

Next Ord: 1687-10

Next Res: 837-10

VISION STATEMENT

SEDRO-WOOLLEY IS A FRIENDLY CITY THAT IS CHARACTERIZED BY CITY GOVERNMENT AND CITIZENS WORKING TOGETHER TO ACHIEVE A PROSPEROUS, VIBRANT AND SAFE COMMUNITY

MISSION STATEMENT

TO PROVIDE SERVICES AND OPPORTUNITIES WHICH CREATE A COMMUNITY WHERE PEOPLE CHOOSE TO LIVE, WORK AND PLAY

**EXECUTIVE SESSION**

6:00 PM – 7:00 PM Litigation

**CITY COUNCIL AGENDA**

**November 10, 2010**

**7:00 PM**

**Sedro-Woolley Municipal Building**

**Council Chambers**

**325 Metcalf Street**

1. Call to Order
2. Pledge of Allegiance
3. Consent Calendar

NOTE: Agenda items on the Consent Calendar are considered routine in nature and may be adopted by the council by a single motion, unless any Councilmember wishes an item to be removed. The Council on the regular agenda will consider any item so removed after the Consent Calendar.

- a. Minutes from Previous Meeting (Including November 2, 2010 Work Session)
  - b. Finance
    - Claim Checks #70595 to # 70700 in the amount of \$433,595.16.  
(Voided Checks #70655 - #70669) & Manual Checks #70701 & #70702  
in the amount of \$235,300.00.
    - Payroll Checks #49041 to #49145 in the amount of \$231,813.16.
  - c. APP Propane Proposal
  - d. Benson Hay Lease Agreement
  - e. Final Acceptance - SR20/F&S Grade Road and Skagit Industrial Park Roadway Improvements Project - Interwest Construction, Inc.
4. Public Comment (Limited to 3-5 minutes)

**PUBLIC HEARING**

5. Property Tax Levy Ordinance (*1<sup>st</sup> reading*)

**NEW BUSINESS**

6. Comcast Franchise Agreement (*1<sup>st</sup> reading*)
7. 2011 Budget (*1<sup>st</sup> reading*)
8. Ordinance - Possible Adoption of Final Stormwater Management Standards and Stormwater Maintenance (*action requested*)

**COMMITTEE REPORTS AND REPORTS FROM OFFICERS**

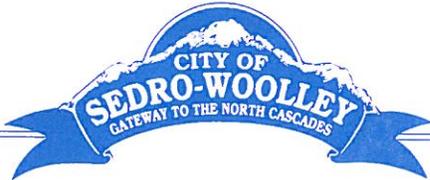
9. Fire Station 2 Update

*There may be an Executive Session immediately preceding or following the meeting.*

CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 13



DATE: November 10, 2010  
TO: Mayor Anderson and City Council  
FROM: Patsy Nelson, Finance Director  
SUBJECT: 1) CALL TO ORDER; 2) PLEDGE OF ALLEGIANCE; 3) CONSENT  
CALENDAR

1. CALL TO ORDER - The Mayor will call the November 10, 2010 Regular Meeting to Order. The Finance Director will note those in attendance and those absent.  

___	Ward 1	Councilmember Ted Meamber
___	Ward 2	Councilmember Tony Splane
___	Ward 3	Councilmember Thomas Storrs
___	Ward 4	Councilmember Pat Colgan
___	Ward 5	Councilmember Hugh Galbraith
___	Ward 6	Councilmember Rick Lemley
___	At-Large	Councilmember Brett Sandström
2. PLEDGE OF ALLEGIANCE - The Mayor will lead the City Council and citizens in the Pledge of Allegiance to the United States of America.
3. CONSENT CALENDAR - Mayor will ask for Council approval of Consent Calendar items.

NOV 10 2010

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CITY OF SEDRO-WOOLLEY  
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7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 39

Regular Meeting of the City Council  
October 27, 2010 – 7:00 P.M. – City Hall Council Chambers

ROLL CALL: Present: Mayor Mike Anderson, Councilmembers: Ted Meamber, Tony Splane, Tom Storrs, Hugh Galbraith, Rick Lemley and Brett Sandström. Staff: Recorder Brue, Finance Director Nelson, City Supervisor/Attorney Berg, Engineer Freiburger, Planner Moore, Fire Chief Klinger and Police Chief Wood.

The Meeting was called to order at 7:01 P.M

Pledge of Allegiance

Consent Calendar

- Minutes from Previous Meeting
- Finance
  - Claim Checks #70484 to #70594 in the amount of \$180,328.04 (Voided Checks #70555 thru #70562)
  - Payroll Checks #48935 to #49040 in the amount of \$175392.15
- Interlocal Agreement – Skagit County District Court Probation – 2011-2013
- Ordinance #1686-10 – 2010 Budget Amendment #2
- Task Force 1, Inc. Training Agreement – Fire Department
- Bid Award – Crown Victoria Interceptor – Police Department
- Possible Contract Award – 2011 Backup Generator Maintenance – Legacy Power Systems
- Setting Public Hearing – 2011 Budget

Councilmember Storrs moved to approve the consent calendar A through H. Seconded by Councilmember Lemley. Motion carried (6-0).

Public Comment

No Comments Received

## COMMITTEE REPORTS AND REPORTS FROM OFFICERS

### Fire Station 2 Update

Fire Chief Klinger reported on the progress of Fire Station 2 to include brick work, sidewalks, truck bay flooring, doors for truck bay and cabinetry. City Supervisor/Attorney Berg reviewed two action items. Carletti is requesting an additional \$1,250.00 for additional reimbursable costs. The second action item is to ratify the City Supervisor's signature on a bill of sale for PUD water line infrastructure/line extensions.

Discussion ensued regarding the Carletti request for reimbursable costs, the water line issue, make up of design team and change orders.

Councilmember Storrs moved to authorize the City Supervisor to sign Amendment 1 with Carletti in the amount of \$1,250.00 for additional reimbursable costs. Seconded by Councilmember Splane. Motion carried (5-1) (Councilmember Galbraith opposed).

Councilmember Storrs moved to ratify the City Supervisor's signature on the Bill of Sale to the Skagit PUD No. 1 for water line infrastructure/line extensions that were installed for Fire Station 2. Councilmember Splane seconded. Motion carried (6-0).

Finance Director Nelson – noted the Council Worksession agenda at each Councilmember's seat. She also noted Council will receive a copy of the Mayor's preliminary 2011 balanced budget at the worksession on November 2.

City Supervisor/Attorney Berg – reported that the City is scheduled for mediation on the Metcalf Street project. Also the first meeting in December worksession is scheduled with Fire District 8 Commissioners to discuss joint fire operations. A consultant for Fire District 8 will be in attendance to facilitate the discussion.

Engineer Freiburger – reported that punch list items have been finished on Fruitdale/McGargile. He also reported on the recent activity along Brickyard Creek by the County as part of preparations for the transfer of the Brickyard Creek Sub Flood Zone in December 2011. Freiburger stated that much of his time has been spent in preparations for the upcoming mediation.

Councilmember Splane questioned work on Brickyard Creek at Sapp Road.

Engineer Freiburger addressed a sample LED luminary on loan for consideration of replacement for the downtown lights. He noted one will be mounted temporarily on a light standard.

Discussion ensued regarding utilizing existing lights replacing with an LED bulb, rotation of the globe to a downward position, better light needed for security purposes, no current funding for replacement and exploration of grant opportunities.

Fire Chief Klinger – reported that the new engine has arrived. Chief Klinger offered tours of the engine after adjournment.

Police Chief Wood – reported the police officers have been dealing with lots of problems at Memorial Park and they have been utilizing the ordinance that was passed last year to help solve the problems. He also reported from a law enforcement perspective the downtown lighting is not very good.

Councilmember Sandström – thanked the Parks department for repair and replacement of the Skate Board ramps. He also addressed comments on the downtown neighborhoods being hit with petty crimes.

Councilmember Galbraith – expressed concern with Black Heroin and the current issues in Stanwood and questioned if Sedro-Woolley had the same problem. Chief Wood reviewed processes the Police take for observation and enforcement and work with the Drug Task Force.

Councilmember Meamber – commented on the 1920's theme and with the change of lighting would change the look away from the theme.

Councilmember Galbraith – addressed the new sign at Sedro-Woolley Family Dental.

Councilmember Galbraith moved to adjourn. Councilmember Lemley seconded. Motion carried (6-0).

The meeting adjourned at 7:36 P.M.

NOV 10 2010

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CITY OF SEDRO-WOOLLEY  
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7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 3a

Council Worksession  
November 2, 2010 – 7:00 P.M. – Fire Training Room

The meeting was called to order at 7:00 P.M. by Mayor Anderson.

ROLL CALL: Present: Mayor Mike Anderson, Councilmembers: Ted Meamber, Tony Splane, Tom Storrs, Pat Colgan, Rick Lemley and Brett Sandström. Staff: City Supervisor/Attorney Berg and Finance Director Nelson

**Manual Warrant – Fire Truck License and Sales Tax**

- Councilmember Colgan moved to approve manual warrant #70595 in the amount of \$34,358.53. Seconded by Councilmember Meamber. Motion carried (6-0).

**2011 Mayor's Balanced Budget**

- City Supervisor/Attorney presented the key elements of the Mayor's 2011 Balanced Budget. Finance Director Nelson presented additional revenue and expenditure information at the fund level. Council discussed various topics throughout the presentation.

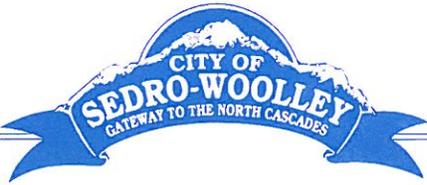
Councilmember Lemley moved to adjourn. Seconded by Councilmember Splane. Motion carried.

The worksession adjourned at 8:35 P.M.

CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 3b



DATE: November 10, 2010  
TO: Mayor Anderson and City Council  
FROM: Patsy Nelson, Finance Director  
SUBJECT: FINANCE - CLAIMS

Attached you will find the Claim Checks register proposed for payment for the period ending November 10, 2010.

Motion to approve Claim Checks #70595 to #70700 in the amount of \$433,595.16. (Voided Checks #70655-#70669) & Manual Checks #70701 & #70702 in the amount of \$235,300.00.

Motion to approve Payroll Checks #49041 to #49145 in the amount of \$231,813.16.

If you have any comments, questions or concerns, please contact me for information during the working day at 855-1661. This will allow me to look up the invoices that are stored in our office.

CITY OF SEDRO-WOLLEY  
 SORTED TRANSACTION WARRANT REGISTER  
 11/10/2010 (Printed 11/04/2010 11:38)

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
70595	DEPARTMENT OF LICENSING	FIRE TRUCK	FD	34,358.53
		WARRANT TOTAL		34,358.53
70596	A-1 MOBILE LOCK & KEY	REPAIR & MAINTENANCE	CS	270.50
		WARRANT TOTAL		270.50
70597	ALL-PHASE ELECTRIC	OPERATING SUP - LIBRARY	PK	746.58
		WARRANT TOTAL		746.58
70598	ALPINE FIRE & SAFETY	OFFICE/OPERATING SUPPLIES	PD	45.82
		REPAIRS/MAINT-EQUIP	FD	389.52
		REPAIRS/MAINT-EQUIP	FD	365.18
		REPAIRS/MAINT-EQUIP	FD	365.18
		REPAIRS/MAINT-EQUIP	FD	121.73
		WARRANT TOTAL		1,287.43
70599	LLOYD RUSSELL	REPAIRS/MAINT-EQUIP	FD	160.66
		REPAIRS/MAINT-EQUIP	FD	319.80
		WARRANT TOTAL		480.46
70600	A.T.V. ACCESSORIES	REPAIR/MAINT-EQUIP & BLDG	CEM	16.23
		WARRANT TOTAL		16.23
70601	ARAMARK UNIFORM SERVICES	MISC-LAUNDRY	ST	17.20
		LAUNDRY	SWR	17.96
		WARRANT TOTAL		35.16
70602	ASSOC PETROLEUM PRODUCTS	AUTO FUEL	CS	137.74
		AUTO FUEL	CS	57.60
		AUTO FUEL	PD	1,385.04
		AUTO FUEL/DIESEL	FD	602.40
		AUTO FUEL/DIESEL	PK	15.45
		AUTO FUEL/DIESEL	ST	225.07
		AUTO FUEL/DIESEL	SWR	66.36
		WARRANT TOTAL		2,489.66
70603	AT & T	TELEPHONE	JUD	.97
		TELEPHONE	FIN	8.72
		TELEPHONE	LGL	.97
		TELEPHONE	IT	1.94
		TELEPHONE	PLN	9.70
		TELEPHONE	ENG	9.70
		TELEPHONE	PD	46.55
		TELEPHONE	FD	13.58
		TELEPHONE	LIB	1.94
		TELEPHONE	SWR	.97
		TELEPHONE	SAN	1.93
		WARRANT TOTAL		96.97
70604	BANK OF AMERICA	REPAIR & MAINTENANCE	CS	99.77
		TRAVEL	PD	159.02
		REPAIRS/MAINT-DORM	FD	234.60

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		WARRANT TOTAL		493.39
70605	BANK OF AMERICA	SUPPLIES	LIB	193.57
		EARLY LITERACY	LIB	222.40
		COMMUNITY GRANT PROGRAMS	LIB	295.27
		COMMUNITY GRANT PROGRAMS	LIB	57.58
		WARRANT TOTAL		768.82
70606	BANK OF AMERICA	OPERATING SUPPLIES	FD	113.95
		WARRANT TOTAL		113.95
70607	BANK OF AMERICA	NETWORK HARDWARE	IT	532.57
		WARRANT TOTAL		532.57
70608	BAY CITY SUPPLY	OPERATING SUP - HAMMER SQ	PK	179.99
		OPERATING SUP - HAMMER SQ	PK	93.59
		WARRANT TOTAL		273.58
70609	BLUMENTHAL UNIFORM & EQUIP	UNIFORMS/ACCESSORIES	PD	27.59
		UNIFORMS/ACCESSORIES	PD	3.79
		WARRANT TOTAL		31.38
70610	BLUNT, TAMARA	TRAVEL	PD	11.66
		WARRANT TOTAL		11.66
70611	BRIGHT RAIN SOLUTIONS	PROFESSIONAL SERVICES	SWR	2,353.20
		WARRANT TOTAL		2,353.20
70612	CEMEX	REPAIR/MAINT-STREETS	ST	214.24
		WARRANT TOTAL		214.24
70613	CITIES INSURANCE ASSOC.	INSURANCE & BONDS	JUD	28.84
		INSURANCE & BONDS	FIN	115.37
		INSURANCE	LGL	28.84
		INSURANCE	PLN	115.37
		INSURANCE	ENG	115.37
		INSURANCE	PD	1,269.07
		INSURANCE	FD	749.91
		INSURANCE	INSP	57.69
		INSURANCE	PK	576.85
		INSURANCE	CEM	173.06
		INSURANCE	ST	576.85
		INSURANCE	LIB	346.11
		INSURANCE	SWR	1,211.39
		INSURANCE	SAN	403.80
		WARRANT TOTAL		5,768.52
70614	COLLINS OFFICE SUPPLY, INC	OFFICE/OPERATING SUPPLIES	PD	22.04
		WARRANT TOTAL		22.04
70615	COMCAST	INTERNET SERVICES	IT	99.95
		WARRANT TOTAL		99.95

CITY OF SEDRO-WOLLEY  
 SORTED TRANSACTION WARRANT REGISTER  
 11/10/2010 (Printed 11/04/2010 11:38)

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
70616	CORRECTIONAL INDUSTRIES	MISC-PRINTING & BINDING	PLN	12.69
		WARRANT TOTAL		12.69
70617	COUNTRYSIDE SALES & SERVICE	REPAIR & MAINT - AUTO	PD	197.88
		WARRANT TOTAL		197.88
70618	CRYSTAL SPRINGS	OPERATING SUPPLIES	SAN	15.00
		WARRANT TOTAL		15.00
70619	DEMCO INC.	SUPPLIES	LIB	377.61
		WARRANT TOTAL		377.61
70620	DIMENSIONAL COMM, INC.	SOFTWARE MAINT & SUPPORT	IT	1,912.98
		WARRANT TOTAL		1,912.98
70621	DISCOVER	BOOKS, PERIOD, RECORDS	LIB	59.95
		WARRANT TOTAL		59.95
70622	DISPLAY SALES	HOLIDAY DISPLAYS	PK	201.00
		WARRANT TOTAL		201.00
70623	DILLAWAY, LEEANN	TRAVEL	PD	776.04
		WARRANT TOTAL		776.04
70624	E & E LUMBER	MACHINERY & EQUIPMENT	PD	199.73
		MACHINERY & EQUIPMENT	PD	16.76
		MACHINERY & EQUIPMENT	PD	37.07
		MACHINERY & EQUIPMENT	PD	10.60
		OPERATING SUP - MEMORIAL PARK		9.28
		REPAIRS/MT-RIVERFRONT	PK	22.66
		REPAIR/MT-HAMMER SQUARE	PK	37.91
		REPAIR/MT-LIONS ROADSIDE PARK		7.56
		REPAIR/MT-LIONS ROADSIDE PARK		39.47
		REPAIR/MT-LIONS ROADSIDE PARK		6.38
		REPAIR/MAINT-STREETS	ST	5.72
		REPAIR-SAFETY EQUIPMENT	ST	19.01
		WARRANT TOTAL		412.15
70625	ENTERPRISE OFFICE SYSTEMS	SUPPLIES	JUD	54.91
		OFFICE/OPERATING SUPPLIES	PD	31.33
		WARRANT TOTAL		86.24
70626	EVERGREEN PHARMACEUTICAL	RETIRED MEDICAL	PD	184.64
		WARRANT TOTAL		184.64
70627	FASTENAL COMPANY	REPAIR/MAINT-STREETS	ST	6.51
		REPAIR/MAINT-STREETS	ST	25.77
		WARRANT TOTAL		32.28
70628	FERRELLGAS	TRAINING FACILITIES	FD	630.95
		WARRANT TOTAL		630.95

CITY OF SEDRO-WOLLEY  
 SORTED TRANSACTION WARRANT REGISTER  
 11/10/2010 (Printed 11/04/2010 11:38)

PAGE 4

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
70629	FRANKLIN CORPORATION (THE)	CONSTRUCTION	F-C	304,869.31
		WARRANT TOTAL		304,869.31
70630	FRONTIER	TELEPHONE	PD	57.42
		TELEPHONE	LIB	121.15
		TELEPHONE	SWR	254.22
		WARRANT TOTAL		432.79
70631	GARDNER ELECTRONICS	FIRE TRUCK	FD	302.96
		WARRANT TOTAL		302.96
70632	GOLDSTREET DESIGN AGENCY INC	MAINTENANCE OF LINES	SWR	751.99
		WARRANT TOTAL		751.99
70633	GREAT AMERICA LEASING COR	REPAIR/MAINTENANCE-EQUIP	LIB	139.63
		WARRANT TOTAL		139.63
70634	H.B. JAEGER CO. LLC	MAINTENANCE OF LINES	SWR	50.41
		WARRANT TOTAL		50.41
70635	HINCKLE, BROOK	TRAVEL	PD	786.66
		WARRANT TOTAL		786.66
70636	HR DIRECT	OPERATING SUPPLIES	SWR	53.86
		WARRANT TOTAL		53.86
70637	HUMANE SOCIETY OF SKAGIT	HUMANE SOCIETY	PD	924.00
		WARRANT TOTAL		924.00
70638	IKON OFFICE SOLUTIONS	REPAIRS & MAINTENANCE	PD	22.56
		REPAIRS & MAINTENANCE	PD	75.74
		EQUIPMENT LEASE	FD	75.74
		REPAIRS/MAINT-EQUIP	FD	22.56
		WARRANT TOTAL		196.60
70639	INGRAM LIBRARY SERVICES	BOOKS, PERIOD, RECORDS	LIB	22.26
		BOOKS, PERIOD, RECORDS	LIB	18.56
		BOOKS, PERIOD, RECORDS	LIB	13.08
		BOOKS, PERIOD, RECORDS	LIB	424.76
		WARRANT TOTAL		478.66
70640	JACOBS, LEO	HEALTH CLUB	SAN	135.00
		WARRANT TOTAL		135.00
70641	L N CURTIS & SONS	FIRE TRUCK	FD	42.38
		FIRE TRUCK	FD	111.50
		WARRANT TOTAL		153.88
70642	LACAL EQUIPMENT INC.	REPAIR/MAINTENANCE-EQUIP	ST	675.21
		WARRANT TOTAL		675.21
70643	LANGUAGE EXCH. INC. (THE)	LANGUAGE INTERPRETER	JUD	232.00

