



## CITY COUNCIL MEETING

### October 18, 2016 – Agenda

Mt. Si Senior Center, 411 Main Ave. S., North Bend, Washington

#### 7:00 P.M. – CALL TO ORDER, ROLL CALL, FLAG SALUTE

#### CONSENT AGENDA:

			Pg.#
1) Minutes	Council Meeting of October 4, 2016		1
2) Payroll	October 5, 2016 – 27533 through 27538, in the amount of \$195,589.66		
3) Checks	October 18, 2016 – 63404 through 63464, in the amount of \$687,185.91		
4) AB16-112	Motion – Authorizing 1 <sup>st</sup> Amendment to Airnote LLC Contract RE IT Services	Ms. Masko	5
5) AB16-113	Resolution – Authorizing ILA with AWC RMSA	Ms. Masko	25
6) AB16-114	Resolution – Adopting Post Issuance Compliance Policy	Ms. Masko	45
7) AB16-115	Motion – Authorizing Contract with Rosenau & Associates RE Special Inspection Services	Mr. Rigos	57
8) AB16-116	Resolution – Authorizing DEA with JDH for Cedar Falls South	Mr. Rigos	67

**CITIZEN'S COMMENTS:** (Please restrict comments to 3 minutes)

#### COMMISSION AND COMMITTEE REPORTS:

Planning Commission	Community & Economic Development – Councilmember Pettersen
Parks Commission	Finance & Administration – Councilmember Rosen
Economic Development Commission	Public Health & Safety – Councilmember Gothelf
	Transportation & Public Works – Councilmember Loudenback
	Mayor Pro Tem – Councilmember Loudenback
	Eastside Fire & Rescue Board – Councilmember Gothelf

#### INTRODUCTIONS:

9) AB16-117	Resolution – Authorizing Developer Agreement with Bendigo Properties RE Snoqualmie Valley Athletic Complex	Ms. Estep	143
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**MAYOR, COUNCIL & ADMINISTRATOR CONCERNS AND INITIATIVES:** (Business and general information presented that may be deliberated upon by the Council. Formal action may be deferred until a subsequent meeting; immediate action may be taken upon a vote of a majority of all members of the Council.)

#### ADJOURNMENT:

**DRAFT**

**NORTH BEND CITY COUNCIL MINUTES**

**October 4, 2016**

Senior Center, 411 Main Ave. S., North Bend, Washington

**CALL TO ORDER, ROLL CALL:**

Mayor Hearing called the regular meeting to order at 7:00 p.m.

**Councilmembers Present:** Elwood, Gothelf, Kostanich, Loudenback, Pettersen, Rosen and Volken.

**CONSENT AGENDA:**

**Minutes** – Special Council Meeting of September 13, 2016 & Council Meeting of September 20, 2016

**Payroll – September 20, 2016 – 27527 through 27532**, in the amount of **\$153,123.72**

**Checks – October 4, 2016 – 63338 through 63403**, in the amount of **\$486,412.16**

**AB16-107** – Motion Authorizing ILA Amendment to SCORE Jail Contract

**AB16-108** – Motion Amending City’s Personnel Manual

**AB16-109** – Resolution 1730 Accepting Tollgate Farm East Bookend Phase 3 Weed Control Project as Complete

Councilmember Rosen **MOVED**, seconded by Councilmember Gothelf to approve the consent agenda as presented. The motion **PASSED** 7-0.

**CITIZENS COMMENTS:**

**Dave Olson**, 440 Main Avenue S, provided an update on Kiwanis activities and noted the Night on a Dark Trail event was still seeking volunteers.

**Kyle Jestrab**, 421 SE Orchard Drive, expressed concern that increased traffic and vehicle speeds on Orchard Drive near Si View Park have created an unsafe area for pedestrians. He provided a handout to Council with pictures of the area of concern as well as signatures of those residents that support safety and parking improvements and beautification in the area.

