distribution networks. In addition, throughout the term of this Franchise Grantee shall have a  
36 plan in place, along with all resources necessary for implementing such plan, for dealing with  
37 outages of more than two (2) hours.

1 **13.2 Emergency Alert Capability**

2 (A) In accordance with, and at the time required by, the provisions of FCC  
3 Regulations, as such provisions may from time to time be amended, EAS activation will be  
4 accomplished in compliance with the FCC approved Washington State EAS plan and the Local  
5 Area EAS plan that applies to City of Bonney Lake, which has already been submitted for  
6 approval to the Washington State Emergency Communications Committee (WSECC).

7 (B) Grantee shall ensure that the EAS system is functioning properly at all times. It  
8 will test the EAS system periodically, in accordance with FCC regulations.  
9

10 **SECTION 14. FRANCHISE BREACHES; TERMINATION OF**  
11 **FRANCHISE**

12 **14.1 Informal Dispute Resolution**

13 Prior to proceeding with the formal Procedure for Remedying of Franchise Violations process as  
14 set forth below (in subsection 14.2), Grantor agrees to provide Grantee informal verbal or  
15 electronic mail notice of any alleged material violation of this Franchise and allow Grantee a  
16 reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee  
17 and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the  
18 matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of  
19 Grantee's legal responsibilities, the Grantee promptly shall so advise Grantor. Grantee agrees to  
20 exert good faith efforts to expedite its investigation, determination and communications to  
21 Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor  
22 believes that Grantee is unreasonably delaying the informal resolution process, it may commence  
23 the formal dispute resolution process.

24 **14.2 Procedure for Remedying Franchise Violations**

25 (A) If Grantor believes that Grantee has failed to perform any material obligation  
26 under this Franchise, or has failed to perform in a timely manner, Grantor shall notify Grantee in  
27 writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have  
28 thirty (30) days from the receipt of such notice to:

- 29 (1) Respond to Grantor, contesting Grantor's assertion that a default has  
30 occurred, and requesting a hearing in accordance with subsection (B), below;  
31 (2) Cure the default; or  
32 (3) Notify Grantor that Grantee cannot cure the default within the thirty (30)  
33 days, because of the nature of the default. In the event the default cannot be cured within  
34 thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and  
35 notify Grantor in writing and in detail as to the exact steps that will be taken and the  
36 projected completion date. In such case, Grantor may set a hearing in accordance with  
37 subsection (B) below to determine whether additional time beyond the thirty (30) days  
38 specified above is indeed needed, and whether Grantee's proposed completion schedule  
39 and steps are reasonable. Upon five (5) business days' prior written notice, either Grantor  
40 or Grantee may call an informal meeting to discuss the alleged default.

41 (B) If Grantee does not cure the alleged default within the cure period stated above, or  
42 by the projected completion date under subsection (A) (3), or denies the default and requests a

1 hearing in accordance with subsection (A) (1), or Grantor orders a hearing in accordance with  
2 subsection (A) (3), Grantor shall set a public hearing to investigate said issues or the existence of  
3 the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall  
4 take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the  
5 hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses,  
6 and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit  
7 Grantee's opportunity to make a record which may be reviewed should any final decision of  
8 Grantor be appealed to a court of competent jurisdiction. The determination as to whether a  
9 default or a material breach of this Franchise has occurred shall be within Grantor's sole  
10 discretion, but any such determination shall be subject to appeal to a court of competent  
11 jurisdiction.

12 (C) If, after the public hearing, Grantor determines that a default still exists; Grantor  
13 shall order Grantee to correct or remedy the default or breach within fourteen (14) days or within  
14 such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure  
15 within such time to Grantor's reasonable satisfaction, Grantor may:

- 16 (1) Assess and collect monetary damages in accordance with this Franchise;  
17 (2) Commence procedures to terminate this Franchise; or,  
18 (3) Pursue any other legal or equitable remedy available under this Franchise  
19 or applicable law.

20 (D) The determination as to whether a violation of this Franchise has occurred  
21 pursuant to this Section herein shall be within the sole discretion of the Grantor or its designee.  
22 Any such determination by Grantor shall be accompanied by a record, to which Grantee's  
23 contribution shall not be unreasonably limited by Grantor. Any such final determination shall be  
24 subject to appeal to a court of competent jurisdiction.