CITY OF SEDRO-WOLLEY  
 SORTED TRANSACTION WARRANT REGISTER  
 11/10/2010 (Printed 11/04/2010 11:38)

PAGE 5

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		WARRANT TOTAL		232.00
70644	LEONARD BOUDINOT & SKODJE	CONST-FRUITDALE MCGARIGLE	AST	826.50
		OTHER IMPROVEMENTS	SWR	1,239.75
		WARRANT TOTAL		2,066.25
70645	LOGGERS AND CONTRACTORS	OPERATING SUPPLIES	FD	44.13
		WARRANT TOTAL		44.13
70646	MID-AMERICAN RESEARCH CHEM.	MAINT OF GENERAL EQUIP	SWR	483.75
		OPERATING SUPPLIES	SAN	324.49
		WARRANT TOTAL		808.24
70647	MOTOR TRUCKS, INC.	REPAIRS/MAINT-EQUIP	SAN	46.08
		WARRANT TOTAL		46.08
70648	MOUNT VERNON, CITY OF	TRAVEL	PD	2,141.28
		TUITION/REGISTRATION	PD	495.00
		WARRANT TOTAL		2,636.28
70649	NEXTEL COMMUNICATIONS	TELEPHONE	PD	377.71
		WARRANT TOTAL		377.71
70650	OAKSTONE PUBLISHING LLC DBA	EMPLOYEE WELLNESS	EXE	328.77
		WARRANT TOTAL		328.77
70651	OFFICE DEPOT	SUPPLIES	FIN	10.13
		SUPPLIES	FIN	16.49
		SUPPLIES/BOOKS	PLN	19.15
		SUPPLIES	ENG	19.15
		OFFICE/OPERATING SUPPLIES	PD	27.88
		OFF/OPER SUPPS & BOOKS	INSP	19.15
		OPERATING SUP - PARKS SHOP	PK	37.99
		WARRANT TOTAL		149.94
70652	PAT RIMMER TIRE CTR, INC	REPAIR & MAINT - AUTO	PD	118.97
		REPAIR & MAINT - AUTO	PD	281.29
		REPAIR/MT-SMALL TOOLS EQUIP	PK	30.70
		WARRANT TOTAL		430.96
70653	PARTSMASTER	SMALL TOOLS & MINOR EQUIP	SAN	589.70
		WARRANT TOTAL		589.70
70654	PETERSON, DEBRA	TRAVEL	LIB	115.20
		WARRANT TOTAL		115.20
70670	PETTY CASH-DEBRA PETERSON	SUPPLIES	LIB	35.28
		POSTAGE	LIB	35.20
		BOOKS, PERIOD, RECORDS	LIB	15.00
		WARRANT TOTAL		85.48
70671	PUGET SOUND ENERGY	PUBLIC UTILITIES	PD	29.63

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		REPAIRS & MAINTENANCE	PD	9.93
		UTILITIES-RIVERFRONT	PK	395.68
		UTILITIES-COMMUNITY CTR	PK	129.99
		UTILITIES-SENIOR CENTER	PK	337.37
		UTILITIES-TRAIN	PK	42.89
		UTILITIES-HAMMER SQUARE	PK	236.34
		UTILITIES-BINGHAM & MEMORIAL P		60.95
		UTILITIES - SHOP	PK	62.86
		UTILITIES - SHOP	PK	22.89
		UTILITIES - OTHER	PK	10.94
		PUBLIC UTILITIES-CITY HALL	PK	2,329.68
		PUBLIC UTILITIES	CEM	55.22
		PUBLIC UTILITIES	ST	9.81
		PUBLIC UTILITIES	ST	88.44
		PUBLIC UTILITIES	ST	335.01
		PUBLIC UTILITIES	ST	79.16
		PUBLIC UTILITIES	LIB	397.10
		ADVERTISING	HOT	37.04
		PUBLIC UTILITIES	SWR	8,898.99
		PUBLIC UTILITIES	SAN	103.26
		PUBLIC UTILITIES	SWTR	74.25
		WARRANT TOTAL		13,747.43
70672	RELIABLE (OFFICE SUPPLY)	OFFICE/OPERATING SUPPLIES	PD	23.53
		OFFICE/OPERATING SUPPLIES	PD	86.25
		WARRANT TOTAL		109.78
70673	RICK'S REFRIGERATION INC.	SOLID WASTE DISPOSAL	SAN	175.28
		WARRANT TOTAL		175.28
70674	ROHLINGER ENTERPRISES, INC.	MAINTENANCE CONTRACTS	SWR	126.05
		MAINTENANCE CONTRACTS	SWR	19.17
		WARRANT TOTAL		145.22
70675	SCIENTIFIC SUPPLY	OFFICE SUPPLIES	SWR	68.90
		OPERATING SUPPLIES	SWR	430.22
		OPERATING SUPPLIES	SWR	155.31
		WARRANT TOTAL		654.43
70676	SEDRO-WOOLLEY AUTO PARTS	REPAIR/MT-SMALL TOOLS EQUIP	PK	12.85
		REPAIR/MAINTENANCE-EQUIP	ST	6.81
		REPAIR-SAFETY EQUIPMENT	ST	13.25
		OPERATING SUPPLIES	SWR	60.59
		WARRANT TOTAL		93.50
70677	SEDRO-WOOLLEY FARMERS MKT	FARMERS MARKET	HOT	1,500.00
		WARRANT TOTAL		1,500.00
70678	SEDRO-WOOLLEY MUSEUM	S-W MUSEUM	HOT	1,355.58
		WARRANT TOTAL		1,355.58
70679	SEDRO-WOOLLEY POSTMASTER	POSTAGE	LIB	132.00

CITY OF SEDRO-WOLLEY  
 SORTED TRANSACTION WARRANT REGISTER  
 11/10/2010 (Printed 11/04/2010 11:38)

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		WARRANT TOTAL		132.00
70680	SEDRO-WOLLEY VOLUNTEER	SALARIES-VOLUNTEERS	FD	8,506.00
		MISC-DUES	FD	720.00
		WARRANT TOTAL		9,226.00
70681	SK CO DEPT OF EMERG MGMT	DEPT OF EMERG MANAGEMENT	EMG	5,143.24
		WARRANT TOTAL		5,143.24
70682	SKAGIT COUNTY GOVERNMENT	PROFESSIONAL SERVICES	IT	771.63
		OPERATING LEASE-COMPUTER	PD	2,950.92
		TELEPHONE	FD	11.69
		WARRANT TOTAL		3,734.24
70683	SKAGIT COUNTY SHERIFF	PRISONERS	PD	9,862.80
		WARRANT TOTAL		9,862.80
70684	SKAGIT COUNTY SHERIFF OFF	TRAVEL	PD	1,193.52
		TUITION/REGISTRATION	PD	270.00
		PRISONERS	PD	607.55
		WARRANT TOTAL		2,071.07
70685	SKAGIT COUNTY TREASURER	CRIME VCTM & WITNSS PROG	LGL	98.88
		WARRANT TOTAL		98.88
70686	SKAGIT COUNTY COMMUNITY SVC.	SKAGIT COUNCIL ON ALCOHOL	ALC	3,200.38
		WARRANT TOTAL		3,200.38
70687	SKAGIT VALLEY HERALD	DUES/SUBSCRIPTIONS	PD	132.00
		WARRANT TOTAL		132.00
70688	SKAGIT VALLEY PUBLISHING	LEGAL PUBLICATIONS	LGS	33.75
		LEGAL PUBLICATIONS	LGS	33.75
		LEGAL PUBLICATIONS	SWR	195.00
		WARRANT TOTAL		262.50
70689	SOLID WASTE SYSTEMS, INC.	REPAIRS/MAINT-EQUIP	SAN	188.87
		WARRANT TOTAL		188.87
70690	TRUE VALUE	MACHINERY & EQUIPMENT	PD	5.16
		MACHINERY & EQUIPMENT	PD	9.73
		MACHINERY & EQUIPMENT	PD	.85
		MACHINERY & EQUIPMENT	PD	24.32
		OPERATING SUPPLIES	FD	4.86
		OPERATING SUPPLIES	FD	29.59
		OPERATING SUPPLIES	FD	6.48
		OPERATING SUPPLIES	FD	5.97
		OPERATING SUPPLIES	FD	22.69
		OPERATING SUPPLIES	FD	16.75
		REPAIRS/MAINT-EQUIP	FD	5.63
		OPERATING SUP - COMM CENTER	PK	5.94
		OPERATING SUP - CITY HALL	PK	42.93

WARRANT	VENDOR NAME	DESCRIPTION	AMOUNT
		REPAIR/MAINTENANCE-EQUIP ST	23.78
		OPERATING SUPPLIES SWR	12.20
		OPERATING SUPPLIES SWR	3.01
		OPERATING SUPPLIES SAN	28.12
		OPERATING SUPPLIES SAN	28.12-
		WARRANT TOTAL	219.89
70691	UNITED GENERAL HOSPITAL	PRISONERS PD	118.00
		PRISONERS PD	53.00
		WARRANT TOTAL	171.00
70692	VALLEY AUTO SUPPLY	REPAIRS/MT-PARKS SHOP PK	108.20
		MAINT OF PUMPING EQUIP SWR	2.21
		REPAIRS/MAINT-EQUIP SAN	140.36
		REPAIRS/MAINT-EQUIP SAN	7.78-
		SMALL TOOLS & MINOR EQUIP SAN	31.42
		WARRANT TOTAL	274.41
70693	VERIZON WIRELESS	TELEPHONE FIN	123.54
		TELEPHONE LGL	56.77
		TELEPHONE IT	56.77
		NEXTEL CELL PHONES	113.54
		TELEPHONE PD	56.77
		TELEPHONE PD	559.26
		TELEPHONE PD	26.48
		TELEPHONE FD	129.03
		TELEPHONE FD	145.80
		TELEPHONE INSP	26.89
		TELEPHONE PK	126.78
		TELEPHONE CEM	23.33
		TELEPHONE ST	82.81
		NEXTEL CELL PHONES	209.97
		NEXTEL CELL PHONES SAN	176.08
		WARRANT TOTAL	1,913.82
70694	VISITING NURSE HOME CARE	PROFESSIONAL SERVICES PD	50.00
		OPERATING SUPPLIES FD	225.00
		PROFESSIONAL SERVICES LIB	25.00
		WARRANT TOTAL	300.00
70695	WA STATE DEPT OF ECOLOGY	MISC-DUES/SUBSCRIPTIONS SWR	30.00
		WARRANT TOTAL	120.00
70696	WA ST DEPT OF PROF LICEN	INTERGOV SVC-GUN PERMITS PD	93.00
		WARRANT TOTAL	93.00
70697	WA ST DEPT OF TRANS	TUITION/REGISTRATION ENG	200.00
		WARRANT TOTAL	200.00

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
70698	WA ST OFF OF TREASURER	STATE REMITTANCES-COURT		4,883.84
		WARRANT TOTAL		4,883.84
70699	WELCH, DAVID	OFFICE/OPERATING SUPPLIES	PD	3.86
		WARRANT TOTAL		3.86
70700	WOOD'S LOGGING SUPPLY INC	MACHINERY & EQUIPMENT	PD	35.65
		OFFICE SUPPLIES	FD	26.51
		POSTAGE	FD	7.43
		FIRE TRUCK	FD	212.03
		OPERATING SUPPLIES	ST	67.16
		OPERATING SUPPLIES	SWR	7.43
		WARRANT TOTAL		356.21
		RUN TOTAL		433,595.16

CITY OF SEDRO-WOLLEY  
SORTED TRANSACTION WARRANT REGISTER  
11/10/2010 (Printed 11/04/2010 11:38)

PAGE 10

FUND	TITLE	AMOUNT
001	CURRENT EXPENSE FUND	94,096.08
101	PARK FUND	5,931.70
102	CEMETERY FUND	267.84
103	STREET FUND	2,471.81
104	ARTERIAL STREET FUND	826.50
105	LIBRARY FUND	3,048.65
108	STADIUM FUND	2,892.62
330	1996 FIRE STATION CONST FUND	304,869.31
401	SEWER FUND	16,792.91
412	SOLID WASTE FUND	2,323.49
425	STORMWATER	74.25
TOTAL		433,595.16

CITY OF SEDRO-WOLLEY  
SORTED TRANSACTION WARRANT REGISTER  
11/10/2010 (Printed 11/04/2010 11:38)

PAGE 11

DEPARTMENT	AMOUNT
001 000 000	4,883.84
001 000 011	67.50
001 000 012	316.72
001 000 013	328.77
001 000 014	274.25
001 000 015	185.46
001 000 017	3,375.84
001 000 018	565.61
001 000 019	156.91
001 000 020	457.76
001 000 021	25,935.35
001 000 022	49,100.72
001 000 024	103.73
001 000 025	5,143.24
001 000 062	3,200.38
FUND CURRENT EXPENSE FUND	94,096.08
101 000 076	5,931.70
FUND PARK FUND	5,931.70
102 000 036	267.84
FUND CEMETERY FUND	267.84
103 000 042	2,471.81
FUND STREET FUND	2,471.81
104 000 042	826.50
FUND ARTERIAL STREET FUND	826.50
105 000 072	3,048.65
FUND LIBRARY FUND	3,048.65
108 000 019	2,892.62
FUND STADIUM FUND	2,892.62
330 000 082	304,869.31
FUND 1996 FIRE STATION CONST FUND	304,869.31
401 000 035	16,792.91
FUND SEWER FUND	16,792.91
412 000 037	2,323.49
FUND SOLID WASTE FUND	2,323.49
425 000 039	74.25
FUND STORMWATER	74.25
TOTAL	433,595.16

IF YOU INTEND TO PAY BY CHECK, IT SHOULD BE RECEIVED BY US  
5 DAYS PRIOR TO PAYMENT

SOW  
11/04/2010



THE BANK OF NEW YORK MELLON

CITY OF SEDRO-WOOLLEY UNLIMITED TAX G O  
REF BONDS 2005 SERIES 2005

CITY OF SEDRO-WOOLLEY  
325 METCALF STREET  
ATTN: KATHY NELSON  
SEDRO WOOLLEY WA 98284

SEDUTGOREF05

Collection No: 11/04/10-1377

For Debt Service Payment Due 12/01/2010

Registered Principal \$	150,000.00	<i>230,000,082.591.21.71.00</i>
Registered Interest \$	25,800.00	<i>230,000,082.592.21.83.00</i>
Total	\$ 175,800.00	<i>pn 11/5/10</i>

Please include BNY collection number (see above) on your check or wire transfer legend so that we can accurately record your payment.  
The address for remitting payments by check or wire is listed below:

CHECK: The Bank of New York Mellon  
State of Washington  
Fiscal - 7W  
101 Barclay Street  
New York, NY 10286

WIRE: The Bank of New York Mellon  
ABA # 021000018  
GLA # 111565  
TAS # 334708  
Collection # : 11/04/10-1377

If you are not in agreement with the information shown above, please contact us at 1-800-646-5468

*check # 70701*

IF YOU INTEND TO PAY BY CHECK, IT SHOULD BE RECEIVED BY US  
5 DAYS PRIOR TO PAYMENT

SOW  
11/04/2010



**CITY OF SEDRO-WOOLLEY SEWER REVENUE  
REFUNDING BONDS, 2008 SERIES 2008**

CITY OF SEDRO-WOOLLEY  
325 METCALF STREET  
ATTN: KATHY NELSON  
SEDRO WOOLLEY WA 98284

SEDSEWREF08

Collection No: 11/04/10-1376

For Debt Service Payment Due 12/01/2010

Registered Interest \$	59,500.00	467,000.082,592.35.83.00
Total	\$ 59,500.00	<i>pr</i> 11/5/10

Please include BNY collection number (see above) on your check or wire transfer legend so that we can accurately record your payment. The address for remitting payments by check or wire is listed below:

**CHECK:** The Bank of New York Mellon  
State of Washington  
Fiscal - 7W  
101 Barclay Street  
New York, NY 10286

**WIRE:** The Bank of New York Mellon  
ABA # 021000018  
GLA # 111565  
TAS # 334708  
Collection # : 11/04/10-1376

If you are not in agreement with the information shown above, please contact us at 1-800-646-5468

*check # 70702*

APP Associated Petroleum Products, Inc. | Corporate Headquarters  
2320 Milwaukee Way, Tacoma, Washington 98421  
Toll Free . (800) 929.5243 | Local . (253) 627.6179 | Fax . (253) 627.3637



CITY COUNCIL AGENDA  
REGULAR MEETING

October 22, 2010

NOV 10 2010

Todd Olson  
City of Sedro-Woolley  
325 Metcalf Street  
Sedro-Woolley, WA. 98284

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 3C

Re: APP Propane Proposal

Dear Todd:

Thank you for this opportunity to further discuss the products and services that APP Propane has to offer Sedro Woolley Fire District. This proposal is to be viewed exclusively for Sedro Woolley Fire District, and we greatly appreciate your confidentiality.

APP Propane is pleased to offer the following product and service package for your review and consideration:

- APP Propane will supply 1-500 WG Tank contingent on a signed APP Propane Equipment Lease Agreement for a contract term of three years from date of acceptance.
- No charge installation.
- Provide "live and local" 24-7 On-Call service to resolve any potential fuel or equipment issues.
- Provide safety training for the employees of Sedro Woolley Fire District on an on-going basis.
- Lease the APP Propane storage tanks to Sedro Woolley Fire District for \$1.00 each per year.
- Supply Sedro Woolley Fire District's propane needs on a keep-full basis, delivered from APP's Sedro-Woolley plant.

Current price for October 22, 2010= \$1.89

Thank you again for this opportunity to introduce APP. Founded in 1972 and still family-owned, we are more than just a vendor and our commitment to *fueling* your company's *success* is unparalleled in the industry. We look forward to a new beginning with your company.

Sincerely,

APP PROPANE

Ken Freeman  
Propane Operations Manager

Accepted: \_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature Date

**PROPANE EQUIPMENT LEASE AGREEMENT**

Customer's (Borrower) Name: City of Sedro-Woolley  
Customer's Address: 325 Metcalf Street, Sedro-Wolley, WA. 98284  
Customer's Phone No: (360) 855-2252  
Contact Name & Title: \_\_\_\_\_ (Please Print) Init.     
Contract Date: October 25, 2010

1. **Equipment Lease:** Associated Petroleum Products, Inc., a Washington corporation, ("APP Propane") agrees to lease to Customer certain equipment listed on Exhibit A attached hereto ("Equipment") for a period of 3 year(s) ("Lease Commitment") in the amount of \$1.00 per year for so long as Customer exclusively purchases from APP Propane all of Customer's requirements for propane at Customer's business located at the address set forth above. APP Propane retains the right to determine the tank size, and upsize or downsize such tank, as determined by Customer's LP Gas usage. By its signature hereon and on any Exhibit(s) hereto, Customer acknowledges receipt of the Equipment.

In the event Associated delivers Equipment to Customer or installs equipment after the date of this Agreement at locations in addition to the address set forth above ("Additional Equipment"), such equipment will be itemized on supplementary Exhibit(s) to this Agreement. Customer agrees the Lease Commitment as to the items of Additional Equipment evidenced by said supplementary Exhibit(s) will be for a period of years following the date of delivery or installation of the Additional Equipment and will be in the amount of \$1.00 per year, so long as Customer exclusively purchases from APP Propane all of Customer's requirements for propane at the addresses set forth above and on any Exhibit hereto.

2. **Termination:** Either party has the right to terminate this Agreement without cause upon (30) days prior written notice to the other. This Agreement will automatically terminate upon the failure or suspension of Customer's business, insolvency or bankruptcy of Customer, or the seizure upon or levy against the property of Customer.

3. **Covenants of Customer:** Customer agrees to be responsible for all loss, damage or destruction to the Equipment or Additional Equipment while in Customer's possession or under Customer's control. Customer further agrees to insure the Equipment or Additional Equipment against damage, loss and theft in an amount equal to its full insurable value and to name APP Propane as an additional insured thereon. Customer agrees that Customer will not represent or assert to any third party ownership in the Equipment or Additional Equipment and that the Equipment or Additional Equipment will not be provided as collateral to secure any obligation of Customer, nor will Customer allow any lien or interest to be placed against the Equipment or Additional Equipment by operation of law, or otherwise. Customer agrees to maintain and to not remove any identification stickers on the Equipment or Additional Equipment while it is in Customer's possession. The Equipment or Additional Equipment will not be removed from Customer's address listed above or on any supplementary Exhibit hereto without the advance written consent of APP Propane. Furthermore, Customer agrees that Customer will notify APP Propane of any sale of a significant portion of its assets, change of ownership in the stock/units in the Customer's business or in the change of ownership or occupancy of any real estate upon which the Equipment is

located. Furthermore, Customer will advise any new owner or occupant of the business assets, stock or real estate that the Equipment and any Additional Equipment is the property of APP Propane. Upon termination, Customer agrees to return the Equipment and any Additional Equipment in good condition (ordinary wear and tear resulting solely from proper use is excepted) or otherwise provide APP Propane with access to the Premises to pick up the Equipment and any Additional Equipment. Customer's failure to promptly return the Equipment or Additional Equipment may result in a criminal prosecution in accordance with Washington State Law, RCW 9A.56 and/or Chapter 9A.56 RCW.