**Peter Brosseau**, 730 Meadow Drive SE, Vice President of Mt. Si Lacrosse Club, noted the Snoqualmie Valley was experiencing a shortage of sports fields due to the increased participation and popularity in sports such as Lacrosse. He expressed his support for the Snoqualmie Valley Athletic Center multi-sport complex being proposed by Ms. Miller.

**DRAFT**

**INTRODUCTIONS:**

**AB16-110 – Public Hearing, Ordinance 1601 Amending Taxes, Rates & Fees Schedule RE School Impact Fees Audio: 7:25**

Senior Planner Burrell provided the staff report. Snoqualmie Valley School District (SVSD) Assistant Superintendent Ryan Stokes answered questions regarding the June 23, 2016 SVSD Capital Facilities Plan.

**Mayor Hearing opened the Public Hearing on an Ordinance Amending the Taxes, Rates & Fees Schedule RE School Impact Fees at 7:12 p.m. There was no public comment and Mayor Hearing closed the Public Hearing at 7:12 p.m.**

Councilmember Pettersen **MOVED**, seconded by Councilmember Rosen to approve AB16-110, an ordinance amending the Taxes, Rates, & Fees Schedule Relating to School Impact Fees, as a first and final reading.

Councilmember Rosen **MOVED**, seconded by Councilmember Gothelf to add the phrase “or cottage dwelling unit greater than 1,500 sq. feet” to the impact fee for single-family dwelling unit and to add the phrase “1,500 sq. feet or less” after cottage dwelling unit under the impact fee for multi-family. The motion **PASSED** 7-0.

The main motion then **PASSED AS AMENDED** 7-0.

**AB16-111 – Resolution 1731 Accepting Riverfront & Ribary Creek Weed Control Project as Complete Audio: 33:58**

Senior Planner Burrell provided the staff report.

Councilmember Pettersen **MOVED**, seconded by Councilmember Kostanich to approve AB16-111, a resolution accepting as complete the Mountains to Sound Greenway Trust work for invasive control at Riverfront Park and Ribary Creek. The motion **PASSED** 7-0.

**MAYOR, COUNCIL, AND ADMINISTRATOR CONCERNS AND INITIATIVES:**

Councilmember Rosen thanked all the volunteers that helped with the recent demolition work and removal of backstops at Torguson Park in preparation for the upcoming improvements to the facility.

Councilmember Loudenback echoed Councilmember Rosen’s comments and thanked fellow Councilmembers for their support of the Torguson Park Capital Improvement Project.

City Administrator Lindell commented staff was busy preparing for the October 11<sup>th</sup>

**DRAFT**

Special Budget Workstudy at City Hall and the October 25<sup>th</sup> Open House and Special Council Workstudy at the Mt. Si Senior Center to view and discuss proposed designs of a new City Hall to be located on the existing Public Works site.

Mayor Hearing spoke regarding the following items:

- Arbor Day Tree Planting Event – Saturday, October 8<sup>th</sup> at Tollgate Farm Park
- North Bend Fan Fest – Saturday, October 15<sup>th</sup> – Downtown North Bend
- October 11<sup>th</sup> Special Budget Workstudy
- October 25<sup>th</sup> Open House & Special Workstudy

**ADJOURNMENT:**

Councilmember Gothelf **MOVED** to adjourn, seconded by Councilmember Rosen. The motion **PASSED** 7-0.

The meeting adjourned at 7:45 p.m.