### 25 **14.3 Alternative Remedies**

26 (A) No provision of this Franchise shall be deemed to bar the right of either party to  
27 seek or obtain judicial relief from a violation of any provision of the Franchise or any rule,  
28 regulation, requirement or directive promulgated hereunder. Neither the existence of other  
29 remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise  
30 limit the right of either party to recover monetary damages, as allowed under applicable law, or  
31 to seek and obtain judicial enforcement of obligations by means of specific performance,  
32 injunctive relief or mandate, or any other remedy at law or in equity.

33 (B) The Grantor specifically does not, by any provision of this Franchise, waive any  
34 right, immunity, limitation or protection (including complete damage immunity) otherwise  
35 available to the Grantor, its officers, officials, Councils, boards, commissions, authorized agents,  
36 or employees under federal, state, or local law including by example Section 635A of the Cable  
37 Act. The Grantee shall not have any monetary recourse against the Grantor, or its officers,  
38 officials, Council, Boards, commissions, agents or employees for any loss, costs, expenses or  
39 damages arising out of any provision, requirement of this Franchise or the enforcement thereof.

### 40 **14.4 Assessment of Monetary Damages**

41 (A) Upon completion of the procedures set forth above, and from the date of said  
42 violation pursuant to the procedures specified in this Franchise, Grantor may assess against and  
43 collect from Grantee monetary damages in amounts of up to two hundred fifty dollars (\$250.00)

1 per day for any material breaches. Grantor may collect the assessment as specified in this  
2 Franchise.

3 (B) Any assessment hereunder shall not constitute a waiver by Grantor of any other  
4 right or remedy it may have under this Franchise or applicable law, including its right to recover  
5 from Grantee any additional rights or claims Grantor might have to damages, losses, costs and  
6 expenses, after the period for collecting liquidated damages referenced in subsection (C) below  
7 has expired.

8 (C) The Grantor and the Grantee recognize the delays, expense and unique difficulties  
9 involved in proving in a legal proceeding the actual loss suffered by the Grantor as a result of the  
10 Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Grantor and  
11 the Grantee agree that the Grantee shall pay to the Grantor the sums set forth above for each day  
12 that the Grantee shall be in breach of the specific provisions of this Franchise, for a maximum of  
13 ninety (90) days. Such amounts are agreed by both parties to be a reasonable estimate of the  
14 actual damages the Grantor would suffer in the event of the Grantee's breach of such provisions  
15 of this Franchise, and are not intended as a penalty.

16 (D) The Grantee's maintenance of the Security required herein or by applicable code  
17 shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit  
18 the liability of the Grantee to the amount of the Security; or to otherwise limit the Grantor's  
19 recourse to any other remedy available at law or equity.

#### 20 **14.5 Revocation**

21 (A) This Franchise may be revoked and all rights and privileges rescinded if a  
22 material breach of the Franchise is not cured pursuant to Section 14.2, or in the event that:

- 23 (1) Grantee fails to perform any material obligation under this Franchise;
- 24 (2) Grantee attempts to evade any material provision of this Franchise or to  
25 practice any fraud or deceit upon the Grantor or Subscribers;
- 26 (3) Grantee makes a material misrepresentation of fact in the negotiation of  
27 this Franchise;
- 28 (4) Grantee or an Affiliate challenges the legality or enforceability of this  
29 Franchise in a judicial or administrative (for example, FCC) proceeding;
- 30 (5) Grantee fails to maintain required business offices as provided above;
- 31 (6) Grantee abandons the System, or terminates the System's operations;
- 32 (7) Grantee fails to restore service to the System after three consecutive days  
33 of an outage or interruption in service; except when approval of such outage or  
34 interruption is obtained from the Grantor, it being the intent that there shall be continuous  
35 operation of the System; or
- 36 (8) Grantee becomes insolvent, unable or unwilling to pay its debts, or is  
37 adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or  
38 part of the Grantee's System is sold under an instrument to secure a debt and is not  
39 redeemed by Grantee within thirty (30) days from said sale.