4. Condition of Equipment: Customer agrees, acknowledges and accepts any Equipment or Additional Equipment in its current condition "AS IS," and agrees to indemnify and hold APP Propane harmless against all claims, damages (including consequential damages), liabilities and all other obligations ("Claims") relating to or arising out of the Equipment or Additional Equipment or Customer's use, removal or replacement of the Equipment or Additional Equipment. The Customer agrees to use the Equipment and Additional Equipment in accordance with all applicable laws and regulations and in accordance with the Manufacturer's recommendations. In the event Customer installs all or part of the Equipment or Additional Equipment or performs, either directly or indirectly through a contractor, any service in relation to the installation of the Equipment or Additional Equipment, Customer agrees to install the Equipment or Additional Equipment in accordance with the foregoing laws, regulations and Manufacturer's recommendations and agrees to indemnify and hold APP Propane harmless against all Claims arising out of or related to the installation or any such service performed.

5. Maintenance of Equipment: APP Propane will be responsible for any operating repairs of the leased equipment during the term to this Agreement, with the exception of damage or necessary repairs caused by the actions or inactions of Customer's employees, agents, contractors or customers. With regard to new or used equipment provided by APP Propane, APP Propane will provide the parts and labor for any such repairs necessary due from Customer's actions or inactions, and invoice Customer for labor and parts expenses incurred.

6. Equipment Installation and Waiver of and Indemnity Against Claims: In conjunction with the lease and installation of the Equipment that is the subject of this Agreement, Associated has made available to Customer onsite training, as well as training material in the proper operation of the Equipment and the dispensing of propane therefrom ("Safety Training"). By signing this Agreement, Customer (1) acknowledges Associated has made the Safety Training available, (2) represents that a qualified representative of Customer's business has received the Safety Training, and (3) covenants that Customer and/or Customer's qualified representative(s) will ensure that no individual who is not qualified nor has been adequately trained in the safe operation of the dispensing equipment, will operate said equipment. Alternatively, Customer may opt to decline the Safety Training. In either event, Customer expressly agrees to release, waive, and forego any and all Claims against Associated for damages of any nature arising out of or relating to the operation of and the dispensing of propane from the Equipment. Customer further agrees to indemnify and hold Associated harmless against all Claims by third parties or others arising out of or relating to the operation of and the dispensing of fuel from the Equipment.

7. Attorneys' Fees and Expenses: In the event APP Propane is required to take any action under this Agreement or to recover the Equipment or Additional Equipment, Customer agrees to pay on demand all costs and expenses incurred by APP with regard thereto (including attorneys' fees and costs), including all actions, suits, arbitrations, and any appeals therefrom. Customer further agrees to pay to APP Propane

all expenses reasonably incurred by APP in protecting or recovering the Equipment or Additional Equipment and in protecting or defending APP Propane's ownership or interest in the Equipment or Additional Equipment.

8. Financing Statements: Customer hereby grants to Associated and creates a security interest in the Equipment and any Additional Equipment described in Exhibit A or in any supplemental Exhibit hereto (hereinafter "Collateral"), together with all such other rights therein as Customer may hereafter acquire to secure all of Customer's obligations, liabilities, debts, accounts and duties to Associated, whether presently existing or hereafter arising. Customer warrants that title to the Collateral will remain free from any lien, encumbrance or interest adverse to that of Associated in regard to the Collateral covered by this Agreement. Customer will not move the Collateral from the State of Washington or sell, transfer, or otherwise encumber any part of the Collateral without Associated's prior written consent. During the term hereof, Customer will maintain the Collateral in the same condition as when purchased, less ordinary wear and tear, and in good operating condition at Customer's sole cost and will insure the Collateral from loss from all perils at the Collateral's maximum insurable value naming Associated as additional insured on the policy.

9. Exclusive Venue: Customer agrees to Pierce County, Washington as the exclusive venue for any action under this Agreement.

10. Certification of Authority: Customer hereby warrants that it has full and complete authority to execute this Agreement. If Customer is a limited liability company or corporation, the company or corporation certifies that all approvals by members, stockholders, board of directors, or others as may be necessary to bind the corporation have been obtained before the execution of this Agreement and Customer hereby agrees to furnish Associated with any and all documentation as may be required by Associated to assure compliance with this certification.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written. The undersigned signatory represents and warrants that he/she is authorized to sign this Equipment Lease Contract, which is binding upon the corporate entities.

CUSTOMER:

APP Propane:

City of Sedro-Woolley

Associated Petroleum Products, Inc.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Frank D. Pupo, Jr.

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

Title: Executive VP/COO

**ASSOCIATED PETROLEUM PRODUCTS, INC.  
EXHIBIT "A"**

**Date:** October 25, 2010  
**Customer Name:** City of Sedro-Woolley  
**Customer Address:** 325 Metcalf Street  
Sedro-Woolley, WA. 98284  
**Phone Number:** (360) 855-2252      **Account Number:**  
**APP Manager:** Ken Freeman

<b>Date Out</b>	<b>Description</b>	<b>Qty</b>	<b>Value</b>	<b>Serial #</b>
	500 WG Tank	1	\$1,295.00	
	<b>Total</b>		<b>\$1,295.00</b>	

**INSTALLATION COSTS: \$50.00**

**ACCEPTED AND AGREED TO:**

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

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

\_\_\_\_\_  
**Customer Signature**

\_\_\_\_\_  
**Associated Petroleum Products, Inc.**

**Frank D. Pupo, Jr.**

\_\_\_\_\_  
**Printed Name**

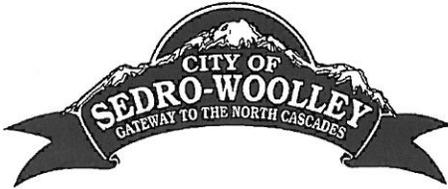
\_\_\_\_\_  
**Printed Name**

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

\_\_\_\_\_  
**Title: Executive VP/COO**

CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010



7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 32

**CITY OF SEDRO-WOOLLEY**

Sedro-Woolley Municipal Building  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
Phone (360) 855-9922  
Fax (360) 855-9923

Eron M. Berg  
City Supervisor/City Attorney

---

MEMO TO: City Council  
FROM: Eron Berg  
RE: Hay Lease Agreement  
DATE: November 10, 2010

ISSUE: Should the Council approve the attached Lease Agreement with Lonnie and Tarrie Benson?

BACKGROUND: The City has leased approximately 20 acres of land to Lonnie and Tarie Benson since it was purchased in 2007. The draft attached for your approval tonight includes some revised language that makes it clear that the City reserves its right to use the land for parking during certain community events and the whole site for fireworks.

The Bensons have been good to work with and have kept the site clean and orderly. It is my recommendation that we continue to lease the land to them.

RECOMMENDATION: Motion to approve the attached Lease Agreement with Lonnie and Tarrie Benson.

## LEASE AGREEMENT

This lease made and entered into by and between CITY OF SEDRO-WOOLLEY, a Municipal Corporation of the State of Washington, hereinafter called the "LESSOR", and Lonnie and Tarie Benson, husband and wife, hereinafter called "LESSEE".

### I. PURPOSE:

In consideration of an in accordance with the terms, covenants and conditions hereinafter set forth, the LESSOR hereby leases to the LESSEE the premises and property described below in this agreement for the purpose of removing hay.

### LEGAL DESCRIPTION

A portion of the property legally described in Exhibit A more specifically identified by the attached map. On-site boundaries shall be established by LESSOR and LESSEE.

### II. USE OF FACILITIES:

A. The LESSEE may use only those facilities within the area described above and identified on the attached map. The LESSEE shall be limited to the cutting of hay on approximately 20 acres of land. Further, LESSEE shall ensure haying of the premises shall be done within acceptable management practices. Failure to use the property solely for the purpose set forth in this section shall result in the LESSEE forfeiting the lease.

All operations under this lease shall be conducted in a manner that will not in any way interfere with public use and enjoyment of adjoining lands under the ownership and/or jurisdiction of the City. Necessary precautions will be taken by the LESSEE to ensure the safety of the public in all phases of operation under this lease. All hay must be cut upon reaching maturity.

B. **CITY'S RESERVATION OF USE.** The City reserves the right to designate in the field and/or modify the boundaries of hay cutting sites and to eliminate sites from cutting when deemed necessary by the City. **The City reserves the right to use the entire site as a sludge application area for the City's municipal sewage sludge and LESSEE agrees to abide by all requirements of the City's sludge application permit, including but not limited to restrictions on access following a sludge application to the fields.** The City further reserves the right to use the East 200 feet of the site for parking during City-sanctioned events and LESSEE agrees to cut the hay to allow for that use as required by the City. The City also reserves the right to use and/or allow the use of the entire site for the annual fireworks display.

III. TERM

This lease shall commence on January 1, 2011, and expire on June 30, 2011, provided that this lease shall automatically renew for successive six-month terms on the same terms and conditions stated herein unless either party provides written notice at lease thirty (30) days prior to the end of the term that it wishes to terminate this lease.

IV. LEASE PAYMENT SCHEDULE

The LESSEE shall pay \$500.00 in rent to LESSOR for the use and occupation of the premises described in section I.

LESSEE shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, on Rent or other sums owing under the terms of this Lease commencing the date such Rent or other sum is due and payable. In the event LESSOR pays any sum or incurs any expense which LESSEE is obligated to satisfy or pay under this Lease, or which is made on behalf of LESSEE, LESSOR shall be entitled to receive reimbursement thereof from LESSEE upon demand, together with interest thereon from the date of expenditure at the rate stated above. Payment must be made no later than the 5<sup>th</sup> day of the first month of the term. Make checks payable to: City of Sedro-Woolley, 325 Metcalf Street, Sedro-Woolley, WA 98284.

LESEE shall pay all necessary leasehold taxes as required by law.

V. IMPROVEMENTS:

LESSEE shall not make any alterations, additions, or improvements to the premises.

VI. MANAGEMENT

A. Weed Control. LESSEE shall protect water resources and streams from pollution and/or contamination by using no pesticides or herbicides.

B. Management. The premises, and all improvements regardless of ownership thereon, shall be managed and maintained in accordance with customary standards of the industry.

C. Hazardous, Toxic or Harmful Substances.

1. Deleterious Material. LESSEE shall not make, or suffer to be made, any filling in of the premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes,

hydrocarbons, any other pollutants, or other matter within or upon the premises, except as approved in writing by the LESSOR. If the LESSEE fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the premises, the LESSEE agrees that the LESSOR may, but is not obligated to, remove such materials and charge the LESSEE for the cost of removal and disposal.

2. Hazardous, Toxic or Harmful Substances.

a. LESSEE shall not keep on or about the premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out LESSEE's permitted use under subsection II, and hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out LESSEE's permitted use under subsection II, and unless LESSEE fully complies with all federal, state and local laws, regulations, statutes and ordinances, now in existence or as subsequently enacted or amended.

b. LESSEE shall:

(1) Immediately notify the LESSOR of (i) all spills or releases of any hazardous substance affecting the premises, (ii) all failures to comply with any federal, state or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the premises by, or any correspondence, orders, citations or notifications from any regulatory entity concerning the hazardous substances affecting the premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the premises; and

(2) On request, provide copies to the LESSOR of any and all correspondence, pleadings, and/or reports received by or required of LESSEE or issued or written by LESSEE or on

LESSEE's behalf with respect to the use, presence, transportation or generation of hazardous substances related to the premises.

c. LESSEE shall be fully and completely liable to the LESSOR, and shall indemnify, defend and save harmless LESSOR and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of LESSEE's use, disposal, transportation, generation and/or sale of hazardous substances or that of LESSEE's employees, agents, assigns, subleases, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

#### VIII. SUBLEASES and ASSIGNMENTS

A. Sublease. The premises, in whole or in part, and appurtenances thereon shall not be subleased.

B. Assignment. LESSEE shall not hypothecate, mortgage, assign, encumber, transfer or otherwise alienate this lease, or any interest therein or engage in any other transaction which has the effect of transferring or affecting the right of enjoyment of the premises. This lease shall not be assigned.

#### IX. INSURANCE:

LESSEE, at LESSEE's expense, further agrees to provide adequate property damage and liability insurance for LESSOR, and agrees to hold LESSOR harmless for any and all claims arising from the acts of its agents and employees. LESSEE shall present a certificate of insurance in the amount of one million (\$1,000,000) dollars for liability insurance to LESSOR, that names City of Sedro-Woolley as an additional insured as follows: "IT IS AGREED CITY OF SEDRO-WOOLLEY, ITS OFFICIALS, AGENTS AND EMPLOYEES ARE ADDITIONAL INSURED." LESSEE shall provide a certificate of insurance with the first payment for of each term of this agreement.

#### X. INDEMNITY:

The LESSEE covenants and agrees to assume all responsibility and liability connected with the use and occupation of the leased premises during the entire period of this lease and to save and hold harmless the LESSOR from any and all claims, rights, or actions, or for damages of every kind, character and description that may be occasioned by or through LESSEE's use and occupation of said premises for any work, labor, or construction done thereon, which may or might be suffered or claimed by any party or person or corporation done thereon, which

may or might be suffered or claimed by any party or person or corporation, whatsoever, either to property or person and to defend any and all actions that may or might be instituted in which the LESSOR shall become a party by virtue of this lease, and to pay any and all judgment that may or might be obtained against the LESSOR thereby.

XI. RIGHT OF ENTRY:

The LESSOR reserves the right and LESSEE hereby expressly grants to LESSOR the right of entry to the premises for any purpose and specifically the application of sludge and other reserved uses as identified in Paragraph II herein.

XII. TERMINATION:

A. LESSOR shall have the right to terminate this lease for any default in payments on the part of LESSEE or breach of any condition of this lease. Such termination shall become effective thirty (30) days after written notice of termination is presented to LESSEE. It is also agreed that each party shall have the right to terminate the lease, without cause, by giving two (2) months written notice.

B. If LESSEE violates or breaches or fails to keep or perform any covenant, agreement, term or condition of this lease, and if such default or violation shall continue or shall not be remedied within ten (10) days (thirty [30] days in the case of nonpayment of rent or other payments due hereunder) after notice in writing thereof given by LESSOR to LESSEE specifying the matter claimed to be in default, LESSOR, at its option, may immediately declare LESSEE's rights under this lease terminated, and reenter the premises and repossess itself thereof, as of its former estate. If upon the reentry of LESSOR, there remains any personal property of LESSEE or of any other person, firm or corporation upon the premises, LESSOR may, but without the obligation to do so, remove said personal property and place the same in a public warehouse or garage, as may be reasonable, at the expense and risk of the owners thereof, and LESSEE shall reimburse LESSOR for any expense incurred by LESSOR in connection with said removal and/or storage. Notwithstanding any such reentry, the liability of LESSEE for the full rent provided for herein shall not be extinguished for the balance of the term of this lease.

XIII. AMENDMENTS:

Any amendments, revisions, supplements or additions to this lease or the attached exhibits shall be made in writing executed by the parties hereto, and neither LESSOR nor LESSEE shall be bound by verbal or implied agreements. Such changes may be made by formal amendment of the lease with approval of the City Council.

XIV. NOTICE:

Mail all correspondence to:

City of Sedro-Woolley

ATTN: Eron Berg, City Supervisor

325 Metcalf Street

Sedro-Woolley, WA 98284

(360) 855-1661

XV. CONDITION AT END OF LEASE

Prior to vacating the premises, the LESSEE shall leave the premises and all improvements thereon to which LESSOR has elected to claim title in the state of repair and cleanliness required to be maintained by LESSEE during the term of the lease and shall peaceably and quietly surrender the same to LESSOR.

XVI. ENTIRE AGREEMENT

This written lease or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

---

LESSOR:  
DATED:

LESSEE:  
DATED:

---

Mike Anderson, Mayor

---

Lonnie Benson

Attest:

---

Tarie Benson

---

Patsy Nelson, Finance Director

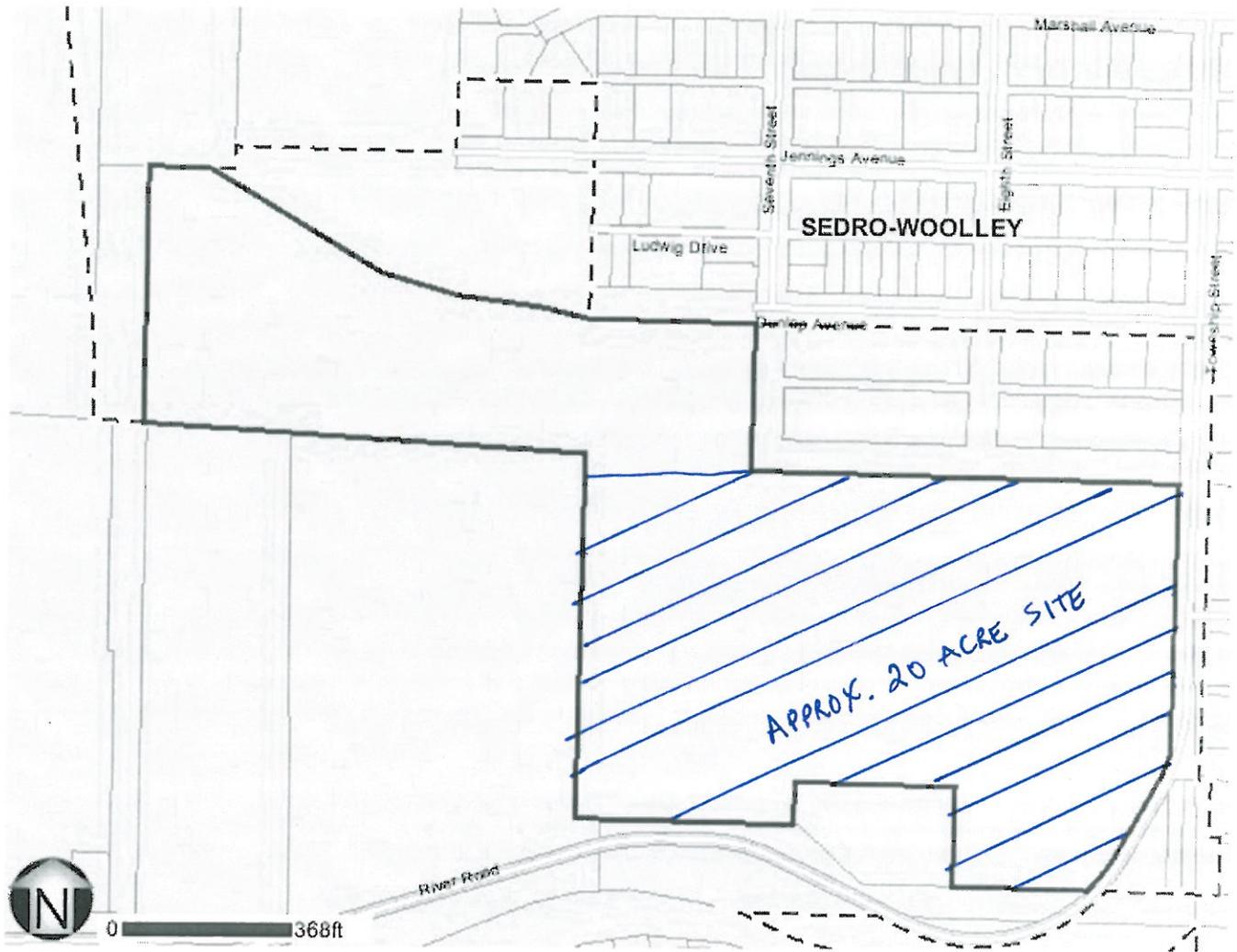
Approved as to form:

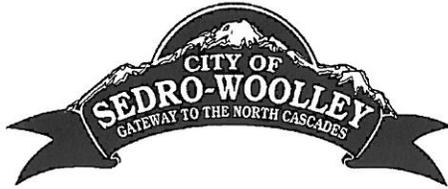
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Eron Berg, City Attorney