ATTEST:

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Kenneth G. Hearing, Mayor

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Susie Oppedal, City Clerk





## City Council Agenda Bill

<b>SUBJECT:</b>		<b>Agenda Date: October 18, 2016</b>		<b>AB16-112</b>		
<b>A Motion Authorizing a First Amendment to the Contract for Services with AirNote LLC, for Information Technology Services</b>		Department/Committee/Individual				
		Mayor Ken Hearing				
		City Administrator – Londi Lindell				
		City Attorney - Mike Kenyon				
		City Clerk – Susie Oppedal				
		Asst. City Administrator/Finance Director Dawn Masko				X
		Community & Economic Development – Gina Estep				
		Public Works – Mark Rigos				
Cost Impact: Not to exceed \$33,000, excluding equipment or I.T. related purchases						
Fund Source: Technology Operating Fund						
Timeline: Immediate						
<b>Attachments:</b> First Amendment; Contract for Services dated September 6, 2016						
<p><b>SUMMARY STATEMENT:</b></p> <p>The City entered into a contract for Information Technology (I.T.) services with AirNote LLC in September 2016 (“Agreement”). The contract was for 30 days during which time AirNote LLC would provide interim I.T. services and perform an audit of existing I.T. infrastructure and services. The City has determined that it is in our best interest to retain AirNote LLC for a longer term contract to continue providing I.T. services while we are developing a long-term I.T. service plan. The contract extension period is up to six months with the goal of issuing a Request for Proposals (RFP) for long term Information Technology services in early 2017.</p> <p>The proposed First Amendment outlines routine I.T. services to be performed as well as I.T. upgrades and projects that AirNote LLC will be assisting the City with. The cost will be \$6,500 per month while the City email is running on an internal Exchange server and will be reduced to \$4,500 per month after email services are migrated to Office 365 and Exchange is no longer running internally. It is the City’s intent to migrate to Office 365 before the end of 2016.</p>						
<p><b>COMMITTEE REVIEW AND RECOMMENDATION:</b> This item was reviewed by the Finance and Administration Committee at their October 4, 2016 meeting and was recommended for approval and placement on the consent agenda.</p>						
<p><b>RECOMMENDED ACTION: MOTION to approve AB16-112, authorizing the Mayor to sign a First Amendment to the Contract for Services with AirNote LLC for information technology services.</b></p>						
<b>RECORD OF COUNCIL ACTION</b>						
<i>Meeting Date</i>		<i>Action</i>		<i>Vote</i>		
October 18, 2016						



**FIRST AMENDMENT  
FOR  
CONTRACT FOR SERVICES  
City of North Bend and AirNote LLC**

This First Amendment is dated effective October 7, 2016 and is entered into by and between the City of North Bend, Washington, a municipal corporation of the State of Washington, hereinafter referred to as "the City," and AirNote LLC, hereinafter referred to as "the Consultant."

- A. The City and AirNote LLC entered into a Contract for Services dated effective the 6th day of September, 2016 ("Agreement") providing for AirNote LLC to provide information technology services.
- B. The City and AirNote LLC desire to amend the Agreement to extend the term, revise the scope of services, and provide for an increase in the compensation.

NOW, THEREFORE, IN CONSIDERATION OF the mutual benefits and conditions set forth below, the parties hereto agree as follows:

- 1. **Term.** Section 3 of the Agreement shall be amended to read as follows:

**Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing September 6, 2016 and ending April 6, 2017 unless sooner terminated by either party. Each party shall have the right to terminate this contract upon thirty (30) days written notice.

- 2. **Scope of Services.** The Scope of Services is amended as per **Exhibit A** attached to this Amendment.
- 3. **Compensation.** The Compensation is amended as per Exhibit B attached to this Amendment.
- 4. **Full Force and Effect.** Except as otherwise amended by this First Amendment, the Agreement shall remain in full force and effect.