40 (B) Additionally, this Franchise may be revoked one hundred twenty (120) days after  
41 the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at  
42 the option of the Grantor and subject to applicable law) whether in a receivership, reorganization,  
43 bankruptcy or other action or proceeding, unless:

1 (1) The receivership or trusteeship is vacated within one hundred twenty (120)  
2 days of appointment; or

3 (2) The receivers or trustees have, within one hundred twenty (120) days after  
4 their election or appointment, fully complied with all the material terms and provisions of  
5 this Franchise, and has remedied all material defaults under the Franchise. Additionally,  
6 the receivers or trustees shall have executed an agreement duly approved by the court  
7 having jurisdiction, by which the receivers or trustees assume and agree to be bound by  
8 each and every term and provision of this Franchise.

9 (C) If there is a foreclosure or other involuntary sale of the whole or any part of the  
10 plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee  
11 and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise  
12 shall be revoked thirty (30) days after service of such notice, unless:

13 (1) Grantor has approved the transfer of the Franchise, in accordance with the  
14 procedures set forth in this Franchise and as provided by law; and

15 (2) The purchaser has covenanted and agreed with Grantor to assume and be  
16 bound by all of the terms and provisions of this Franchise.

17 (D) Grantor shall provide Grantee written notice of its intent to consider revocation  
18 and hold a hearing in accordance with the provisions of this Franchise. Grantee shall submit any  
19 objection to revocation in writing to Grantor, stating with specificity its objections. Grantor shall  
20 hear any Persons interested in the revocation, and shall allow Grantee an opportunity to be heard,  
21 to cross-examine witnesses, to present evidence, and to make all reasonable additions to the  
22 hearing record.

23 (E) Grantor shall determine whether the Franchise shall be revoked. The Grantee  
24 may appeal such determination to a court of competent jurisdiction. Such appeal to the  
25 appropriate court shall be taken within thirty (30) days of the issuance of the determination of the  
26 Grantor. Grantor shall receive notice of any appeal concurrent with any filing to a court of  
27 competent jurisdiction.

28 **14.6 Removal**

29 (A) In the event of termination, expiration or revocation of this Franchise, and after all  
30 appeals from any judicial determination are exhausted and final, Grantor may order the removal  
31 of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable  
32 period of time as determined by Grantor. In removing its plant, structures and equipment,  
33 Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all  
34 Rights-of-Way, public places and private property in as good a condition as that prevailing prior  
35 to Grantee's removal of its equipment.

36 (B) If Grantee fails to complete any required removal to the satisfaction of Grantor,  
37 Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable  
38 costs incurred within thirty (30) days after receipt of an itemized list of Grantor's expenses and  
39 costs, or Grantor may recover its expenses and costs from the Security, or pursue any other  
40 judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor  
41 of such obligation shall be included in the monies due Grantor from Grantee, including  
42 reasonable attorney fees, court expenses and attributed expenses for work conducted by  
43 Grantor's staff or agents.  
44

1 **SECTION 15. ABANDONMENT**

2 **15.1 Effect of Abandonment**

3 If the Grantee abandons its System during the Franchise term, or fails to operate its System in  
4 accordance with its duty to provide continuous service, the Grantor, at its option, may operate the  
5 System or; designate another entity to operate the System temporarily until the Grantee restores  
6 service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new  
7 franchisee is selected by the Grantor. If the Grantor designates another entity to operate the  
8 System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages  
9 incurred, including reasonable attorney fees, court expenses and attributed expenses for work  
10 conducted by Grantor's staff or agents.

11 **SECTION 16. FRANCHISE TRANSFER**

12 **16.1 Transfer of Ownership or Control**

13 (A) The Cable System and this Franchise shall not be sold, assigned, transferred,  
14 leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale,  
15 merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or  
16 property therein pass to or vest in any Person or entity without the prior written consent of the  
17 Grantor, which consent shall be by the Grantor's Council, acting by ordinance or resolution.

18 (B) The Grantee shall promptly notify the Grantor of any actual or proposed change  
19 in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control"  
20 as used herein is not limited to majority stockholders but includes actual working control in  
21 whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall  
22 make this Franchise subject to cancellation unless and until the Grantor shall have consented in  
23 writing thereto.

24 (C) The parties to the sale or transfer shall make a written request to the Grantor for  
25 its approval of a sale or transfer and furnish all information required by law and the Grantor.