## EXHIBIT A

PARCEL A: BLOCKS 112, 122, 123, 124, 125, 126, 127, 138, 139 AND 140, PLAT OF THE TOWN OF SEDRO, SKAGIT COUNTY, W.T., ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 18, RECORDS OF SKAGIT COUNTY, WASHINGTON. TOGETHER WITH ALL VACATED STREETS AND ALLEYS ADJACENT THERETO AS VACATED BY ORDER FILED IN COMMISSIONERS FILE NO. 11231. EXCEPT THE FOLLOWING DESCRIBED TRACT: THOSE PORTIONS OF LOTS 1 THROUGH 14 OF BLOCK 139 AND LOTS 18 THROUGH 29 OF BLOCK 139 AND BLOCK 141 AND VACATED WATER AVENUE AND THE VACATED ALLEY IN BLOCK 139 WHICH LIE NORTH OF RIVER ROAD, EAST OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 14, BLOCK 139, AND WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF BLOCK 139, ALL IN THE PLAT OF THE TOWN OF SEDRO AS RECORDED IN VOLUME 1 OF PLATS AT PAGE 18, RECORDS OF SKAGIT COUNTY, WASHINGTON; EXCEPT THE NORTH 32 FEET THEREOF. ALSO TOGETHER WITH PARCEL B: THAT PORTION OF THE FOLLOWING DESCRIBED TRACT LYING SOUTHERLY OF THE CENTERLINE OF THAT CERTAIN DITCH EASEMENT CONVEYED TO THE CITY OF SEDRO WOOLLEY BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 649376; THE SOUTH 600 FEET OF THE FOLLOWING DESCRIBED TRACT (AS MEASURED ALONE THE EAST LINE THEREOF, AND BY A LINE DRAWN PARALLEL TO THE SOUTH LINE THEREOF) THAT PORTION OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE WEST LINE OF THE PLAT OF THE TOWN OF SEDRO, SKAGIT COUNTY, W.T., ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 18. RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHEAST 1/4, 1,000.93 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF THOSE PREMISES CONVEYED TO THE CITY OF SEDRO WOOLLEY BY DEED DATED APRIL 20, 1964, AND FILED UNDER AUDITOR'S FILE NO. 649381; THENCE NORTH ALONG THE EAST LINE OF SAID CITY OF SEDRO WOOLLEY PREMISES 517 FEET, MORE OR LESS, TO THE SOUTH LINE OF THOSE PREMISES TO THE CITY OF SEDRO WOOLLEY BY DEED DATED MARCH 12, 1956, FILED JULY 2, 1956, UNDER AUDITOR'S FILE NO. 536237; THENCE EAST ALONG SAID SOUTH LINE 150 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID PREMISES CONVEYED BY DEED FILED UNDER AUDITOR'S FILE NO. 538237; THENCE NORTH ALONG THE EAST LINE OF SAID LAST MENTIONED CITY OF SEDRO WOOLLEY PREMISES 450 FEET TO AN ANGLE POINT IN SAID EAST LINE; THENCE CONTINUE NORTH 19 DEGREES 30' EAST ALONG SAID EAST LINE 258 FEET TO THE SOUTH LINE OF ALEXANDER STREET AS NOW ESTABLISHED IN THE CITY OF SEDRO WOOLLEY; THENCE EAST ALONG THE SOUTH LINE OF SAID ALEXANDER STREET AND SAID SOUTH LINE PRODUCED TO THE WEST LINE OF SAID PLAT OF THE TOWN OF SEDRO, SKAGIT COUNTY, W.T.; THENCE SOUTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING, EXCEPT ROAD, EXCEPT THAT PORTION CONVEYED TO SKAGIT COUNTY BY DEED RECORDED MARCH 27, 1977, UNDER AUDITOR'S FILE NO. 853514. SITUATE IN SKAGIT COUNTY, WASHINGTON.





CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 3e

CITY OF SEDRO-WOOLLEY  
Sedro-Woolley Municipal Building  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
Phone (360) 855-0771  
Fax (360) 855-0733

Mark A. Freiberger, PE  
Director of Public Works/City Engineer

MEMO TO: City Council and Mayor Mike Anderson  
FROM: Mark A. Freiberger, PE  
RE: **Final Acceptance**  
**SR 20/F&S Grade Road and Skagit Industrial Park Roadway Improvements Project**  
**Interwest Construction, Inc.**  
DATE: November 2, 2010 (for Council review November 10, 2010)

**ISSUE** Should Council approve final acceptance of the SR 20/F&S Grade Road and Skagit Industrial Park Roadway Improvements Project as constructed by Interwest Construction, Inc. of Burlington, WA in the amount of \$1,686,009.63 (including sales tax)?

**BACKGROUND/DISCUSSION**

The public works contract for the SR 20/F&S Grade Road and Skagit Industrial Park Roadway Improvements Project with Interwest Construction, Inc. of Burlington, WA was executed on March 2, 2009. The work was started on May 18, 2009, with substantial completion on October 21, 2009 and final completion on November 5, 2010.

We have filed Notice of Completion documents with Washington Department of Labor & Industries and Department of Revenue. Once clearance is received from these agencies, retention will be released.

**FINANCIAL**

Funds for this project were from the Accounts 104 Construction Skagit Project, 401 Cumulative Sewer Reserve, and 104 Construction – PUD Water Lines.

**ANALYSIS**

**FINAL COST SUMMARY**

Interwest construction contract, final	\$1,686,009.63
Miscellaneous Construction costs	\$ 165,282.60
David Evans & Associates, Inc. Construction Engineering (final)	\$ 302,109.63
City CM Costs	\$ 26,220.92
WSDOT CM Costs	\$ 2,921.37
<b>Subtotal Construction</b>	<b>\$2,182,544.15</b>
<b>Design &amp; Design Phase Environmental (includes Signal design in 2006)</b>	<b>\$ 780,800.89</b>
<b>Right of Way &amp; Donations</b>	<b>\$ 243,716.00</b>
<b>TOTAL PROJECT COST</b>	<b>\$3,207,061.04</b>

<b>PROJECT BUDGET FINAL</b>	<b>\$3,312,634.18</b>
<b>CHANGE (under budget)</b>	<b>\$ 105,573.14</b>

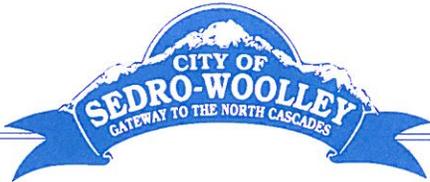
The adjusted design and construction budget was \$3,312,634.18. Seven change orders were issued during the course of the work for an increase of \$228,033.13, or 16.1%. Included in this was addition of sidewalk from F&S Grade Road to the roundabout under Change Order 1 at the request of the city totaling \$132,128.90, and \$9,934.71 in PUD water changes reimbursed by PUD. Factoring in these items, other change order work was \$85,969.52, or 6% of the contract amount. Unit quantity final increases added an additional \$38,724.09, or 2.7%. Construction management costs increased by \$47,464.72 over the budget, mainly for design and construction management related to the added work, and additional costs due to the city requested suspension of work. Other construction costs included PSE street lights and relocation expenses related to the right of way work. The final cost is \$105,573.14 under the revised budget. \$55,573.14 of this total is the reduction in city GMA Impact Fees budgeted for the project. The remaining \$50,000 is unused commitment to the project by Patrick Road LLC. All other budgeted federal, state and local funds were fully expended.

**MOTION:** *Move final acceptance of the SR 20/F&S Grade Road and Skagit Industrial Park Roadway Improvements Project as constructed by Interwest Construction, Inc. of Burlington, WA in the amount of \$1,686,009.63 (including sales tax).*

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 4

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SUBJECT: PUBLIC COMMENT

Name:  
Address:  
Narrative:

PUBLIC  
HEARING(S)

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 5

# Memorandum

**To:** Mayor Anderson and City Council  
**From:** Patsy Nelson *Patsy*  
**Date:** 11/1/2010  
**Re:** Property Tax Levy Ordinances Public Hearing (first reading)

---

**Background information:** The attached property tax ordinance has two components. The first is voter approved bond tax revenues and the second is general property tax revenues.

Voter Approved Bond Tax Revenues Part of the ordinance is for the debt service for the Public Safety Building which was previously approved by the voters of Sedro-Woolley. Low-income senior citizens and disabled persons do not pay this tax. The 2011 tax request is \$210,000 which is the same as 2009 and 2010.

General Property Tax Revenues As the population of the City is greater than 10,000, we fall under the Implicit Price Deflator (IPD) levy limit factor. The IPD limits the property tax levy to the lesser of 100% plus inflation or 101 percent (plus new construction and annexation). The Department of Revenue calculates the rate of inflation based upon the percentage change in the IPD. For the 2011 tax year the change in the IPD is 1.539 percent which limits the 2011 property tax to 101% of the 2010 dollar amount of tax (plus any new construction & annexations). Properties in the two new annexed areas will pay property taxes at the same rate as those properties previously existing within the City limits.

The Skagit County Auditor's Office has not yet determined the preliminary assessed valuation. The tax rate is calculated based upon the Assessor's valuation and the Council's tax request. The final assessed valuations and resulting tax rate, will not be known until January, 2011.

A levy increase in the amount of 1% would result in \$17,358 of additional property tax. Low-income senior citizens and disabled persons either do not pay this tax or receive a tax reduction, as determined by the Skagit County Assessor's Office. The use of this 1% tax increase is not limited to the general fund. It may be restricted for specific items such as the acquisition of Park land, etc.

The Mayor's preliminary budget shows 2011 property taxes at the same dollar amount as 2010 (plus new construction & annexations).

Other general fund revenues are anticipated to remain at their current level extending through 2011. All indicators predict a long, slow economic recovery.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SEDRO-WOOLLEY APPROVING THE PROPERTY TAX LEVY.

WHEREAS, The City Council of the City of Sedro-Woolley has properly given notice of the public hearing held November 10, 2010, to consider the City of Sedro-Woolley 2011 Real Estate Property Tax Levy; and

WHEREAS, the City Council, after hearing, and after duly considering all relevant evidence and testimony presented, has determined that the City of Sedro-Woolley will not require an increase or decrease in general property tax revenue from the previous year, in addition to the increase resulting from the addition of new construction and improvements to property, addition of properties as a result of annexation and any increase in the value of state assessed property, in order to discharge the expected expenses and obligations of the City of Sedro-Woolley and in its best interest; and

WHEREAS, per a 1996 citizen voted and approved GO Bond issuance, it is necessary to increase property taxes to pay GO Bond principal and interest; and

WHEREAS, the City's actual levy amount from the previous year was \$1,735,760; and

WHEREAS, the population of this City is more than 10,000; and now, therefore,

IT IS HEREBY ORDAINED, by the City Council of the City of Sedro-Woolley, an increase in the regular property tax levy shall not be imposed in addition to the increase resulting from the addition of new construction and improvements to property, addition of properties as a result of annexation and any increase in the value of state-assessed property. It is further ordained that the City Council hereby authorizes the 2011 levy in the amount of an increase of 0.00% from last year, or \$0.00 not to exceed the levy limit as allowed by law.

Also levied here is an amount necessary to fund the debt service of the 1996 G/O Bond Fund (Public Safety Building) in the amount of \$210,000.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS 23rd DAY OF NOVEMBER, 2010.

\_\_\_\_\_  
Mike Anderson, Mayor

ATTEST:

\_\_\_\_\_  
Finance Director

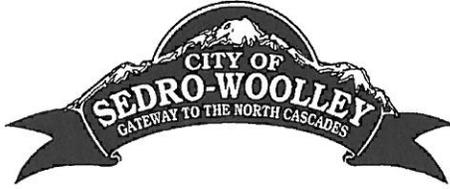
APPROVED AS TO FORM:

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

NEW  
BUSINESS

CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010



7:00 P.M. COUNCIL CHAMBERS Sedro-Woolley Municipal Building  
AGENDA NO. 6

CITY OF SEDRO-WOOLLEY

325 Metcalf Street  
Sedro-Woolley, WA 98284  
Phone (360) 855-9922  
Fax (360) 855-9923

Eron M. Berg  
City Supervisor/City Attorney

---

MEMO TO: City Council  
FROM: Eron Berg  
RE: Comcast Franchise Agreement  
DATE: November 10, 2010

ISSUE: Should the Council approve the attached Franchise Agreement with Comcast?

BACKGROUND: The City's current franchise with Comcast expired one year ago. We have been engaged in negotiations over the new agreement since that time. There are a number of changes between the agreements (both the old and the draft new agreement are attached for your review) and a summary of some of the more significant changes follows:

	<u>Proposed Agreement</u>	<u>Current Agreement</u>
1. Term:	Five years with a renewal	10 years
2. Franchise Fee:	5%	limited by federal law
3. EG Channel:	\$.24/subscriber/month	n/a
4. Insurance:	\$2,000,000.00 coverage	unchanged

There are a number of other changes between the agreements including more detail on public works projects and coordination, addressing defaults and competitive equity. Much of this franchise is based on federal law and much is based on a Comcast standard agreement. It appears to me that this agreement will address our needs and allows Comcast to continue to occupy the public rights of way to deliver cable TV services to the community.

RECOMMENDATION: First Reading only. Any comments or concerns?

**FRANCHISE**

**Between**

**SEDRO-WOOLLEY, WASHINGTON**

**And**

**COMCAST OF WASHINGTON IV, INC.**

## **Franchise**

This Franchise (hereinafter, the "Franchise") is between City of Sedro-Woolley (hereinafter, "City") and Comcast of Washington IV, Inc. (hereinafter, "Grantee").

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

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITION OF TERMS	1
SECTION 2. GRANT OF AUTHORITY	3
2.1 Grant	3
2.2 Other Ordinances	3
2.3 Term of Franchise	3
2.4 Effective Date	3
2.5 Renewal	3
2.6 Reservation of Authority	3
2.7 Competitive Equity	4
2.8 Conditions of Sale	4
SECTION 3. CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM	6
3.1 Permits and General Obligations	6
3.2 Conditions on Occupancy of Public Ways	6
3.2.1 Relocation at Request of City	6
3.2.2 Temporary Relocation at Request of Third Party	6
3.2.3 Restoration of Public Ways	6
3.2.4 Safety Requirements	7
3.2.5 Trimming of Trees and Shrubbery	7
3.2.6 New Construction or Relocation	7
3.3 Cable System Mapping	9
SECTION 4. SERVICE OBLIGATIONS	9
4.1 General Service Obligation	9
4.2 Programming	9
4.3 No Discrimination	9
4.4 New Developments	10
4.5 Prohibition Against Reselling Service	10
SECTION 5. FEES AND CHARGES TO CUSTOMERS	10
5.1 Rates, Fees, Charges and Deposits	10
SECTION 6. CUSTOMER SERVICE	10
6.1 Customer Service Standards	10
6.2 Customer Bills	10
6.3 Privacy Protection	10
6.4 Customer Survey	10
SECTION 7. OVERSIGHT, REGULATION AND FEES	11
7.1 Franchise Fee	11
7.2 Utility Tax	11
7.3 Late Charges and Interest	11
7.4 Franchise Fee Audit	11
7.5 Oversight of Franchise	12
7.6 Technical Standards	12
7.7 Maintenance of Books, Records and Files	12
7.7.1 Books and Records	12

	7.7.2 File for Public Inspection	12
	7.7.3 Proprietary Information	13
<b>SECTION 8.</b>	<b>TRANSFER OR CHANGE OF CONTROL</b>	<b>14</b>
	8.1 Transfer or Change of Control	14
<b>SECTION 9.</b>	<b>INSURANCE AND INDEMNITY</b>	<b>14</b>
	9.1 Insurance	14
	9.2 Indemnification	14
<b>SECTION 10.</b>	<b>SYSTEM DESCRIPTION AND COMPLIMENTARY SERVICE</b>	<b>16</b>
	10.1 System Capacity	16
	10.2 Service to School Buildings	16
	10.3 Service to Governmental and Institutional Facilities	16
<b>SECTION 11.</b>	<b>EDUCATIONAL AND GOVERNMENTAL ACCESS</b>	<b>17</b>
	11.1 E.G. Channel	17
	11.2 Capitol Contribution for EG Equipment	17
	11.3 Channel Location	17
<b>SECTION 12.</b>	<b>ENFORCEMENT AND TERMINATION OF FRANCHISE</b>	<b>17</b>
	12.1 Notice of violation or Default	17
	12.2 Grantee's Right to Cure or Respond	17
	12.3 Public Hearings	18
	12.4 Enforcement	18
	12.5 Technical Violation	19
<b>SECTION 13.</b>	<b>MISCELLANEOUS PROVISIONS</b>	<b>19</b>
	13.1 Force Majeure	19
	13.2 Notice	20
	13.3 Entire Franchise	20
	13.4 Severability	20
	13.5 Governing Law	20
	13.6 Modification	21
	13.7 No Third-Party Beneficiaries	21
	13.8 No Waiver of Rights	21
	13.9 Counterparts	21
	<b>SIGNATURE PAGE</b>	<b>22</b>

## COMCAST FRANCHISE

### **SECTION 1 - Definition of Terms**

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

1.1. "Basic" or "Basic Service" means cable service as defined by the FCC as basic service tier.

1.2. "Cable Service(s)" shall mean (1) the one-way transmission to Subscriber/Customers of (a) video programming, or (b) other programming service, and (2) Subscriber/Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.3. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided within the Franchise Area.

1.4. "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

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

1.6. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

1.7. "Franchise" shall mean this document and any amendments or modifications hereto.

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

1.9. "City" means City of Sedro-Woolley or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Grantee" shall mean Comcast of Washington IV, Inc.

1.11. "Gross Revenue" means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not

## COMCAST FRANCHISE

limited to monthly basic, premium and pay-per-view fees, installation fees, and equipment rental fees. Gross Revenue shall not include advertising or home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

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

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

**SECTION 2 - Grant of Authority**

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

2.2. Police Powers. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Grantor. Nothing in this ordinance awarding a franchise in accordance herewith shall be construed as an abrogation by the City of any of its lawful police powers.

2.3. Term of Franchise. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be for five (5) years from the effective date of this Franchise, then at any time during the three (3) year Franchise renewal period, Grantee may request an extension of the Franchise for an additional five (5) years, unless extended or terminated sooner as hereinafter provided.

2.4. Effective Date. The effective date of this Franchise shall be the date of Grantees signed acceptance following the adoption of this Franchise by the City, unless Grantee fails to file with the City an unconditional written acceptance of this Franchise and post the security required hereunder within one-hundred twenty (120) days of the date of adoption of this Franchise by the City's City Council, in which event this Franchise shall be voidable at the option of the City, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise may be terminated.

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

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

## COMCAST FRANCHISE

### 2.7. Competitive Equity.

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

2.7.2. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City Code requires the applicant to mail, via certified or registered mail, a copy of the approved ordinance to existing providers prior to applicant's acceptance.

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

### 2.8 Conditions of Sale.

2.8.1 If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Grantor lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

2.8.2 The Grantee and the Grantor agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms

## COMCAST FRANCHISE

of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Grantor, the Grantee and the Grantor may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Grantor or the Grantee.

**SECTION 3 – Construction and Maintenance of the Cable System**

3.1. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment shall be maintained in good and safe condition. The location of all facilities, poles, conduits, cables, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be approved by the City of Sedro-Woolley and shall be located so as to minimize interference with the designated use of the Public Ways at the time of Cable System facilities installation. If the facilities, poles, conduits, cables and equipment will be installed along a substandard or under developed roadway then the location shall conform to the approved road standard for the designated use of the Public Way.

3.2. Conditions on Occupancy of Public Ways.

3.2.1. Relocation at request of City. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Ways when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by City, City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by City due to Grantee's delay. If City requires Grantee to relocate its facilities located within the Public Ways, City shall make a reasonable effort to provide Grantee with an alternate location within the Public Ways. If public funds are available to any Person using such Public Ways for the purpose of defraying the cost of any of the foregoing, the City shall upon written request of the Grantee make application for such funds on behalf of the Grantee.

3.2.2. Temporary Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

## COMCAST FRANCHISE

3.2.4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Public Ways.

3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to, any of its Cable System facilities in the Public Ways. Any planned tree trimming must be coordinated in advance with the City Public Works Department to ensure that designated Heritage Trees and Street Trees are being properly addressed and evaluated by arborist if required by the City. All such trimming and arborist evaluation if required shall be at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.2.6. New Construction or Relocation. All new construction of Cable Systems by the Grantee shall be placed underground per Sedro-Woolley Municipal Code; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality.

Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment. The location of all ground mounted facilities shall be coordinated in advance with the City Public Works Department via the Right of Way construction permitting process.

3.2.6.1 In the event of a City Public Works project that requires conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes, or sidewalk installation. Grantee agrees to bear the costs of converting Grantee's cable system from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering -- To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete cable system related engineering coordination with the other utilities involved in the project.

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

## COMCAST FRANCHISE

1. If the City contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.
2. If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the City or its contractor, Grantee shall have the option to hire their own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.
3. If Grantee chooses option (2), the City and its contractor(s) are responsible to coordinate with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.