CITY OF NORTH BEND, WASHINGTON

[CONSULTANT]

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

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

Kenneth G. Hearing

Title: Mayor

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

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

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

Attest/Authenticated:

\_\_\_\_\_  
Susie Oppedal, City Clerk

Approved As To Form:

\_\_\_\_\_  
Michael R. Kenyon, City Attorney

## EXHIBIT A

Scope of Services. The Contractor shall furnish services including, but not limited to, the following:

### Routine IT Services

#### Help Desk

Help desk and IT services for up to 50 users, to include:

- Troubleshooting for Windows, Office, and other common software
- Installation and configuration for printers and other peripherals
- Installation and configuration of new computers
- Manage updates for workstations and laptops
- Hardware troubleshooting, replacement, and swap-outs

### Servers and Network Services

- Maintain software on internal servers
  - Domain Controller
  - Exchange server
  - Backup server
  - Telemetry servers
- Troubleshoot and maintain network infrastructure
  - Firewalls, routers, access points, and other network infrastructure
  - Point of contact for internet service providers
- Configure and maintain user accounts for domain and email
- Configure and maintain VPN access
- Configure and maintain reliable backup services for internally-stored data

### Public Records Searches

- Assist with public records requests for email

### Online Services

- Point of contact for DNS providers
- Configure and maintain Office 365 accounts (when migrated)

### Phone System

- Develop a plan for ongoing support of the phone system

### Availability

- For routine services, response within 4 hours 0800-1700 business days
- For emergencies (critical system failures), response within 2 hours 0800-1700 business days and within 8 hours all other times

## IT Upgrades and New Services

### Office 365 Email

- Obtain proposal from Microsoft government resellers and develop a plan to migrate email from the internal Exchange server to Office 365
- Manage the migration and cutover process for email
- Re-purpose the internal Exchange server

### OneDrive File Storage and Sharing

- Develop a plan to organize shared files and folders, create the appropriate security, and move to OneDrive
- Move individual files and folders to OneDrive

### Office 365 Desktop Apps

- Develop and implement a plan to upgrade all desktop and laptop computers to Office Online subscriptions (allows all computers to install and stay updated with the current version of Office applications)

### Windows 10

- Develop and implement a plan to upgrade all desktop and laptop computers to Windows 10, and all remaining servers to the current version of Windows Server

### Cloud-Based Active Directory and Domain Controller

- Once all computers are running Windows 10, the Active Directory and Domain Controller functions can be migrated to the Microsoft Azure cloud, enabling the internal servers to be used for backup domain control or decommissioned

### Suggested Improvements

- Outline areas of improvement in functionality, maintainability, and security with rough time and cost estimates
- Assist with recommendations for a long-term IT service plan

**EXHIBIT B**

Costs

- \$6,500 per month while email is running on the internal Exchange server (including necessary tasks to migrate to Office 365 email)
- \$4,500 per month beginning the first full month after email is migrated and Exchange is no longer running internally
- Out of pocket expenses as pre-approved, including a 5% surcharge to cover state and local taxes

**CONTRACT FOR SERVICES  
City of North Bend and AirNote LLC**

This Contract for Services (“Agreement”) is entered into this 6<sup>th</sup> day of September, 2016, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and AirNote LLC (“Contractor”) in consideration of the mutual benefits and conditions contained herein.

WHEREAS, the City has determined the need to have certain services performed for its citizens; and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Scope of Services.** The Contractor shall perform those services described on **Exhibit A** attached hereto and incorporated by this reference as if fully set forth. All such services will be rendered with the degree of skill and care exercised by members of Contractor’s profession practicing under similar circumstances at the same time and in the same or similar locale, and in compliance with all federal, state, and local statutes, rules, and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith.
2. **Compensation and Method of Payment.** Contractor will invoice the City monthly based upon the fee schedule set forth in **Exhibit B** attached hereto, which is incorporated by this reference as if fully set forth. The City shall pay Consultant for services rendered under this Agreement within ten (10) days after City Council voucher approval. Consultant agrees to complete and return the attached **Exhibit C** (Taxpayer Identification Number) to the City prior to or along with the first invoice.
3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing September 6, 2016 and ending October 6, 2016 unless earlier terminated upon 30 days’ notice by either party to the other in accordance with Section 10 herein or extended by written amendment in accordance with Section 13 herein.
4. **Ownership, Form, and Use of Documents.** All documents, drawings, specifications, and other materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. The Contractor shall provide to the City all final documents, reports, or studies in printed and electronic form unless otherwise designated in **Exhibit A**. Unless otherwise directed in writing by the City, all final documents, reports, or studies shall be provided to the City in both a PDF and Word format. Where applicable, all Complete Plan Set Drawings shall include all Specifications and shall be submitted to the City in the most updated version of AutoCAD in an unrestricted format and in accordance with City Code. Consultant shall not be responsible for any use or modifications of said documents, drawings, specifications, or other materials by the City or its representatives for any purpose other than the project specified in this Agreement.
5. **Independent Contractor.** The City and Contractor agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create an employer-employee relationship between the parties hereto. Neither Contractor nor any of Contractor’s employees shall be entitled, by virtue of the services provided under this Agreement, to any benefits afforded to City employees. The City shall not be responsible for paying, withholding, or otherwise deducting any customary state or federal payroll deductions, including but not limited to FICA, FUTA, state industrial insurance, state