26 (D) In seeking the Grantor's consent to any change in ownership or control, the  
27 proposed transferee shall indicate whether it:

28 (1) Has ever been convicted or held liable for acts involving deceit including  
29 any violation of federal, State or local law or regulations, or is currently under an  
30 indictment, investigation or complaint charging such acts;

31 (2) Has ever had a judgment in an action for fraud, deceit, or  
32 misrepresentation entered against the proposed transferee by any court of competent  
33 jurisdiction;

34 (3) Has pending any material legal claim, lawsuit, or administrative  
35 proceeding arising out of or involving a cable system;

36 (4) Is financially solvent, by submitting financial data including financial  
37 statements that are audited by a certified public accountant who may also be an officer of  
38 the transferee, along with any other data that the Grantor may reasonably require; and

39 (5) Has the financial, legal and technical capability to enable it to maintain  
40 and operate the Cable System for the remaining term of the Franchise.

41 (E) The Grantor shall act by ordinance or resolution on the request within one  
42 hundred twenty (120) days of the request, provided it has received all requested information.

1 Subject to the foregoing, if the Grantor fails to render a final decision on the request within one  
2 hundred twenty (120) days, such request shall be deemed granted unless the requesting party and  
3 the Grantor agree to an extension of time.

4 (F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by  
5 the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other  
6 written instrument evidencing such sale or transfer of ownership or control, certified and sworn  
7 to as correct by Grantee and the transferee, and the transferee shall file its written acceptance  
8 agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the  
9 event of a change in control, in which the Grantee is not replaced by another entity, the Grantee  
10 will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and  
11 will not be required to file an additional written acceptance. By agreeing to any transfer of  
12 ownership, Grantor does not waive any rights in this Franchise.

13 (G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal,  
14 technical and financial qualifications of the prospective controlling party or transferee, and  
15 Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer  
16 upon such terms and conditions as it deems reasonably appropriate, provided, however, any such  
17 terms and conditions so attached shall be related to the legal, technical and financial  
18 qualifications of the prospective controlling party or transferee and to the resolution of  
19 outstanding and unresolved issues of noncompliance with the terms and conditions of this  
20 Franchise by Grantee.

21 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of  
22 the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable  
23 System to an entity controlling, controlled by or under the same common control as Grantee,  
24 provided that the proposed assignee or transferee must show financial responsibility as may be  
25 determined necessary by the Grantor and must agree in writing to comply with all of the  
26 provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the  
27 purpose of financing without the consent of the Grantor; provided that such pledge of assets shall  
28 not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations  
29 under the provisions of this Franchise.  
30

## 31 **SECTION 17. MISCELLANEOUS PROVISIONS**

### 32 **17.1 Preferential or Discriminatory Practices Prohibited**

33 Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color,  
34 ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability.  
35 Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or  
36 non-discrimination provisions and requirements of federal, State and local laws, and rules and  
37 regulations relating thereto.

### 38 **17.2 Notices**

39 Throughout the term of this Franchise, each party shall maintain and file with the other a local  
40 address for the service of notices by mail. All notices shall be sent to such respective address,  
41 and such notices shall be effective upon the date of mailing. At the effective date of this  
42 Franchise:  
43

1 Grantee's address shall be:  
2 Comcast Cable  
3 410 Valley Ave. NW, Suite 9  
4 Puyallup, WA 98371  
5 Attention: General Manager  
6  
7

8 With a copy to:  
9 Comcast Cable  
10 15815 25<sup>th</sup> Avenue West  
11 Lynnwood, WA 98087  
12 Attention: Franchise Department  
13

14 Grantor's address shall be:  
15 City of Bonney Lake  
16 [PO Box 7380](#)  
17 [9002 Main Street East](#)  
18 Bonney Lake, WA 98391  
19  
20

21 **17.3 Costs to be Borne by Grantee**

22 Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to  
23 not more than two (2) public meetings provided for pursuant to this Franchise.

24 **17.4 Binding Effect**

25 This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

26 **17.5 Authority to Amend**

27 No provision of this Franchise Agreement Shall be amended or otherwise modified, in whole or  
28 in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which  
29 amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate  
30 resolution or order by the Grantor, as required by applicable law.

31 **17.6 Venue**

32 The Venue for any dispute related to this Franchise shall be with the United States District Court  
33 for the Western District of Washington or the Pierce County Superior Court, Tacoma,  
34 Washington.

35 **17.7 Governing Law**

36 This Franchise shall be governed in all respects by the laws of the State of Washington.

37 **17.8 Captions**

38 The captions and headings of this Franchise are for convenience and reference purposes only and  
39 shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

1 **17.9 Construction of Franchise**

2 The provisions of this Franchise shall be liberally construed to promote the public interest.

3 **17.10 No Joint Venture**

4 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between  
5 the parties and neither party is authorized to, nor shall either party act toward third persons or the  
6 public in any manner that would indicate any such relationship with the other.