C. Within the conversion area, Grantee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench or for work performed outside the City's project scope. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in item B above.

3.2.6.2 In the event of a Local Improvement District (LID) project that is sponsored by the City and which requires relocation of Grantees facilities, Grantee shall not be reimbursed by the LID funding for all expenses incurred as a result of the project. In the event of a Local Improvement District (LID) project that requires relocation of Grantees facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project. The intent of this section is to provide funding for Grantee for those LID projects which are citizen driven and primarily for aesthetic purposes while requiring Grantee to relocate at its own expense as part of a City sponsored LID.

3.2.6.3 The Grantee shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Grantee may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) Grantee is granted a permit for such work by the City.

3.2.6.4 In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for the all time and material costs associated with the conditioned underground conversion of cable facilities. The City shall not be liable for time and material costs related to requirements on subdivisions or planned unit developments. Grantee and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

## COMCAST FRANCHISE

3.2.6.5 Unless otherwise directed by the City, Grantee shall install anchors and guys necessary to support the additional strain imposed on any Pole by attachment of the Equipment. If The City installs or replaces guys and/or anchors to support the additional strain imposed by attachment of the Equipment, Grantee shall reimburse the City on demand for the entire cost incurred by the City for such installation or replacement (including, but not limited to the cost of installing or transferring guys to such anchors).

3.3. Cable System Mapping: Within 60 days of the date of execution of this agreement and upon request thereafter the Grantee shall provide in a digital format, a map of those basic portions of the cable system that are located within the public right of way. The format of the data shall be suitable for overlaying on the Grantor's GIS mapping system which uses NAD 83 as the horizontal datum. The data shall indicate overhead cables and underground cables.

### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least sixty (60) dwelling units per underground trench mile. Subject to the density requirement, Grantee shall offer Cable Service at standard installation rates to all new homes or previously unserved homes located within one-hundred twenty five (125) aerial feet of the Grantee's aerial distribution cable, or within sixty (60) underground trench feet of either aerial or underground distribution facilities.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be the fully allocated cost of the installation that exceeds the standards set forth above.

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

4.3. No Discrimination. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial, and other business obligations to the Grantee are satisfied. Grantee shall not however be required to continue service to a customer who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

## COMCAST FRANCHISE

4.4. New Developments. The City will provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground installation and/or conversion of cable facilities as part of its normal process of notifying utility providers. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of cable facilities within the development and the developer shall be responsible for the digging and backfilling of all trenches. For conversion of cable facilities as part of the street improvement condition(s), see Section 3.2.6.4 "New Construction and Relocation."

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

### **SECTION 5 - Fees and Charges to Customers**

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

### **SECTION 6 - Customer Service**

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

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

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

6.4. Customer Survey. Upon request, and within ninety 90 days, Grantee shall conduct a survey of the customer's views regarding adequacy of Grantee's services within the City. City may request said survey one time during the initial 5 year term of the Franchise, and again in the second 5 year term in the event the Franchise is extended as provided for herein. Grantee shall provide a copy of the survey to the City for their use

## COMCAST FRANCHISE

in determining grantee's compliance with the Franchise and future cable related needs and interests.

### **SECTION 7 Oversight, Regulation and Fees**

7.1. Franchise Fee. The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.2. Utility Tax. The City reserves the right to enact a utility tax upon the Gross Revenues of the Grantee to the extent permitted by state and federal law.

7.3. Late Charges and Interest: In the event any payment due quarterly is not received within thirty (30) days from the end of the preceding quarter, Grantee shall pay interest on the amount due at the prime rate as listed in the Wall Street Journal on the date the payment was due, compounded daily, until the date the City receives the payment. Payment of such late charge shall in no event excuse or cure any default under or breach of this Agreement by Grantee.

#### 7.4. Franchise Fee Audit.

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

7.4.2. Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section (7.2), the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," either party may bring an action to have the disputed amount determined by a court of law.

## COMCAST FRANCHISE

7.4.3. Any “Finally Settled Amount(s)” due to the City as a result of such audit shall be paid to the City by the Grantee within forty-five (45) days from the date the parties agree upon the “Finally Settled Amount.” Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee’s books and records.

7.4.4 In the event of the “Finally Settled Amount(s)” being an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.

7.5. Oversight of Franchise. In accordance with applicable law, the City shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee’s employee, periodically inspect the construction, operation and maintenance of the Cable System in the Public Ways, as necessary to monitor Grantee’s compliance with the provisions of this Franchise.

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

### 7.7. Maintenance of Books, Records, and Files.

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

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

## COMCAST FRANCHISE

7.7.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee and clearly designated "Proprietary" as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request so Grantee has time to oppose such request if it so chooses.

**SECTION 8 – Transfer or Change of Control**

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

**SECTION 9 - Insurance and Indemnity**

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

9.2. Indemnification. By acceptance of this franchise and the rights and privileges thereby granted, the Grantee covenants and agrees with the City for itself, its successors and assigns, to at all time, defend, indemnify and hold harmless the City, its officers, officials, employees and duly authorized agents from any and all claims, actions, suits, liability, loss, cost, expenses or damages of every kind or description which may accrue to or be suffered by any person or persons or property, and to appear and defend at its own cost and expense, any action instituted or begun against the City for damages by reason of any act(s) or omission(s) of the Grantee, its successors or assigns, exercising any privilege conferred by this Franchise; provided, however, that in the event any such claim, action, suit or demand be presented to or filed with the City or any court having jurisdiction, the City shall notify Grantee thereof, and the Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or

## COMCAST FRANCHISE

demand, or to defend the claim at its sole cost and expense, by attorneys of its own decision; providing that the Grantee shall not be liable for acts and omissions caused by the sole negligence of the City.

**SECTION 10 - System Description and Complimentary Service**

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

10.2. Service to School Buildings. Upon request and as a voluntary initiative, in participation with the "Cable In the Classroom" program the Grantee may provide free Cable Service and free installation (within the installation guidelines described in Section 4.1 of this Franchise) at one outlet to each State accredited public and private K-12 school, not including "home schools," or incarceration facilities, located in the Franchise Area. In the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis in an effort to maintain equitable burdens on each provider.

10.3. Service to Governmental and Institutional Facilities. As a voluntary initiative the Grantee upon request may provide free "Basic" tier Cable Service and free installation (within the installation guidelines described in Section 4.1 of this Franchise) at one outlet to each municipal building and institutional facility located in the Franchise Area. Additional outlets or services will be installed by Grantee at the normal non-discriminatory commercial rate and billed for on a monthly basis at the normal commercial rate as determined by the Grantee's commercial accounts guidelines. "Municipal buildings" are those buildings owned or leased and occupied by the City for government administrative purposes. "Institutional Facilities" are libraries, police stations (not including incarceration facilities) and fire stations but shall not include buildings or sites owned by City such as storage facilities, golf courses, utility offices or other facilities not used for administrative purposes, or those buildings owned by the City but leased to third parties at which government administrative employees are not regularly stationed. In instances wherein the City is leasing and occupying the building, the City shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. The Cable Service provided shall not be used for commercial purposes. The intent of the preceding provision is to ensure availability of local news, weather, and government programming for the benefit of the City administrative staff. For new hookups, the Grantee shall not provide an outlet to such buildings where a non-standard installation (as described in Section 4.1 above) is required, unless the City or building owner/occupant agrees to pay the fully allocated cost of any necessary Cable System extension and/or non-standard installation. If additional outlets of Cable Service or additional services are provided to such buildings beyond those defined herein, the building owner/occupant shall pay the fully allocated costs associated with installation and the service fees, if any, associated therewith. In the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis in an effort to maintain equitable burdens on each provider.

## COMCAST FRANCHISE

### **SECTION 11 - Educational and Governmental Access**

11.1. E.G. Channel. Throughout the term hereof, Grantee shall make available, for the City's use, one (1) Education and Government ("EG") Access Channel for EG programming purposes. The provision of the Access Channel via digital or compressed video technology will not reduce or increase the total number of Access Channels required herein. Upon request and within 180 days, Grantee shall provide a link to one City origination site for transport of City EG programming to Grantee facilities for distribution.

11.2. Capital Contribution for EG Equipment. The Sedro-Woolley City Council, by appropriate action, may initiate and or adjust the monthly capital contribution up to the maximum amount of twenty-five cents (\$.25) per Subscriber per month, provided that such increase or decrease may occur no more often than annually, and shall be effective upon the provision of ninety (90) days notice to the Grantee. The Capital Contribution amount shall be paid quarterly, in conjunction with the Franchise fee schedule. The City agrees that all amounts paid by the Grantee as the Capital Contribution may be added to the price of Cable Services and collected from Subscribers as "external costs," as such term is used in 47 C.F.R. §76.922(f) on the date of this Franchise. In addition, all amounts paid as the Capital Contribution may be separately stated on Subscribers' bills as permitted in 47 C.F.R. §76.985, and shall be characterized as a "EG Fee," or language substantially similar thereto. Grantee shall not be responsible for paying the Capital Contributions with respect to gratis or bad debt accounts. The City shall have discretion to allocate the Capital Contributions in accordance with applicable law, provided that the City submits a summary of capital expenditures from the Capital Contributions to Grantee within sixty (60) days of the end of each calendar year.

11.3. Channel Location. The Franchisee specifically reserves the right to make or change channel assignments in its sole discretion.

### **SECTION 12 - Enforcement and Termination of Franchise**

12.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

12.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the

## COMCAST FRANCHISE

steps being taken and the projected date that they will be completed, which shall be no more than one hundred eighty (180) days from the receipt of the City's written notice without the agreement of the City.

12.3. Public Hearings. In the event the Grantee fails to respond to the City's notice or in the event that the alleged default is not remedied as required under Section 12.2, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City Council that is scheduled at a time that is no less than ten (10) business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

12.4. Enforcement. Subject to applicable federal and state law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the City may:

12.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

12.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

## COMCAST FRANCHISE

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

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

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

### **SECTION 13 - Miscellaneous Provisions**

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

## COMCAST FRANCHISE

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

To the City:

City of Sedro-Woolley  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
Finance Director

To the Grantee:

Comcast of Washington IV, Inc.  
15815 25<sup>th</sup> Ave. W.  
Lynnwood, WA 98087  
Attn: Government Affairs Dept.

with a copy to:

Comcast Cable Communications, Inc.  
1525 75<sup>th</sup> St. S.W.  
Everett, WA 98203  
Attn.: Government Affairs Dept.

13.3. Entire Franchise. This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

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

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

## COMCAST FRANCHISE

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

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

13.8. No Waiver of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, either Grantor or Grantee may have under Federal or state law unless such waiver is expressly stated herein.

13.9. Counterparts. This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

COMCAST FRANCHISE

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

Attest:

City:

\_\_\_\_\_

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

Name:

Title:

Attest:

Comcast of Washington IV, Inc.

\_\_\_\_\_

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

Name:

Title:

ORDINANCE NO. 1337-99

AN ORDINANCE OF THE CITY OF SEDRO-WOOLLEY WASHINGTON, GRANTING UNTO TCI CABLEVISION OF WASHINGTON, INC., THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE FOR TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE A CABLE TELEVISION SYSTEM FOR THE DISTRIBUTION OF TELEVISION AND OTHER ELECTRONIC SIGNALS WITHIN ALL CITY RIGHTS-OF-WAYS.

THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. PURPOSE.

This Franchise shall constitute an agreement between the City of Sedro-Woolley (hereinafter the "City") and TCI Cablevision of Washington, Inc. (hereinafter the "Operator"). The Operator promises to construct, maintain, and operate a Cable Television System for distribution of Cable Service pursuant to the terms of this Franchise and any generally applicable City ordinances as now existing or hereafter amended or enacted. The City agrees to grant the Operator all necessary rights and privileges to use Public Rights-of-Way necessary for a Cable Television System, subject to such generally applicable rules and regulations for use of Public Right of Way as are adopted by the City from tie to time. This agreement shall, as of its effective date, supersede and replace all existing Franchises previously granted by the City of Sedro-Woolley to the Operator or any of its predecessors, subsidiaries or affiliated companies.

"Cable Service" shall be defined in Ordinance No. 1335-99.

"Cable System", "Cable Communications System", or "CATV System" shall be defined in Ordinance No. 1335-99.

SECTION 2: GRANT

The City hereby grants to the Operator a nonexclusive Franchise which authorizes the Operator to construct and operate a Cable System, including transmitting and receiving all other signals, data, digital, voice and audio-visual, over a Cable System, unless covered by a separate franchise or similar authority in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Operator from offering any service over its Cable System that is not prohibited by federal or state law.

ORIGINAL

This Franchise and all rights and privileges granted under the Franchise are subject to, and the Operator must exercise all rights in accordance with, applicable law, including the Cable Ordinance, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police and other powers and applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. In the case of any conflict between the express terms of this Franchise Agreement and the express terms of the Cable Ordinance, this Franchise Agreement shall govern; *provided* that, in cases of conflict between this Franchise Agreement and any ordinance of general application (including the Cable Ordinance) enacted pursuant to the City's police power, the ordinance of general application shall govern unless in conflict with an express provision of this Franchise. The Operator does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights as defined in this agreement.

### **SECTION 3: LENGTH OF FRANCHISE.**

The length of this Franchise shall be for a term of ten (10) years commencing on the effective date of this ordinance.

### **SECTION 4: SERVICE AREA.**

The Operator's service area shall be the entire incorporated area of the City of Sedro-Woolley, in its present incorporated form or in any later reorganized, consolidated, enlarged, or re-incorporated form.

### **SECTION 5: FRANCHISE FEE.**

The City may impose a franchise fee, if so permitted by State and Federal law. (The present fee shall be paid on a quarterly basis and equal to a percentage of Gross Revenues as defined in section 7.12.030 of the Sedro-Woolley Municipal Code.) Prior to implementation of any new franchise fees the Operator may request, and will be granted, a public hearing by the City Council to discuss the benefits of said franchise fee to the citizens of Sedro-Woolley. Upon a finding of the City Council that such implementation of said franchise fee is reasonably required to meet community needs, taking into consideration the cost to the citizens, the City Council may require the implementation of such franchise fee in accordance with the provisions of this agreement.

(a) Late Payment. Any quarterly franchise fee not paid by the Operator within thirty (30) days of the end of a quarter shall bear interest at the rate of twelve percent (12%) per annum or whatever maximum amount is allowed under state law, whichever is greater, from the due date until paid.

(b) Financial Reports. Each franchise fee payment shall be accompanied by a financial report on a form provided by the City, and approved by the Operator, showing the basis for the Operator's computation and separately indicating revenues received by the Operator within the City from Basic Cable Service, pay service and other applicable sources or revenue, and such

other information directly related to confirming the amount of the Operator's Gross Revenues as may be reasonably requested by the City.

(c) Audit by City. The City shall have the right, upon reasonable notice or no less than two working days, to inspect the books and records of the operator during normal business hours, for the purpose of ascertaining the actual gross revenues collected by the Operator. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual gross revenues collected by the Operator, the Operator agrees to pay to the City the costs of such audit. In the event that such audit results in a determination that additional franchise fees are due the City, the Operator further agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment from the Operator is due. Unless within three (3) years from and after such payment due date the City initiates action for recovery of such franchise fee in a court of competent jurisdiction, such recovery shall be barred and the City shall be stopped from asserting any claims whatsoever against the Operator relating any such alleged deficiencies.

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

(e) Taxes. Nothing in this section shall limit the Operator's obligation to any applicable local, state, or federal taxes.

**SECTION 6: FUTURE PROVISIONS.**

The City and the Operator acknowledge that the former should be provided with a Cable System that has the same general capabilities, capacity, and charges for service, as those provided other cities having approximately the same Subscriber base as the addition served by the Operator in the Whatcom-Skagit-Island county area of the State of Washington. Operator shall provide upgrades capable of carrying at least 77 video channels and at least 19 F.M. radio channels within the City within eighteen (18) months. Prior to the selection of new channels and services, if requested by the City the operator shall establish a public input process, including at least one public meeting in the City of Sedro-Woolley, which processes may be in conjunction with such processes for other communities in Skagit County.

The City may, at its discretion, request that the operator provide such interactive services as addressability, security, computer interaction, banking, shopping, voice and data transmission. If operator agrees to provide some or all of the requested service within the City, they shall be provided within twenty-four (24) months of any of the following occurrences:

Provision by the Operator of any of the same services identified above to a preponderance of a Cable System:

(a) Within any adjacent community, or;

(b) Within Forty percent (40%) of the municipalities in Whatcom, Skagit, and Island Counties.

Prior to implementation of any such services listed above the Operator may request a public hearing before the City Council to discuss the benefits and costs of said features with the citizens of the City. Upon a finding by the City Council that such features are reasonably required to meet community needs, taking into consideration the expense of providing such services and the potential costs to Subscribers, the City Council may require the implementation of such features in accord with the provisions of this agreement. If the Council deem it necessary, it may, at its own option by a majority vote, extend the time requirements established in this public hearing by the City Council to discuss the benefits of said features to the citizens of the City. Upon a finding by the City Council that such features are reasonably required to meet community needs, taking into consideration the expense of providing such services and the potential costs to Subscribers, the City Council may require the implementation of such features in accord with the provisions of this agreement. If the Council deem it necessary, it may at its own option, by a majority vote, extend the time requirements established in this section. Franchisee shall maintain an office either by itself or in conjunction with another business within Skagit County which shall open no later than 9:00 a.m. and shall close no earlier than 4:30 p.m., Monday through Friday, except for state and national holidays. Said office shall provide for the receipt of payments, facilitation of request of service of disconnection of services and shall provide a drop off point for equipment relinquished by the Subscriber.

#### **SECTION 7: PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNELS.**

Within eighteen (18) months of the effective date of this Franchise, unless such time is extended by mutual written agreement between the parties, the Operator shall make provisions so that the City shall have the capability of broadcasting tapes of government and public interest ~~meeting~~ on a Government Access Channel. This Government Access Channel may be shared with ~~shared~~ ~~services~~ throughout Skagit, Island, and Whatcom counties.

The City shall within eighteen (18) months be provided with one (1) government/educational Access Channel capable of taped broadcast. An additional channel over and above this channel shall be made available for City purpose when this channel is in use for access purposes with programming during 80% of the hours between 8:00 a.m. and 10:00 p.m. during any consecutive ten (10) week period. Programming on the additional channel required shall be distinct and non-repetitive of the previous channel. The Operator shall, within six (6) months following a request by the City, provide another designated Access Channel for this purpose.

Additional Channels over and above these shall be made available for City purposes when any of the two (2) designated channels is in use for access purposes with programming during fifty percent (50%) of the hours between 8:00 a.m. and 10:00 p.m., during any consecutive ten (10) week period. Programming or additional Channels required shall be distinct and non-repetitive of

the previous channel. The Operator shall, within six (6) months following a request by the City, provide another designated Access Channel for this purpose.

The Operator shall continue to provide additional channels under the same conditions not to exceed a total of five channels. If additional channels are designated for community use, but, after one year, such channel(s) are not programmed at least twenty-five percent (25%) of the hours between 8:00 a.m. and 10:00 p.m. with programming, the access users will, within six (6) months of receiving written notice from the Operator, group their programming into one contiguous block of time of their choosing and moved to another access channel. Such channel shall then revert to the Operator for its unrestricted use within the terms and conditions of this ordinance.

Contributions to Public, Educational and Government ("PEG") access will not be considered in lieu of a franchise fee or other obligations to the City.

#### **SECTION 8: GOVERNMENT ACCESS EQUIPMENT.**

Upon request the Operator shall provide and install the necessary equipment for local government cable casting within eighteen (18) months of a request of the City unless extended by mutual written agreement. Such equipment shall not be less in quantity nor equivalent quality than those listed in **Appendix A**. The equipment provided by the operator may be shared by other government agencies within Skagit County, with the consent of the City.

#### **SECTION 9: EMERGENCY OVERRIDE.**

In accordance with and at the time required by the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.51.

Subject to Federal and State laws and regional planning authorities, control of these emergency override facilities shall be the responsibility of the City. The City shall hold a Franchisee, its agents, employees, officers, and assigns harmless from any claims arising out of the emergency use of its transmitting facilities by the City. The City, at it option, may elect to share this service with adjoining communities.

#### **SECTION 10. INDEMNITY.**

By acceptance of this franchise and the rights and privileges thereby granted, the Franchisee covenants and agrees with the City for itself, its successors and assigns, to at all times, defend, indemnify and hold harmless the City, its officer, officials, employees and duly authorized agents from any and all claims, actions, suits, liability, loss, cost, expensed or damages of every kind or description which may accrue to or be suffered by any person or persons or property, and to

appear and defend at its own cost and expense, any action instituted or begun against the City for damages by reason of any act(s) or omission(s) of the Franchisee, its successors or assigns, exercising any privilege conferred by this Franchise; provided, however, that in the event any such claim, action, suit or demand be presented to or filed with the City or any court having jurisdiction, the City shall notify Franchisee thereof, and the Franchisee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, or to defend the claim at its sole cost and expense, by attorneys of its own decision; providing that the Franchisee shall not be liable for acts and omissions caused by the sole negligence of the City.

#### **SECTION 11. INSURANCE.**

So long as the Franchisee shall possess any right or privilege granted pursuant to this franchise, and before the commencement of any work thereunder, the Franchisee shall deliver to the City Clerk, a certificate of insurance showing that it has procured and is maintaining at all times a policy of public liability insurance, subject to the approval of the City Attorney naming the City as an additional insured, protecting the City against claims for injuries or death to Persons or damage to property which may arise from or in connection with the performance of the Franchise by the Franchisee, its agents, representatives, employees or subcontractors.

The policy of insurance shall evidence policy limits as follows:

- A. Automobile liability insurance with limits no less than Two Million Dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage; and
- B. Commercial general liability insurance written on an occurrence basis with limits no less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence and Two Million dollars (\$2,000,000.00) aggregate for Personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

These limits are listed in 1999 dollars and shall be adjusted on the five year anniversary(ies) of this Franchise for inflation, at the request of the City.

Any payment of deductible or self insured retention shall be the sole responsibility of a Franchisee. Subject to the indemnification provision of Section 10 herein, the Franchisee's insurance shall be primary insurance as respects the City, and the City shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

#### **SECTION 12: PUBLIC BUILDINGS.**

The Operator shall provide without charge for installation or monthly Rate, basic service, and outlets at such municipal buildings and accredited schools (public and private-nonprofit) as

specified in **Appendix "B"** and **"C"** as well as other such buildings that may be constructed during the period of the Franchise that are passed by cable and within 125 feet of the trunk or distribution system.

**SECTION 13: PENALTIES.**

The City may, following a hearing of the City Council, apply any of the following penalties in connection with delays in system performance. The City shall, prior to any hearing which may result in the imposition of fines, provide the Operator a reasonable opportunity to correct alleged violations by notifying the Operator in writing within thirty (30) days of the City's discovery of the alleged violation, stating the nature of the alleged non-compliance. If, following such hearing, it is determined by the City Council that the Operator has failed to comply with the schedule set forth in the Franchise, monetary penalties will be imposed as set forth below for each day beyond thirty (30) days that the Operator has not fulfilled the requirements(s):

- a. Regional P.E.G. facilities required by Section 6: \$200. Per day not to exceed a total of \$50,000.
- b. Equipment and channels committed by the Operator to the City for access purposes described in Section 6, 7 and 8, \$200. Per day not to exceed a total of \$50,000.
- c. Coverage of annexed areas where such is not completed as required b Section 9, \$200. Per day not to exceed a total of \$50,000..

In addition, the term of the Franchise shall be reduced at City's option by each day that the Operator is out of compliance in any of the above respects.

Termination of the Franchise pursuant to the procedure outlined in the City's cable communications ordinance, as now existing or hereafter amended or enacted (provided such procedure provides notice and an opportunity for a fair hearing consistent with due process,) may be imposed for any violation of one or more of the above listed items. The Operator and the City agree that any of the above described violations, unless excused, would constitute failure to comply with a material provision of the Franchise.

No penalty shall be imposed without a hearing before the Council or its designated representative(s). No penalty, bond, forfeiture, or termination shall be imposed for delays where such delays are the result of causes beyond the control and/or without fault or negligence of the Operator. The Operator shall be entitled to an extension of time of construction is suspended or delayed by the City, or where unusual weather, acts of God (e.g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are beyond the control of the Operator, delay progress provided that the Operator has not, through its own actions or inactions, substantially contributed to the delay. The amount of time allowed will be determined by the City and the Operator.

The extensions of time in any case shall not be less than the extent of the actual non-contributory delay experienced by the Operator. If payment of any of these penalties is delinquent by three (3) months or more, the City may require partial or total forfeiture of performance bonds or other surety.

**SECTION 14: INDEPENDENT CONTRACTOR.**

This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the city or to bind the City in any manner or thing whatsoever.

**SECTION 15: INCORPORATION OF CITY'S CABLE COMMUNICATIONS AND PUBLIC RIGHT OF WAY USE ORDINANCES.**

The parties acknowledge that the City of Sedro-Woolley is contemplating enacting ordinances of general applicability to cover telecommunications, cable communications, and use of public right-of-way by franchisees. Provided, that said ordinances and amendments shall be substantially applicable to similar situated franchisees and licensees, the terms of any such ordinances, whether now existing, or hereafter enacted or amended, shall apply to the Franchisee and this Franchise, unless prohibited by State or Federal law, and shall be incorporated herein by reference.

**SECTION 16: ENTIRE AGREEMENT.**

This Franchise, and exhibits that are attached hereto and incorporated herein by reference, represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties. However, the City reserves the right to waive any of these sections without affecting the applicability of other sections not so specifically waived. Waiver of any Franchise requirement or Ordinance sections by the City shall be in writing in order to be effective.

**SECTION 17: SUCCESSORS OR ASSIGNS.**

This Franchise Agreement, including all appendices and the City's Cable Communications Ordinance No. 1335-99, as now existing or hereinafter amended, shall bind the Operator, its heirs, successors, transferees and assigns.

**SECTION 18: ACCEPTANCE.**

This grant of Franchise and its terms and provisions shall be accepted by the Operator by the submission of a written instrument, executed and sworn to by a corporate officer of the Operator before a Notary Public, and filed with the City Clerk within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

**SECTION 19: NOTICE.**

Written notices shall be deemed to have been duly served if delivered in Person to the individual or entity for whom it was intended, or if delivered at or sent by registered or certified United States mail to the last business address known to the party who gives the notice. All notices and requests shall be addressed to the City of Sedro-Woolley and the Operator as follows:

**CITY:** City Clerk  
City of Sedro-Woolley  
720 Murdock Street  
Sedro-Woolley WA 98284

**OPERATOR:** General Manager  
TCI Cablevision of Washington, Inc.  
777 W. Horton Road  
Bellingham, WA 98226

**SECTION 20: SEVERABILITY.**

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or in invalidity of its application to any Person or circumstance shall not affect the validity of the remainder of the ordinance, or the validity of its application to other Persons or circumstances.

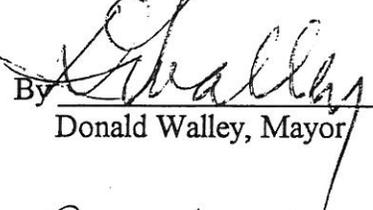
**SECTION 21: EFFECTIVE DATE.**

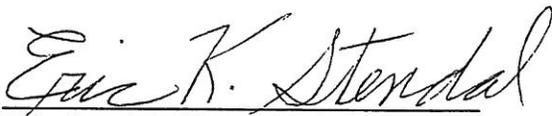
This Ordinance shall take effect thirty (30) days from and after its passage and publication, provided, however, the Franchise granted by this Ordinance shall not become effective until the Operator files written acceptance thereof.

Dated this 8th day of Sept, 19 99.

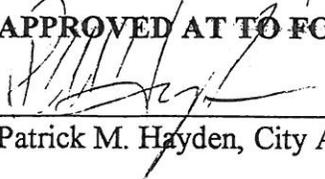
**CITY OF SEDRO-WOOLLEY:**

**ATTEST:**

By   
Donald Walley, Mayor

  
Eric Stendal, City Clerk / Treasurer

**APPROVED AT TO FORM:**

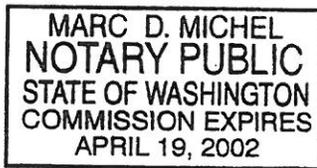
  
Patrick M. Hayden, City Attorney



STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF SNOHOMISH )

On this 2<sup>ND</sup> day of NOVEMBER, 1999 Personally appeared before me JAMES H. SMITH, III of TCI Cablevision of Washington, Inc., known to be the individual described herein and who executed the foregoing agreement, and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 2<sup>ND</sup> day of NOVEMBER, 1999.



Marc D. Michel  
Notary Public in and for the State of Washington  
Residing at: Bellevue  
My Commission Expires: 4-19-02  
Print Name: MARC D. MICHEL

## APPENDIX "A"

A Video Camera Package To Include The Following:

- \* 2 Video Cameras
- \* Tripod With Dolly and one ceiling hanger for camera
- \* Ball Leveler
- \* 2 Microphones With Cables
- \* Necessary Interconnecting Cables And Wiring
- \* Necessary Audio Wiring To Connect Into The Sound System, At The City Council Chambers.
- \* Video Tap Recorder with Playback Capabilities.
- \* Other Items Which May Be Necessary For The Video Package.

## **APPENDIX "B"**

TCI shall provide without charge service to each governmental building including but not limited to the following:

Sedro-Woolley City Hall

Sedro-Woolley Public Library

Sedro-Woolley Museum

Sedro-Woolley Police Station

Sedro-Woolley Fire Station

Sedro-Woolley City Shops

Sedro-Woolley Municipal Court

## APPENDIX "C"

TCI shall provide without charge service to each accredited school (public and private-nonprofit) building including but not limited to the following:

Sedro-Woolley Middle School

Sedro-Woolley High School

Central Elementary School

Evergreen Elementary School

Sedro-Woolley Alternative School

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 7

# Memorandum

**To:** Mayor Anderson and City Council

**From:** Patsy Nelson *Patsy*

**Date:** 11/04/10

**Re:** 2011 Budget (first reading)

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The attached ordinance summarizes the budget amounts for each fund as detailed in the Mayor's 2011 Preliminary Budget which was presented and discussed at the November Worksession. All funds have been balanced according to Council goals and direction as outlined in the Mayor's 2011 Budget Memo. Staff will be available to answer any additional Council questions.

ORDINANCE NO.

AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF SEDRO-WOOLLEY, WASHINGTON, FOR THE FISCAL YEAR ENDING DECEMBER 31, 2011.

WHEREAS, the Mayor of the City of Sedro-Woolley, Washington, completed and placed on file with the City Finance Director, a proposed budget and estimate of the amount of the moneys required to meet the public expenses, bond retirement and interest, reserve funds and expenses for the City of Sedro-Woolley for the fiscal year ending December 31, 2011, and a notice was published that the Sedro-Woolley City Council would meet on the 23th day of November, 2010, at the hour of 7:00 P.M., at the Sedro-Woolley City Hall, for the purpose of making and adopting a budget for the year 2011, and giving taxpayers within the city limits of Sedro-Woolley an opportunity to be heard upon said budget; and

WHEREAS, the Sedro-Woolley City Council did meet at said time and place and did then consider the matter of said proposed budget; and

WHEREAS, the proposed budget does not exceed the lawful limit of taxation allowed by law to be levied on the property within the City of Sedro-Woolley for the purposes set forth in said budget, and the estimated expenditures set forth in said budget being all necessary to carry on the government of said City for said year and being sufficient to meet the various needs of said City during said period.

NOW, THEREFORE, the City Council of the City of Sedro-Woolley do ordain as follows:

Section 1. The budget for the City of Sedro-Woolley, Washington, for the year 2011 is hereby adopted at the fund level in its final form and content as set forth in the document entitled City of Sedro-Woolley 2011 Annual Budget, three copies of which are on file in the Office of the Finance Director.

Section 2. Estimated resources, including fund balances or working capital from each separate fund of the City of Sedro-Woolley, and aggregate totals for all such funds combined, for the year 2011 are set forth in summary form below, and are hereby appropriated for expenditure at the fund level during the year 2011 as set forth below:

FUND:	AMOUNT:
001 GENERAL FUND	4,806,272
101 PARKS FUND	658,390
102 CEMETERY FUND	169,330
103 STREET FUND	725,297
104 ARTERIAL STREET FUND	556,189
105 LIBRARY FUND	424,620
106 CEMETERY ENDOWMENT FUND	115,696
107 CUM RESERVE FOR CITY PARKS FUND	6,763
108 STADIUM FUND (HOTEL/MOTEL)	58,653
109 SPECIAL INVESTIGATIONS FUND	4,409
113 PATHS AND TRAILS FUND	40,725
205 G/O BOND REDEMPTION FUND 2008	284,660
206 G/O BOND 2008 RESERVE FUND	155,850
230 G/O BOND 1996 REDEMPTION FUND	297,251
302 CUM RES FOR C/E CAP OUT FUND	464,051
303 FACILITIES MAINTENANCE RESERVE FUND	110,180
310 MITIGATION RES FOR POLICE FUND	11,609
311 MITIGATION RES FOR PARKS FUND	119,964
312 MITIGATION RES FOR FIRE FUND	13,252
330 FIRE STATION 2 CONSTRUCTION FUND	27,383
332 PWTF SEWER CONSTRUCTION FUND	610,856
401 SEWER FUND	3,582,748
402 CUM RES FOR SEWER OPERATIONS FUND	525,329
407 98 SEWER REV BOND FUND	796,764
410 CUM RES FOR SEWER FACILITES FUND	2,362,231
411 98 SEWER REV BOND RESERVE FUND	376,482
412 SOLID WASTE OPERATIONS FUND	2,078,936
413 SOLID WASTE RATE STABILIZATION FUND	90,130
425 STORMWATER FUND	381,904
501 EQUIPMENT REPLACEMENT FUND	824,109
621 SUSPENSE (SWSD)	40,000
TOTAL ALL FUNDS	20,720,033

Section 3. The City Finance Director is directed to transmit a certified copy of the budget hereby adopted to the State Auditor's Office and to the Association of Washington Cities.

Section 4. This ordinance shall be in force and take effect five (5) days after its publication according to law.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS 23RD DAY OF NOVEMBER, 2010.

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Mike Anderson, Mayor

ATTEST:

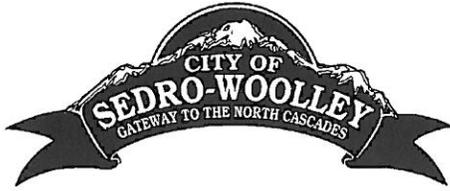
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Finance Director

APPROVED AS TO FORM:

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City Attorney



CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010

7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. \_\_\_\_\_

CITY OF SEDRO-WOOLLEY  
Sedro-Woolley Municipal Building  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
Phone (360) 855-0771  
Fax (360) 855-0733

Mark A. Freiberger, PE  
Director of Public Works/City Engineer

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MEMO TO: City Council and Mayor Mike Anderson  
FROM: Mark A. Freiberger, PE  
RE: **Possible Adoption – Ordinance \_\_\_\_\_ Final Stormwater Management Standards and Stormwater Maintenance**  
DATE: October 29, 2010 (for Council review November 10, 2010)

**ISSUE**

Should Council adopt Ordinance \_\_\_\_\_ adopting permanent amendments SWMC Ch. 13.36 and SWMC Ch. 13.40, providing for the adoption of the 2005 Stormwater Manual for Western Washington, including the thresholds and minimum requirements?

**BACKGROUND**

The Cities Western Washington Phase II Municipal Stormwater Permit contains a number of deadlines for implementation of the Phase II stormwater requirements. Among these requirements, Section S5.C.3.b of the Permit requires that the city develop and implement an ordinance or regulatory mechanism to effectively prohibit non-stormwater, illegal discharges to the cities' stormwater system, due by August 16, 2009. Section S5.C.4 of the Permit requires that the city develop a program to reduce pollutants in stormwater, due by August 16, 2009. Section S5.C.4.a requires that the city adopt an ordinance controlling runoff from Development, Redevelopment and Construction sites. Section S5.C.4.c.i requires that the city adopt an ordinance identifying responsible parties for post construction operation & maintenance of stormwater facilities and best management practices.

Sedro-Woolley Municipal Code (SWMC) Section 13.36 Stormwater Management covers runoff control. SWMC 13.40 Stormwater Maintenance addresses system maintenance. Also included under S5.C.4 of the Permit are requirements for setting up a recordkeeping system, permitting process, inspection system and staff training to implement the requirements of the ordinances, also due by August 16, 2009. These activities have been completed or are under way in compliance with the Permit.

Staff engaged Pat Hayden to update these SWMC sections to meet the requirements of Sections S5.C.3 and 4.

**DISCUSSION**

Council originally adopted interim Ordinance 1648-09 on August 12, 2009 with an expiration date of February 12, 2010 to allow for completion of the SEPA process period. This was extended and additional six months by Ordinance 1676-10 adopted May 12, 2010. No comments were received during the SEPA process. Ecology also did not provide comments.

The attached ordinance represents final adoption of the revisions to SWMC sections 13.36 and 13.40 in compliance with S5.C.3 and 4.

Continuing follow up activities include an update of the 1997 Sedro-Woolley Stormwater Management Plan and the 2006 Sedro-Woolley Public Works Department Standards to reflect the changes to the SWMC.

**FINANCIAL**

The impacts of the new requirements were discussed in detail in the August 12, 2009 memorandum introducing the code changes. The following analysis is a repetition of that discussion. The revisions will involve significant investment of staff resources. This will vary depending on permit activities (private

development). At a minimum, monitoring the existing 57 private facilities and performing annual inspections and documentation will require significant time. Additionally, development permit tracking will require staff resources. The tracking system is now in place, and the inventory of private facilities is under way.

In the 2007 Stormwater Management Program Gap Analysis, OTAK estimated that the administrative staffing requirement for activities would be approx. 1.3 full time employees (FTE) after program implementation, with an annual cost of approx. \$90,000 for construction and private facilities and an additional 1.5 FTE and \$115,000 for municipally owned facilities, including stormwater system maintenance activities including catch basin and storm drain cleaning and ditch maintenance, plus street sweeping. Additional permit activities including illicit discharge detection and elimination, public outreach, reporting, etc. are estimated to add another \$275,000 and 1.7 FTE, for a total of \$440,000 and 4.5 FTE. Current funding for the Stormwater Utility is approximately \$236,000, allowing for 1.2 FTE from Street and 0.3 FTE from Engineering, plus \$16,000 for 0.27 FTE from Street for Sweeping, total \$252,000 and 1.77 FTE. This leaves a shortfall of \$188,000 and 2.73 FTE.

## **ANALYSIS**

Staff is attempting to implement the Permit requirements with existing staff, consisting of 1.47 FTE from the Street Dept. performing storm drainage maintenance activities and street sweeping, plus 0.3 FTE between the Engineering Services Manager and Public Works Assistant for administrative functions. This will be inadequate to properly administer the program should Ecology begin aggressive enforcement efforts. It also does not address capital improvements needed to the system, estimated in the Gap Analysis at \$616,300 per year over the five year window used in the analysis. Completion of these projects are funding driven.

Failure to implement the requirements of the Permit may also subject the city to potential litigation from environmental watchdog groups.

On the positive side, it is likely that the cost of maintenance will improve as the city catches up on storm drainage maintenance activities for municipally owned systems. We have made significant strides in the past three years with the emphasis on storm drain cleaning and recently with replacement of the Vactor equipment. To date, approximately 75% of the system has been cleaned and inspected, and we anticipate completion of the first round in 2011. Our goal is to reduce cleaning activities to a sustainable level at something under the current allowance.

In addition, the ongoing economic slow down has significantly reduced new construction and the corresponding need to monitor and report on these activities. We still however face a significant staff effort to bring the existing private systems into compliance, as required starting with the approval of this ordinance.

## **RECOMMENDATION**

Staff recommends adoption of this ordinance in order to meet Permit requirements. Staff will continue to monitor developments of permit requirements and current efforts by other agencies to mitigate these unfunded mandates. In addition, Staff will continue to implement requirements of the permit as time permits, and will track actual costs for these efforts and address identified shortfalls to council during subsequent Budget cycles.

## **MOTION:**

***Move adoption of Ordinance \_\_\_\_\_ adopting permanent amendments SWMC Ch. 13.36 and SWMC Ch. 13.40, providing for the adoption of the 2005 Stormwater Manual for Western Washington, including the thresholds and minimum requirements.***

Ordinance No. \_\_\_\_\_

**AN ORDINANCE ADOPTING PERMANENT AMENDMENTS OF SWMC CH. 13.36 AND SWMC CH. 13.40, PROVIDING FOR THE ADOPTION OF THE 2005 STORMWATER MANAGEMENT MANUAL FOR WESTERN WASHINGTON (SWMMWW), INCLUDING THE THRESHOLDS AND MINIMUM REQUIREMENTS.**

WHEREAS, the City of Sedro-Woolley has previously, in compliance with RCW Ch. 90.48 and the Federal Water Pollution Control Act, adopted interim stormwater maintenance and management ordinances into compliance with the 2005 Stormwater Management Manual for Western Washington, and

WHEREAS, the City of Sedro-Woolley has complied with the State Environmental Policy Act for the updates to SWMC Ch. 13.36 and Ch. 13.40, and

Whereas, the City Council of the City of Sedro-Woolley has completed SEPA review of these ordinances, and

Whereas, the City of Sedro-Woolley City Council finds that the following amendments to SWMC Chapter 13.36 and SWMC Chapter 13.40 adopting the 2005 Stormwater Management Manual for Western Washington (SWMMWW), and Appendix 1 of the Western Washington Phase II Stormwater Permit, are in the interests of the public safety and welfare, now therefore,

**THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1. SWMC Ch. 13.36.** SWMC Ch 13.36 is hereby repealed, and a new SWMC Ch. 13.36 as set forth on Exhibit A is hereby adopted in its entirety.