7 **17.11 Waiver**

8 The failure of either party at any time to require performance by the other of any provision  
9 hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall  
10 the waiver by either party of any breach of any provision hereof be taken or held to be a waiver  
11 of any succeeding breach of such provision, or as a waiver of the provision itself or any other  
12 provision.

13 **17.12 Severability**

14 If any Section, subsection, paragraph, term or provision of this Franchise is determined to be  
15 illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such  
16 determination shall have no effect on the validity of any other Section, subsection, paragraph, term  
17 or provision of this Franchise, all of which will remain in full force and effect for the term of the  
18 Franchise.

19 **17.13 Entire Agreement**

20 This Franchise and all Exhibits represent the entire understanding and agreement between the  
21 parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations  
22 and written agreements between the parties.

23 **17.14 Compliance with Federal, State, and Local Laws**

24 The Grantee shall comply with applicable federal, state and local laws, rules and regulations.

25 **17.15 Customer Service Standards**

26 The Grantee shall comply with any applicable customer service standards that are lawfully  
27 adopted by Grantor and are consistent with applicable Federal law.

28 **17.16 Force Majeure**

29 The Grantee shall not be held in default under, or in noncompliance with, the provisions of this  
30 Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where  
31 such noncompliance or alleged defaults occurred or were caused by circumstances reasonably  
32 beyond the ability of the Grantee to anticipate and control, including war or riots, civil  
33 disturbances, floods or other natural catastrophes, labor stoppages, slow downs, or power outages  
34 exceeding back-up power supplies, work delays caused by waiting for utility providers to service  
35 or monitor their utility poles to which the Grantee's Cable System is attached as well as  
36 unavailability of materials irrespective of cost.

37  
38

1           **IN WITNESS WHEREOF**, and pursuant to the vote of approval of the qualified  
2 electors (if required) of the City of Bonney Lake, Washington this Franchise is signed in the  
3 name of the City of Bonney Lake, Washington, this \_\_\_\_\_ day of \_\_\_\_\_,  
4 2011.

5  
6  
7 **CITY OF BONNEY LAKE**

8  
9  
10 \_\_\_\_\_  
11 By: Neil Johnson  
12       Mayor, City of Bonney Lake

13  
14  
15 ATTEST:

16  
17  
18 \_\_\_\_\_

19  
20  
21 **ACCEPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011, subject to applicable  
22 federal, state and local law.

23  
24 **Comcast of California/Colorado/Washington I, Inc.**

25  
26 \_\_\_\_\_  
27 By: (Authorized Representative Signature)

**City of Bonney Lake, Washington**  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Exec / Brian Hartsell	<b>Meeting/Workshop Date:</b> 4 October 2011	<b>Agenda Bill Number:</b> AB11-78
<b>Agenda Item Type:</b> Ordinance	<b>Ordinance/Resolution Number:</b> Ordinance D11-78	<b>Councilmember Sponsor:</b>

**Agenda Subject:** Revise the City's Utility Tax Ordinance and Related Municipal Code pertaining to the Cable TV utility tax.

**Full Title/Motion:** An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Chapter 5.04.030 (F) Of The Municipal Code And The Corresponding Portions Of Ordinance Nos. 990 And 305, Relating To Cable Tv Utility Tax.

**Administrative Recommendation:** Approve the Ordinance as written.

**Background Summary:** The City's 1990 Franchise Agreement, now with Comcast, expired in 2005. An updated cable franchise agreement was negotiated between Comcast and Rainier Communications Commission (RCC)--of which the City of Bonney Lake (CBL) is an RCC member. This agreement will be renewed and established by Ordinance D11-77. That ordinance should be passed in tandem with this Ordinance D11-78. The agreement calls for a 5% franchise fee to be paid to CBL. Since Comcast would pass that 5% fee on to the customers, CBL will offset this fee by reducing its current cable TV utility tax rate from 6.5% to 1.5%. The franchise fee and cable TV utility tax are both calculated from total gross subscriber revenue.