**Section 2. SWMC Ch 13.40.** SWMC Ch 13.40 is hereby repealed, and a new SWMC Ch. 13.40 as set forth on Exhibit B is hereby adopted in its entirety.

**Section 3. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 4. Effective Date.** This ordinance shall be effective five (5) days after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
MAYOR

Attest:

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Finance Director/City Clerk

Approved as to form:

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City Attorney

# EXHIBIT A

## Chapter 13.36 STORMWATER MANAGEMENT

### 13.36.010 Purpose.

It is the purpose of this chapter to:

- A. Minimize water quality degradation and sedimentation in streams, ponds, lakes, wetlands and other water bodies;
- B. Minimize the impact of increased runoff, erosion and sedimentation caused by land development and maintenance practices;
- C. Maintain and protect groundwater resources;
- D. Minimize adverse impacts of alterations on ground and surface water quantities, locations and flow patterns;
- E. Decrease potential landslide, flood and erosion damage to public and private property;
- F. Promote site planning and construction practices that are consistent with natural topographical, vegetational and hydrological conditions;
- G. Maintain and protect the city stormwater management infrastructure and those downstream;
- H. Provide a means of regulating clearing and grading of private and public land while minimizing water quality impacts in order to protect public health and safety; and
- I. Provide minimum development regulations and construction procedures which will preserve, replace or enhance, to the maximum extent practicable, existing vegetation to preserve and enhance the natural qualities of (lands,) wetlands and water bodies.

### 13.36.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

The definitions in

- (1) Wetlands Guidance Appendix 2, Definitions,
- (2) The Glossary and Notations, in the 2005 Ecology Stormwater Management Manual for Western Washington; and
- (3) Section 2. Definitions Related to Minimum Requirements, Appendix I of the NPDES Phase II Municipal Stormwater Permit,

are incorporated by reference, unless the context clearly indicates that another definition is applicable.

“Director” means the city engineer or his designee.

“Person” means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

“Stormwater Management Manual” or “Manual” means Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the 2005 Ecology Stormwater Management Manual for Western Washington, excepted as modified in SWMC 13.36.060(A)(4).

“Stormwater Management Permit” is a permit or approval issued by the director pursuant to SWMC Chapter 13.36 for a regulated activity.

“Stormwater Maintenance Permit” is a permit or approval issued by the director pursuant to SWMC Chapter 13.40 for maintenance of facility constructed for a regulated activity.

### **13.36.030 Abrogation and interpretation of provisions.**

A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate or impair any existing ordinances, regulations, issued permit requirements, easements, covenants or deed restrictions, except as expressly stated. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be liberally construed to serve the purposes of this chapter.

### **13.36.040 Applicability.**

A. When any provision of any other ordinance of the city conflicts with this chapter, that which provides the higher standard of environmental protection shall apply unless specifically provided otherwise in this chapter.

B. Prior to the applicant fulfilling the requirements of this chapter and obtaining a Stormwater Management Permit, the city shall not grant any approval or permission to conduct a regulated activity, including, but not limited to the following: building permit, commercial or residential; binding site plan; conditional use permit; franchise right-of-way construction permit; fill, grading and clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; unclassified use permit; variance; zone reclassification; subdivision; short subdivision; special use permit; sewer discharge, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

C. Regulated activities as defined in Section 13.36.060 shall be conducted and a Stormwater Management Permit shall be issued only after the city approves a stormwater site plan (SSP) which meets the requirements of the Manual.

D. In most situations, non-permanent development activities shall be governed by the Stormwater Management Permit. At the completion of the activities governed by the Stormwater Management Permit, the continuing maintenance and operation of any facilities that continue in operation will be governed by the Stormwater Maintenance Permit issued pursuant to SWMC Ch. 13.40. Both permits will be issued by the director, and shall be administered together to meet the Minimum Requirements and BMPs of the Manual.

**13.36.050 Stormwater Management Manual and Appendix I of Permit adopted; Administrative Provisions Authorized.**

A. The Thresholds, Definitions, Minimum Requirements and Exceptions, Adjustment and Variance Criteria found in Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the 2005 Ecology Stormwater Management Manual for Western Washington are hereby adopted by reference, and are hereinafter collectively referred to as the “Manual”, excepted as modified in SWMC 13.36.060(A)(4).

B. The Director may, in his discretion, modify, adopt and publish standards, designs and administrative regulations for permitting, to supplement the Manual, provided that the standards, designs and administrative regulations are consistent with the Manual. The standards, designs and administrative regulations may include non-structural preventative actions and source reduction approaches such as low impact development (LID) techniques consistent with the Manual. Prior to adoption the Director shall solicit written and verbal comment at an advertized public hearing.

C. Any standards, designs, and administrative regulations adopted by the Director shall be published in printed form maintained for inspection and copying at office of City Engineer. Any such standards, designs, and administrative regulations shall have the same effect as a provision of this ordinance, and its administration and application to a particular permit is subject to appeal and variance in the same manner as the provisions of this ordinance.

**13.36.060 Regulated activities and exempt activities.**

A. Regulated Activities.

1. All development and redevelopment shall be regulated activity subject to this ordinance, and shall be subject to the applicable Minimum Requirements of the manual, unless exempted in subsection B of this section.

2. Not all of the Minimum Requirements apply to every development or redevelopment project. The applicability of the Minimum Requirements to a project or activity shall be determined by the thresholds in the Manual.

3. If new development and redevelopment at sites below the regulatory threshold of this chapter were subject to regulation at the time of permitting, they shall continue to be subject to stormwater regulations, even if the site activities resulted in land disturbances of less than the one (1) acre threshold. The local stormwater requirements in effect at the time of permit issuance shall apply, unless the Minimum Requirements for new development and re-development contained in this chapter are applicable.

4. The requirements of this chapter apply to all development and redevelopment within the City of Sedro-Woolley, including sites which do not meet the 1-acre or larger threshold of the Manual.

B. Exemptions. The following activities are exempt pursuant to the Manual from the requirements of this chapter:

1. Forest practices:

Forest practices regulated under Title 222 WAC, except for Class IV General forest practices that are conversions from timber land to other uses, are exempt from the provisions of the Minimum Requirements.

2. Commercial agriculture:

Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timberland to agriculture, and the construction of impervious surfaces are not exempt.

3. Oil and Gas Field Activities or Operations:

Construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are exempt. Operators are encouraged to implement and maintain Best Management Practices to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.

4. Road Maintenance:

i. The following road maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.

ii. The following road maintenance practices are considered redevelopment, and therefore are not categorically exempt:

a. Removing and replacing a paved surface to base course or lower, or repairing the roadway base;

b. Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders;

c. Resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete; or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete.

5. Underground utility projects:

Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement for Construction Stormwater Pollution Prevention.

C. All other development or redevelopment is subject to one or more of the Minimum Requirements of the Manual.

### **13.36.070 Adjustments and Variances.**

A. Adjustments. Adjustments to the Minimum Requirements may be granted by the Director provided that a written finding of fact is prepared, that addresses the following:

1. The adjustment provides substantially equivalent environmental protection.
2. Based on sound Engineering practices, the objectives of safety, function, environmental protection and facility maintenance, are met.

Adjustments under this subsection do not require a public notice or hearing, and the decision of the director under this subsection is not subject to appeal.

B. Exceptions/Variances. Exceptions/variances (exceptions) to the Minimum Requirements may be granted by the Director following legal public notice of an application for an exception or variance, legal public notice of the Director’s decision on the application, and written findings of fact that documents the Director’s determination to grant an exception. The Director shall keep records, including the written findings of fact, of all local exceptions to the Minimum Requirements.

Project-specific design exceptions based on site-specific conditions do not require prior approval of the Department. The Director must seek prior approval by the Department for any jurisdiction-wide exception.

The Director may grant an exception to the Minimum Requirements if such application imposes a severe and unexpected economic hardship. To determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the Director must consider and document with written findings of fact the following:

1. The current (pre-project) use of the site, and
2. How the application of the minimum requirement(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements; and
3. The possible remaining uses of the site if the exception were not granted; and

4. The uses of the site that would have been allowed prior to the adoption of the Minimum Requirements; and
5. A comparison of the estimated amount and percentage of value loss as a result of the Minimum Requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the Minimum Requirements; and
6. The feasibility for the owner to alter the project to apply the Minimum Requirements.

C. In addition any exception/variances must meet the following criteria:

1. The exception will not increase risk to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
2. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

D. An exception/variance shall be subject to the same notice requirements and appeal process from the decision of the Director as a Type II decision subject to SWMC Ch. 2.90, to the extent applicable and not inconsistent with this chapter.

#### **13.36.080 Stormwater Minimum Requirements and Best Management Practices (BMPs).**

A. The Minimum Requirements of the Manual are adopted and incorporated herein by reference.

B. The site planning process of the Manual and BMP selection and design criteria of the Manual shall be used to implement the Minimum Requirements of the Manual.

C. All development and redevelopment shall apply all known, available and reasonable methods of prevention, control and treatment (AKART), utilizing the BMPs and design criteria of the Manual to comply with the Minimum Requirements of the Manual, prior to discharge into the City of Sedro-Woolley Storm Sewer System permitted by the Department of Ecology

D. No person may conduct activity regulated by this chapter which discharges directly to, or indirectly through the City of Sedro-Woolley Storm Sewer System permitted by the Department of Ecology, in unless they meet the requirements of this chapter and obtain a Stormwater Management Permit or Stormwater Maintenance Permit, or both.

E. All stormwater site plans for regulated activity (development and redevelopment) are subject to review and approval by the director, and shall require a Stormwater Management Permit or Stormwater Maintenance Permit issued by the director pursuant to this chapter. A Stormwater Maintenance Permit may be required by the director as a condition of the Stormwater Management Permit.

F. The director shall adopt BMPs for Low Impact Development (LIDs) techniques pursuant to SWMC 13.36.060(B) as administrative regulations for the implementation of this chapter. The

director may adopt specific BMPs from Chapter 7 of the Low Impact Development Technical Guidance Manual for Puget Sound (PSAT/WSU Extension 2005) or other approved source. In addition, an applicant may seek an adjustment or variance incorporating BMPs for LID techniques into permit approval.

### **13.36.090 Prohibitions.**

A. Illicit discharge to stormwater drainage systems is prohibited. Illicit discharges are defined as those discharges prohibited by the Manual, the Western Washington Phase II Municipal Stormwater Permit, The City of Sedro-Woolley Stormwater Management Plan, and state law.

B. The following categories of nonstormwater discharges are prohibited unless the stated conditions are met:

1. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4.
2. Discharges from lawn watering and other irrigation runoff. These shall be minimized through, at a minimum, public education activities (see section S5.C.1) and water conservation efforts.
3. Dechlorinated swimming pool discharges. The discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.
4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. At active construction sites, street sweeping must be performed prior to washing the street.
5. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed by the director, which addresses control of such discharges.

C. Development and Redevelopment which fails to comply with the requirements of this ordinance is prohibited.

### **13.36.100 Administration.**

A. Director. The director or a designee shall administer this chapter and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter.

B. Review and Approval.

A. Any activity subject to regulation by this chapter shall not be approved until the director issues a written finding that the regulated activity complies with this chapter, or is exempt. The

finding, approvals and conditions shall be incorporated into a “Stormwater Management Permit”. The omission of a Minimum Requirement or BMP on the permit or approved plan shall not relieve the applicant of complying with the Minimum Requirement or BMP if it is made applicable by the manual.

1. If the regulated activity is subject to a permit or approval from any department of the City of Sedro-Woolley, including but not limited to the permits and approvals listed in SWMC Section 13.36.040, a permit or approval shall not be issued until a finding of compliance and a Storm Water Management Permit is issued by the director.

2. If the regulated activity is not subject to any other permit or approval from any department of the City of Sedro-Woolley, but is subject to the provisions of this chapter, then the owner of the affected property and the person conducting the activity shall apply directly to the director for a permit, which shall not be issued until a finding of compliance and a Storm Water Management Permit is issued by the director.

B. Any owner or applicant seeking approval or a permit for activity regulated by this chapter shall, in addition to any other permit necessary for the activity, apply for a Stormwater Management Permit in the form provided by the director, and shall provide the information required to demonstrate compliance with Minimum Requirements and BMPs specified in the Manual. The form of the application shall meet the requirements established by the director.

C. The director may approve, conditionally approve or deny an application for activities regulated by this chapter. Such approval or denial shall be based on the Thresholds, Definitions, Minimum Requirements and Exceptions, Adjustment and Variance Criteria found in Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the 2005 Ecology Stormwater Management Manual for Western Washington, and on any administrative provisions adopted by the director pursuant to SWMC Section 13.36.060.

D. If an adjustment, exception or variance is allowed, it shall be incorporated into the conditions and terms of the permit issued by the director.

E. Inspection. All activities regulated by this chapter shall be inspected by the director. The director shall inspect projects at various stages of the work requiring approval to determine that the regulated activity is complying with the terms of the permit and approval. Stages of work requiring inspection include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the director, a special inspection and/or testing shall be performed.

F. All project applications must address long-term maintenance responsibility and access for maintenance inspections, and all must continue to meet the minimum requirements of the Manual as a condition of the Stormwater Management Permit. When required by the Director, a “Stormwater Maintenance Permit” shall also be required as a condition of the Stormwater Management Permit, pursuant to SWMC Ch. 13.40.

G. The Stormwater Management Permit shall identify the party responsible for compliance, and may require the posting of a bond or surety to guarantee financial responsibility for compliance as a condition of the permit. The amount of the bond or other surety shall not exceed one hundred twenty five percent (125%) of the cost of compliance with the conditions and requirement of the Stormwater Management Permit, as determined by the director.

H. Any applicant may appeal the decision of the director to issue, condition or deny a permit in the same manner as a Type II decision subject to SWMC Ch. 2.90, to the extent applicable and not inconsistent with this chapter.

### **13.36.110 Civil Enforcement.**

The director shall enforce this chapter. Violations of this chapter shall be subject to civil and criminal penalties as set forth in this Chapter. It shall be a violation of this chapter to (a) engage in any regulated activity without a permit issued pursuant to this chapter, (b) to violate the terms and conditions of a permit issued pursuant to this chapter, or (c) to permit, allow, or commit an illicit discharge prohibited by this chapter.

A. General. Enforcement action shall be in accordance with this chapter whenever a person has violated any provision of this chapter. The choice of enforcement action and the severity of any civil penalty shall be based on the nature of the violation, the damage or risk to the public or the public resources, and/or the degree of bad faith of the person subject to the enforcement action.

B. Stop-Work Order. The director shall have the authority to serve a person a stop work order if an action is being undertaken in violation of this chapter. If a portion of a project is in violation of this chapter, the director may issue a stop work order for the entire project, and the order may revoke a Stormwater Management Permit or Stormwater Maintenance Permit.

1. Content of Order. The order shall contain:

a. A description of the specific nature, extent and time of violation and the damage or potential damage; and

b. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection C may be issued with the order.

2. Notice. A stop work order shall be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service, to the person incurring the same.

3. Effective Date. The stop work order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

4. Compliance. Failure to comply with the terms of a stop work order shall result in enforcement actions including, but not limited to, the issuance of a civil penalty.

C. Civil Penalty. A person who fails to comply with the requirements of this chapter, who fails to conform to the terms of an approval or order issued, who undertakes new development without first obtaining city approval, or who fails to comply with a stop work order issued under these regulations shall be subject to a civil penalty.

1. Amount of Penalty. The penalty shall be one hundred dollars for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.

2. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

3. Notice of Penalty. A civil penalty shall be imposed by a notice in writing, either by certified (or registered) mail with return receipt requested or by personal service, to the person incurring the same from the city. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.

4. Application for Mitigation. Any person incurring a penalty may apply in writing within fourteen days of receipt of the penalty to the director for rescission or mitigation of such penalty. Upon receipt of the application, the director may rescind or mitigate the penalty upon a demonstration of extraordinary circumstances, such as the presence of information of factors not considered in setting the original penalty. The decision of the director may be appealed to the city council within thirty days of the decision.

5. Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal in writing to the Skagit County Superior Court within thirty days of the receipt of the penalty, or within thirty days of the decision of the director regarding remission or mitigation of the penalty, whichever is later.

D. Penalties. Penalties imposed under this section shall become due and payable thirty days after receiving it unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable after all review proceedings and final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed the city is not paid within the time specified, the city may take actions necessary to recover such penalty, including legal action to reduce the same to a judgment and collection the same.

E. The director is authorized to seek injunctions, restraining orders, and other civil relief in court as is necessary to enforce this chapter.

### **13.36.120 Criminal Violation.**

In addition to any civil penalty or civil enforcement action, a willful violation of this chapter by any person shall constitute a gross misdemeanor punishable by a five thousand dollar fine, imprisonment in jail not to exceed one year, or both.

### **13.36.130 Fees.**

The applicant shall pay all fees and costs as established by ordinance or resolution prior to issuance of the Stormwater Management Permit or other review and inspections pursuant to this chapter. If no separate fee is established the applicant shall pay a fee based on the hourly rate for City engineering services established by separate ordinance or resolution for plan review and inspections.

# EXHIBIT B

## **Chapter 13.40 STORMWATER MAINTENANCE**

### **13.40.010 Purpose.**

The provisions of this chapter are intended to:

- A. Provide for inspection and maintenance of stormwater facilities in the city to provide for an effective, functional stormwater drainage system;
- B. Authorize the city to require that stormwater facilities be operated, maintained and repaired in conformance with this chapter;
- C. Establish the minimum level of compliance which must be met;
- D. Guide and advise all who conduct inspection and maintenance of stormwater facilities.

### **13.40.020 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

For the purposes of this chapter, the following definitions shall apply:

The definitions in

- (1) Wetlands Guidance Appendix 2, Definitions,
- (2) the Glossary and Notations, in the 2005 Ecology Stormwater Management Manual for Western Washington; and
- (3) Section 2. Definitions Related to Minimum Requirements, Appendix I of the NPDES Phase II Municipal Stormwater Permit,

are incorporated by reference, unless the context clearly indicates that another definition is applicable.

“Director” means the city engineer or his designee.

“Person” means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

“Stormwater Management Manual” or “Manual” means Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the 2005 Ecology Stormwater Management Manual for Western Washington, excepted as modified in SWMC 13.36.060(A)(4).

“Stormwater Management Permit” is a permit or approval issued by the director pursuant to SWMC Chapter 13.36 for a regulated activity.

“Stormwater Maintenance Permit” is a permit or approval issued by the director pursuant to SWMC Chapter 13.40 for maintenance of facility constructed for a regulated activity.

#### **13.40.030 Abrogation and interpretation of provisions.**

A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate or impair any existing ordinances, regulations, issued permit requirements, easements, covenants or deed restrictions, except as expressly stated. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be liberally construed to serve the purposes of this chapter.

#### **13.40.040 Applicability.**

A. When any provision of any other ordinance of the city conflicts with this chapter, that which provides the higher standard of environmental protection shall apply unless specifically provided otherwise in this chapter.

B. This chapter applies to all activities which are subject to SWMC Ch. 13.36, and which have one or more conditions or requirements of a Stormwater Management Permit which are permanent or shall require compliance after the completion of the permitted activity regulated by SWMC Ch. 13.36.

C. All activities regulated by this chapter shall require a Stormwater Maintenance Permit issued pursuant to this chapter. The Stormwater Maintenance Permit shall govern those conditions or requirements of a Stormwater Management Permit which are permanent or shall require compliance after the completion of the permitted activity regulated by SWMC Ch. 13.36.

D. Prior to the applicant fulfilling the requirements of this chapter, the city shall not issue a Stormwater Maintenance Permit.

E. In most situations, non-permanent development activities shall be governed by the Stormwater Management Permit. At the completion of the activities governed by the Stormwater Management Permit, the continuing maintenance and operation of any facilities that continue in operation will be governed by the Stormwater Maintenance Permit issued pursuant to SWMC Ch. 13.40. Both permits will be issued by the director, and shall be administered together to meet the Minimum Requirements and BMPs of the Manual.