**Attachments:** Yes--1) Proposed Ordinance DD11-78 with Proposed amendment to BLMC 5.04.030--line version

<b>BUDGET INFORMATION</b>			
<b>Budget Amount</b>	<b>Current Balance</b>	<b>Required Expenditure</b>	<b>Budget Balance</b>
<b>Budget Explanation:</b> This action is revenue neutral. The current utility tax of 6.5% will be reduced to 1.5% upon implementation of a 5% franchise fee--both tax and fee calculated from the same total gross subscriber revenue.			

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	Finance Committee	<i>Approvals:</i>	<b>Yes No</b>
	Date: 8/23/11 and 9/27/11	Chair/Councilmember Deputy Mayor Swatman	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Mark Hamilton	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember James Rackley	<input checked="" type="checkbox"/> <input type="checkbox"/>
	Forward to: 10/25/2011 Council Meeting	<b>Consent Agenda:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

**APPROVALS**

**Director:**

**Mayor:**

**Date Reviewed  
by City Attorney:** 7/29/11  
(if applicable):

**ORDINANCE D11-78**

**AN ORDINANCE OF THE CITY OF BONNEY LAKE, PIERCE COUNTY,  
WASHINGTON AMENDING CHAPTER 5.04 OF THE BONNEY LAKE  
MUNICIPAL CODE, AND THE CORRESPONDING PORTIONS OF  
ORDINANCE NOS. 990 AND 305,  
RELATING TO CABLE TV UTILITY TAX**

WHEREAS, by Ordinance D11-77 the City renewed and established an exclusive franchise agreement with Comcast, Inc., and

WHEREAS, the franchise agreement, which takes effect on or about December 1, 2011, calls for a 5 percent franchise fee calculated from total gross subscriber revenue, and

WHEREAS, the franchisee fee is passed on to subscribers by Comcast, and

WHEREAS, Comcast currently passes on to subscribers a 6.5 percent cable TV utility tax calculated from total gross subscriber revenue, and

WHEREAS, the City desires that the renewed and updated franchise agreement be a revenue neutral action.

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

**Section 1.** Chapter 5.04 of the Bonney Lake Municipal Code, Utility Tax, is hereby amended to read as follows:

**5.04.030 Tax designated.**

A. There is levied upon, and there shall be collected from, every person, firm or corporation engaged in furnishing, for a monetary consideration, of the city and the inhabitants thereof, with electricity and electrical energy for lighting, heating, power, and other public purposes, within or partly within the corporate limits of the city, an annual tax for the privilege of so doing, such tax to be equal to 6.00 percent of the total gross subscribers revenues from business and residential electrical power service in the city.

B. There is levied upon and there shall be collected from, every person, firm or corporation engaged in carrying on a telephone business for hire, including cellular telephone service, within or partly within the corporate limits of the city an annual tax for the privilege of so doing, such tax to be equal to 6.00 percent of the total gross operation revenues within the city. Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

“Telephone business” means the business of providing access to local telephone network, local telephone switching service, toll service, or coin telephone services, or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or changes, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not include the providing of competitive service.

“Cellular telephone service” means a two- way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications which is not subject to regulation by the Washington State Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service. Cellular telephone service is included within the definition of “telephone business” for the purposes of this chapter.

“Competitive telephone service” means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulations as telephone companies under RCW Title 80 and for which a separate charge is made.

C. There is levied upon, and there shall be collected from, every person, firm or corporation engaged in furnishing, for a monetary consideration, natural gas or manufactured gas for lighting, heating, power, and other public purposes, within or partly within the corporate limits of the city, an annual tax for the privilege of so doing, such tax to be equal to 6.00 percent of the total gross subscriber revenue from business and residential gas service, both natural and manufactured, in the city.

D. There is levied upon, and there shall be collected from, every person, firm or corporation engaged in carrying on the business of selling or furnishing water for domestic or industrial consumption, or sewer service, within or partly within the corporate limits of the city, a tax equal to 8.00 percent of the total gross income from such business in the city.

E. There is levied upon, and there shall be collected from, every person, firm or corporation engaged in carrying on the business of selling or furnishing garbage service, including recyclables and yard waste, within or partly within the corporate limits of the city, a tax equal to 6.00 percent of the total gross income from such business in the city.

F. There is levied upon, and there shall be collected from, every person, firm or corporation engaged in carrying on the business of selling or furnishing cable television service, for domestic or commercial consumption, within or partly within the corporate

limits of the city, a tax equal to ~~6.5 percent~~ 1.5 percent of the total gross subscriber revenue from such service.

G. There is levied upon and there shall be collected from every person, firm or corporation engaged in carrying on the business of selling or furnishing stormwater service, within or partly within the corporate limits of the city, a fee or tax equal to 8.00 percent of the total gross revenues from such business in the city.

**Section 2.** This Ordinance shall take effect and be in force 5 days after passage and publication, as required by law, provided that the Finance Director shall notify Comcast that the effective date of the utility tax reduction shall be on or near the effective date of the franchise agreement thereby eliminating or minimizing the period between collection of the franchise fee and the utility tax at the 6.5 percent rate.

PASSED by the City Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

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

		AB11-77--Ordinance D11-77 Renewing a CATV franchise agreement with Comcast and establishing a franchise fee.		AB11-78--Ordinance D11-78 amending BLMC 5.04.030F to reduce CATV utility tax	
Date	Meeting	Action	Notes	Action	Notes
23-Aug	Finance Committee	Review AB11-77, Ord D11-77 renewing a CATV franchise agreement with Comcast and forward to 25 Oct Council Mtg; forward motion to 13 Sep Council to set a public hearing (AB11-80) for CATV franchise agreement for 27 Sep.	AB11-77 first reading; <a href="#">approved by FC on 23 Aug.</a> <a href="#">FC requested info on council meeting broadcast costs.</a>	AB11-78 a discussion item to review this schedule and determine if finance committee wants Council Workshop review also.	<a href="#">Approved by FC on 23 Aug.</a> <a href="#">FC requested info on council meeting broadcast costs.</a> AB11-78 first reading.
6-Sep	Workshop		<a href="#">Council may be interested in broadcasting CC Mtgs. Additional cost data and visit from RCC rep at future workshop desired. In the meantime all associated ABs to proceed as planned.</a>		
13-Sep	Finance Committee		<a href="#">Deputy Mayor Swatman would like RCC rep to come to finance committee meeting to explain RMC benefits and perks. Proceed with cost neutral action as planned.</a>		
13-Sep	Council Meeting	AB11-80 motion to set a public hearing for CATV franchise agreement for 27 Sep.	<a href="#">Passed by CC.</a>		
14-Sep	N/A	Forward announcement of public hearing to paper of record	<a href="#">Complete to post 20/21Sep.</a>		
20-Sep	N/A	Public hearing announcement published in paper of record	<a href="#">Complete.</a>		
27-Sep	Finance Committee			Review AB11-78, Ordinance D11-78 amending BLMC 5.04.030F to reduce CATV utility tax and forward to 25 Oct Council Mtg. Can also be forwarded to 4 Oct workshop for discussion if necessary.	See 23 Aug.
27-Sep	Council Meeting	AB11-80 public hearing for AB11-77	<a href="#">Public Hearing held. No comments.</a>		
4-Oct	Workshop	Review comments, if any, from 27 Sep Public Hearing; confirm forward to 25 Oct Council Mtg. Additional discussion of AB11-77.		Additional discussion of AB11-77.	
11-Oct	Finance Committee				
11-Oct	Council Meeting				
18-Oct	Workshop				
25-Oct	Finance Committee				
25-Oct	Council Meeting	AB11-77, Ordinance D11-77 renewing a CATV franchise agreement with Comcast and establishing a franchise fee.	Shall take effect 30 days after passage and 5 days after publication, but no sooner than 1 Dec 2011	AB11-78, Ordinance D11-78 amending BLMC 5.04.030F to reduce CATV utility tax.	Shall take effect 30 days after passage and 5 days after publication, but no sooner than 1 Dec 2011
26-Oct	N/A	Forward ordinance announcement to paper of record		Forward ordinance announcement to paper of record	
1-Nov	N/A	Ordinance announcement published in paper of record		Ordinance announcement published in paper of record	
8-Nov	Finance Committee				
8-Nov	Council Meeting				
1-Dec	N/A	Effective date of agreement signed by virtue of Ordinance D11-77	Comcast begins the franchise fee collection the date they sign the agreement, which is estimated 30 days after Council passage (25 Oct). Goal is 1 Dec.	Effective date of Ordinance D11-78	The utility tax collection rate changes the date CBL notifies Comcast or any date we make it effective--whichever is later. Goal is to make effective and notification date both 1 Dec.