**13.40.050 Stormwater Management Manual and Appendix I of Permit adopted; Administrative Provisions Authorized.**

A. The Thresholds, Definitions, Minimum Requirements and Exceptions, Adjustment and Variance Criteria found in Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the 2005 Ecology Stormwater Management Manual for Western Washington are hereby adopted by reference, and are hereinafter collectively referred to as the “Manual”, excepted as modified in SWMC 13.40.060(A)(4).

B. The Director may, in his discretion, modify, adopt and publish standards, designs and administrative regulations for permitting, to supplement the Manual, provided that the standards, designs and administrative regulations are consistent with the Manual. The standards, designs and administrative regulations may include non-structural preventative actions and source reduction approaches such as low impact development (LID) techniques consistent with the Manual. Prior to adoption the Director shall solicit written and verbal comment at an advertized public hearing.

C. Any standards, designs, and administrative regulations adopted by the Director shall be published in printed form maintained for inspection and copying at office of City Engineer. Any such standards, designs, and administrative regulations shall have the same effect as a provision of this ordinance, and its administration and application to a particular permit is subject to appeal and variance in the same manner as the provisions of this ordinance.

**13.40.060 Regulated activities and exempt activities.**

A. Regulated Activities.

1. All development and redevelopment shall be regulated activity subject to this ordinance, and shall be subject to the applicable Minimum Requirements of the manual, unless exempted in subsection B of this section.

2. Not all of the Minimum Requirements apply to every development or redevelopment project. The applicability of the Minimum Requirements to a project or activity shall be determined by the thresholds in the Manual.

3. If new development and redevelopment at sites below the regulatory threshold of this chapter were subject to regulation at the time of permitting, they shall continue to be subject to stormwater regulations, even if the site activities resulted in land disturbances of less than the one (1) acre threshold. The local stormwater requirements in effect at the time of permit issuance shall apply, unless the Minimum Requirements for new development and re-development contained in this chapter are applicable.

4. The requirements of this chapter apply to all development and redevelopment within the City of Sedro-Woolley, including sites which do not meet the 1-acre or larger threshold of the Manual.

B. Exemptions. The following activities are exempt pursuant to the Manual from the requirements of this chapter:

1. Forest practices:

Forest practices regulated under Title 222 WAC, except for Class IV General forest practices that are conversions from timber land to other uses, are exempt from the provisions of the Minimum Requirements.

2. Commercial agriculture:

Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timberland to agriculture, and the construction of impervious surfaces are not exempt.

3. Oil and Gas Field Activities or Operations:

Construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are exempt. Operators are encouraged to implement and maintain Best Management Practices to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.

4. Road Maintenance:

i. The following road maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.

ii. The following road maintenance practices are considered redevelopment, and therefore are not categorically exempt:

a. Removing and replacing a paved surface to base course or lower, or repairing the roadway base;

b. Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders;

c. Resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete; or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete.

5. Underground utility projects:

Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement for Construction Stormwater Pollution Prevention.

C. All other development or redevelopment is subject to one or more of the Minimum Requirements of the Manual.

#### **13.40.070 Maintenance requirements.**

- A. Maintenance Required. All stormwater facilities shall be operated and maintained in accordance with this chapter, the Manual, including the Minimum Standards and BMPs in the Manual, The Western Washington Phase II Municipal Stormwater Permit, the Sedro-Woolley Stormwater Management Plan, and the Stormwater Maintenance Permit.
- B. Compliance. Property owners are responsible for the maintenance, operation or repair of stormwater systems and BMPs. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of the Manual, including the Minimum Standards and BMPs in the Manual, The Western Washington Phase II Municipal Stormwater Permit, the Sedro-Woolley Stormwater Management Plan, and the Stormwater Maintenance Permit.
- C. Financial Responsibility. The property owners are responsible for the maintenance, operation and repair of the stormwater system subject to the Stormwater Maintenance Permit. The director may require a bond or other surety, or a block fund in a federally insured financial institution, as security for the permanent maintenance, operation and repair of the stormwater facilities, as a condition of the Stormwater Maintenance Permit, on such conditions as the director deems reasonable, considering the size and cost of the facility.

#### **13.40.075 Stormwater Minimum Requirements and Best Management Practices (BMPs).**

- A. The Minimum Requirements of the Manual are adopted and incorporated herein by reference.
- B. The site planning process of the Manual and BMP selection and design criteria of the Manual shall be used to implement the Minimum Requirements of the Manual.
- C. All development and redevelopment shall apply all known, available and reasonable methods of prevention, control and treatment (AKART), utilizing the BMPs and design criteria of the Manual to comply with the Minimum Requirements of the Manual, prior to discharge into the City of Sedro-Woolley Storm Sewer System permitted by the Department of Ecology
- D. No person may conduct activity regulated by this chapter which discharges directly to, or indirectly through the City of Sedro-Woolley Storm Sewer System permitted by the Department of Ecology, in unless they meet the requirements of this chapter and obtain a Stormwater Management Permit or Stormwater Maintenance Permit, or both.
- E. All stormwater site plans for regulated activity (development and redevelopment) are subject to review and approval by the director, and shall require a Stormwater Management Permit or Stormwater Maintenance Permit issued by the director pursuant to this chapter. A Stormwater Maintenance Permit may be required by the director as a condition of the Stormwater Management Permit.
- F. The director shall adopt BMPs for Low Impact Development (LIDs) techniques pursuant to SWMC 13.36.060(B) as administrative regulations for the implementation of this chapter. The

director may adopt specific BMPs from Chapter 7 of the Low Impact Development Technical Guidance Manual for Puget Sound (PSAT/WSU Extension 2005) or other approved source. In addition, an applicant may seek an adjustment or variance incorporating BMPs for LID techniques into permit approval.

#### **13.40.080 Adjustments and Variances.**

A. Adjustments. Adjustments to the Minimum Requirements may be granted by the Director provided that a written finding of fact is prepared, that addresses the following:

1. The adjustment provides substantially equivalent environmental protection.
2. Based on sound Engineering practices, the objectives of safety, function, environmental protection and facility maintenance, are met.

Adjustments under this subsection do not require a public notice or hearing, and the decision of the director under this subsection is not subject to appeal.

B. Exceptions/Variances. Exceptions/variances (exceptions) to the Minimum Requirements may be granted by the Director following legal public notice of an application for an exception or variance, legal public notice of the Director's decision on the application, and written findings of fact that documents the Director's determination to grant an exception. The Director shall keep records, including the written findings of fact, of all local exceptions to the Minimum Requirements.

Project-specific design exceptions based on site-specific conditions do not require prior approval of the Department. The Director must seek prior approval by the Department for any jurisdiction-wide exception.

The Director may grant an exception to the Minimum Requirements if such application imposes a severe and unexpected economic hardship. To determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the Director must consider and document with written findings of fact the following:

1. The current (pre-project) use of the site, and
2. How the application of the minimum requirement(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements; and
3. The possible remaining uses of the site if the exception were not granted; and
4. The uses of the site that would have been allowed prior to the adoption of the Minimum Requirements; and
5. A comparison of the estimated amount and percentage of value loss as a result of the Minimum Requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the Minimum Requirements; and
6. The feasibility for the owner to alter the project to apply the Minimum Requirements.

C. In addition any exception/variances must meet the following criteria:

1. The exception will not increase risk to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

2. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

D. An exception/variance shall be subject to the same notice requirements and appeal process from the decision of the Director as a Type II decision subject to SWMC Ch. 2.90, to the extent applicable and not inconsistent with this chapter.

#### **13.40.090 Prohibitions.**

A. Illicit discharge to stormwater drainage systems is prohibited. Illicit discharges are defined as those discharges prohibited by the Manual, the Western Washington Phase II Municipal Stormwater Permit, The City of Sedro-Woolley Stormwater Management Plan, and state law.

B. The following categories of nonstormwater discharges are prohibited unless the stated conditions are met:

1. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4.

2. Discharges from lawn watering and other irrigation runoff. These shall be minimized through, at a minimum, public education activities (see section S5.C.1) and water conservation efforts.

3. Dechlorinated swimming pool discharges. The discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.

4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. At active construction sites, street sweeping must be performed prior to washing the street.

5. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed by the director, which addresses control of such discharges.

C. Development and Redevelopment which fails to comply with the requirements of this ordinance is prohibited.

#### **13.40.100 Authority.**

A. Director. The director or a designee/inspector shall administer and enforce this chapter and shall be referred to as the director.

B. Inspection Authority. The director is directed and authorized to develop an inspection program for stormwater facilities in the city, including all facilities operating under a Stormwater Maintenance Permit.

C. Plan, Manual, and Inspection Schedule. All activities and facilities which are subject to this chapter shall, as a condition of the Stormwater Maintenance Permit, submit a permanent maintenance plan, maintenance and operations manual, and an inspection schedule, which shall be subject to the approval of the director. Compliance with the plan, maintenance manual and inspection schedule shall be a condition of the Stormwater Maintenance Permit.

D. Previously Constructed Facilities. This chapter shall apply to stormwater facilities which were legally constructed without a Stormwater Maintenance Permit issued pursuant to this chapter, to the extent permitted and required by the Manual. The facilities shall be subject to inspection for compliance with the original conditions of approval and the applicable standards of this chapter.

#### **13.40.110 Inspection program.**

A. Inspection. The inspector is authorized to inspect during regular working hours and at other reasonable times all stormwater drainage systems within the city to determine compliance with the provisions of this chapter. The following schedule shall apply:

1. Facilities operating under a Stormwater Maintenance Permit shall be inspected pursuant to the inspection schedule incorporated in the permit.
2. Facilities operating without a Stormwater Maintenance Permit shall be inspected at least annually, unless the director determines that annual inspections are not necessary.
3. Facilities which the director has reason to believe are not being maintained or operated consistent with the Stormwater Maintenance Permit or as previously permitted or designed, may be inspected by the director at any time, as set forth below.

B. Procedures. Prior to making any inspections, the inspector shall present identification credentials, state the reason for the inspection and request entry.

1. If the property of any building or structure on the property is unoccupied, the inspector shall first make a reasonable effort to locate the owner or any other person(s) having charge or control of the property or portions of the property and request entry.
2. If after reasonable effort, the inspector is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the stormwater drainage system creates an imminent hazard to persons or property, the inspector may enter.
3. Unless entry is consented to by the owner or person(s) in control of the property or portion of the property or unless conditions are reasonably believed to exist which create

imminent threat to public safety, the inspector shall obtain a search warrant, prior to entry, as authorized by the laws of the state of Washington.

4. The inspector may inspect the stormwater drainage system without obtaining a search warrant provided for in subsection (B)(3) of this section, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

C. Inspection schedule. The director shall establish a master inspection and maintenance schedule to inspect appropriate stormwater facilities that are not owned by the city. Inspections shall be annual. Critical stormwater facilities may require a more frequent inspection schedule.

D. Inspection and Maintenance Records. As existing stormwater facilities are encountered, they shall be added to the master inspection and maintenance schedule. Records of new stormwater facilities shall include the following:

1. As-built plans and locations;
2. Findings of fact from any exemptions granted by the local government;
3. Operation and maintenance requirements and records of inspections, maintenance actions and frequencies;
4. Engineering reports, as appropriate.

E. Reporting Requirements. The director shall report annually to the city council about the status of the inspections. The annual report may include, but need not be limited to, the proportion of the components found in and out of compliance, the need to upgrade components, enforcement actions taken, compliance with the inspection schedule, the resources needed to comply with the schedule, and comparisons with previous years.

F. Easement. The director may require, as a condition of the Stormwater Maintenance Permit, that the City of Sedro-Woolley be conveyed a permanent easement to access the permitted stormwater facilities for purposes of inspection and emergency maintenance and repairs.

#### **13.40.120 Administration.**

A. Director. The director or a designee shall administer this chapter and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter.

B. Review and Approval.

A. Any activity subject to regulation by this chapter shall not be approved until the director issues a written finding that the regulated activity complies with this chapter, or is exempt. The finding, approvals and conditions shall be incorporated into a "Stormwater Maintenance Permit".

The omission of a Minimum Requirement or BMP on the permit or approved plan shall not relieve the applicant of complying with the Minimum Requirement or BMP if it is made applicable by the manual.

B. Any owner or applicant seeking approval or a permit for activity regulated by this chapter shall, in addition to any other permit necessary for the activity, apply for a Stormwater Maintenance Permit in the form provided by the director, and shall provide the information required to demonstrate compliance with Minimum Requirements and BMPs specified in the Manual. The form of the application shall meet the requirements established by the director.

C. The director may approve, conditionally approve or deny an application for activities regulated by this chapter. Such approval or denial shall be based on the Thresholds, Definitions, Minimum Requirements and Exceptions, Adjustment and Variance Criteria found in Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the 2005 Ecology Stormwater Management Manual for Western Washington, and on any administrative provisions adopted by the director pursuant to SWMC Section 13.40.050.

D. If an adjustment, exception or variance is allowed, it shall be incorporated into the conditions and terms of the permit issued by the director.

E. Inspection. All activities regulated by this chapter shall be inspected by the director. The director shall inspect projects at various stages of the work requiring approval to determine that the regulated activity is complying with the terms of the permit and approval. Stages of work requiring inspection include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the director, a special inspection and/or testing shall be performed.

F. All project applications must address long-term maintenance responsibility and access for maintenance inspections, and all must continue to meet the minimum requirements of the Manual as a condition of the Stormwater Maintenance Permit.

G. The Stormwater Maintenance Permit shall identify the party responsible for compliance, and may require the posting of a bond or surety to guarantee financial responsibility for compliance as a condition of the permit. The amount of the bond or other surety shall not exceed one hundred twenty five percent (125%) of the cost of compliance with the conditions and requirement of the Stormwater Maintenance Permit, as determined by the director.

H. Any applicant may appeal the decision of the director to issue, condition or deny a permit in the same manner as a Type II decision subject to SWMC Ch. 2.90, to the extent applicable and not inconsistent with this chapter.

#### **13.40.130 Civil Enforcement.**

The director shall enforce this chapter. Violations of this chapter shall be subject to civil and criminal penalties as set forth in this Chapter. It shall be a violation of this chapter to (a) engage in any regulated activity without a permit issued pursuant to this chapter, (b) to violate the terms

and conditions of a permit issued pursuant to this chapter, or (c) to permit, allow, or commit an illicit discharge prohibited by this chapter.

A. General. Enforcement action shall be in accordance with this chapter whenever a person has violated any provision of this chapter. The choice of enforcement action and the severity of any civil penalty shall be based on the nature of the violation, the damage or risk to the public or the public resources, and/or the degree of bad faith of the person subject to the enforcement action.

B. Stop-Work Order. The director shall have the authority to serve a person a stop work order if an action is being undertaken in violation of this chapter. If a portion of a project is in violation of this chapter, the director may issue a stop work order for the entire project, and the order may revoke a Stormwater Management Permit or Stormwater Maintenance Permit.

1. Content of Order. The order shall contain:

a. A description of the specific nature, extent and time of violation and the damage or potential damage; and

b. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection C may be issued with the order.

2. Notice. A stop work order shall be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service, to the person incurring the same.

3. Effective Date. The stop work order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

4. Compliance. Failure to comply with the terms of a stop work order shall result in enforcement actions including, but not limited to, the issuance of a civil penalty.

C. Civil Penalty. A person who fails to comply with the requirements of this chapter, who fails to conform to the terms of an approval or order issued, who undertakes new development without first obtaining city approval, or who fails to comply with a stop work order issued under these regulations shall be subject to a civil penalty.

1. Amount of Penalty. The penalty shall be one hundred dollars for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.

2. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

3. Notice of Penalty. A civil penalty shall be imposed by a notice in writing, either by certified (or registered) mail with return receipt requested or by personal service, to the

person incurring the same from the city. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.

4. Application for Mitigation. Any person incurring a penalty may apply in writing within fourteen days of receipt of the penalty to the director for rescission or mitigation of such penalty. Upon receipt of the application, the director may rescind or mitigate the penalty upon a demonstration of extraordinary circumstances, such as the presence of information of factors not considered in setting the original penalty. The decision of the director may be appealed to the city council within thirty days of the decision.

5. Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal in writing to the Skagit County Superior Court within thirty days of the receipt of the penalty, or within thirty days of the decision of the director regarding remission or mitigation of the penalty, whichever is later.

D. Penalties. Penalties imposed under this section shall become due and payable thirty days after receiving it unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable after all review proceedings and final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed the city is not paid within the time specified, the city may take actions necessary to recover such penalty, including legal action to reduce the same to a judgment and collection the same.

E. The director is authorized to seek injunctions, restraining orders, and other civil relief in court as is necessary to enforce this chapter.

#### **13.40.140 Criminal Violation.**

In addition to any civil penalty or civil enforcement action, a willful violation of this chapter by any person shall constitute a gross misdemeanor punishable by a five thousand dollar fine, imprisonment in jail not to exceed one year, or both.

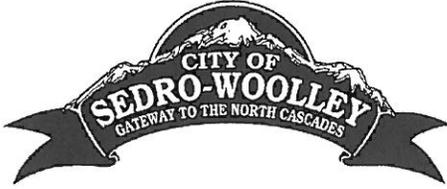
#### **10.40.150 Fees.**

The applicant shall pay all fees and costs as established by ordinance or resolution prior to issuance of the Stormwater Maintenance Permit or other review or inspections pursuant to this chapter. If no separate fee is established, the applicant shall pay a fee based on the hourly rate for City engineering services established by separate ordinance or resolution for plan review.

COMMITTEE  
REPORTS  
AND  
REPORTS  
FROM  
OFFICERS

CITY COUNCIL AGENDA  
REGULAR MEETING

NOV 10 2010



7:00 P.M. COUNCIL CHAMBERS  
AGENDA NO. 9

CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
Phone (360) 855-9922  
Fax (360) 855-9923

Eron M. Berg  
City Supervisor/City Attorney

MEMO TO: City Council  
FROM: Eron Berg  
RE: Fire Station 2 Update  
DATE: November 10, 2010

PROJECT STATUS: The project remains on or ahead of schedule and is progressing well. The project is approximately 81% complete. Over the last week the fire apparatus bay floors were pored and the tile and cabinets have been installed. Brickwork on the site is now complete. Site work is progressing with curbs and sidewalks poured and asphalt to follow fairly soon. Work on SR 9 will begin soon – expect some limited traffic delays as one lane will be closed intermittently for asphalt work on the shoulder. On Friday November 12<sup>th</sup> the power was turned onto the building and the temporary construction power was disconnected. Landscaping has also started and the electrician is trimming out all of his fixtures as well as installing the lighting. Also of note, on the south side of the building the solar hot water heating frame has been installed. The solar tubes will not be added until the end of the project due to them being so fragile.

ISSUES:

PENDING ISSUES:

1. Design team oversights – no new update available at this time.

CHANGE ORDER PROPOSALS:

No.	Description	Amount	Approval
1	Over excavation due to site conditions	withdrawn	n/a
2	Add waterline components missing from plans	\$26,207.00	Council 7-14
3	Bore utilities under SR 9 (design team error)	\$40,336.00	Council 7-14
4	Missed switches from electrical plan	\$ 526.00	EB 9-2

5	Added cost to pour plinth missing from plans	withdrawn	n/a
6	Central exhaust system design conflicts	\$ 981.00	EB 9-16
7	Keypad door openers (design team missed)	\$ 2,491.00	EB 9-2
8	Revise furnace F-2 and F-3	withdrawn	n/a
9	Add 10' steel casing for waterline	\$ 4,235.00	EB 10/14
10	Add conduit for EOC radios (1 <sup>st</sup> owner change)	\$ 1,073.00	EB 9-30
11	Cost for gas meter relocate and piping per CNG	\$ 3,335.00	EB 9-30
12	Additional conduit for Frontier	\$ 2,353.00	EB 10/14

**CONTRACT CHANGE ORDERS:**

Change Order 1 was approved by the City Council on July 28<sup>th</sup>. Due to its size, it exceeded my authority. Change Order 2 was approved on October 28<sup>th</sup>, it is a compilation of 7 individual changes approved under my limited change order authority.

<b>No.</b>	<b>Description</b>	<b>Amount</b>	<b>Approval</b>
1	CP-02r.3 & CP-03r.1	\$66,543.00	Council 7-28
2	CP-4, 6r.2, 7, 9, 10r.2, 11r.1, and 12	\$14,994.00	EB 10-28
	The original contract sum is:	\$1,348,300.00	
	CO#1 is:	\$ 66,543.00	
	CO#2 is:	\$ 14,994.00	
	The new contract total is:	\$1,429,837.00	

**REQUESTS FOR ACTION:** None tonight.