workers' compensation, or for otherwise assuming the duties of an employer with respect to Contractor or Contractor's employees.

6. **Indemnification.** The Contractor shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, including attorneys' and expert witness fees, arising from injury or death to persons or damage to property occasioned by any negligent act, omission, or failure of the Contractor, its officers, agents, and employees, in performing the work required by this Agreement. With respect to the performance of this Agreement and as to claims against the City, its officers, agents, and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligation to indemnify, defend, and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties. This paragraph shall not apply to any damage resulting from the sole negligence of the City, its agents, and employees. To the extent that any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of the City, its agents, or employees, this obligation to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of the Contractor, its officers, agents, and employees.
  
7. **Record Keeping and Reporting and "Red Flag" Rules.**
  - A. The Contractor shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Contractor shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement and compliance with this Agreement.
  
  - B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.
  
  - C. Contractor acknowledges receipt of and agrees to adhere to the City's Identity Theft Prevention Program ("Red Flag" rules), a copy of which is attached hereto as **Exhibit D**.
  
8. **Taxes, Licenses and Permits.**
  - A. Contractor shall procure and maintain a City business license in accordance with Chapter 5.04 NBMC, *Business Licenses and Business and Occupation Tax*, prior to beginning work under this Agreement. Contractor assumes responsibility for and ensures that all contractors, subcontractors and suppliers shall also obtain a City business license.
  
  - B. Contractor acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, including taxes and fees assessed pursuant to Chapters 5.04 and 5.05 NBMC, and Contractor agrees to comply with all applicable laws regarding the reporting of income and maintenance of records, and with all other requirements and obligations imposed pursuant to applicable law. If the City does not receive, or is assessed, made liable, or responsible in any manner for such charges or taxes, Contractor shall reimburse and hold the City harmless from such costs, including attorneys' fees. Contractor shall also require all contractors, subcontractors and suppliers to pay all charges and taxes in accordance with this Section 9.

- C. In the event Contractor fails to pay any taxes, assessments, penalties, or fees imposed by the City or any other governmental body, then Contractor authorizes the City to deduct and withhold and/or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. This provision shall, at a minimum, apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the Contractor's total compensation.
9. **Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by law during the performance of this Agreement. The City shall have the right to conduct an audit of the Contractor's financial statement and condition and to a copy of the results of any such audit or other examination performed by or on behalf of the Contractor.
10. **Termination.** This Agreement may at any time be terminated by the City upon giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same. If the Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement immediately.
11. **Discrimination Prohibited.** The Contractor shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Contractor under this Agreement on the basis of race, color, creed, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.
12. **Assignment and Subcontract.** The Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.
13. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Proposed changes which are mutually agreed upon shall be incorporated by written amendments or addenda signed by both parties.
14. **Notices.** Notices to the City of North Bend shall be sent to the following address:

Dawn Masko, Assistant City Administrator  
City of North Bend  
P.O. Box 896  
North Bend, Washington 98045  
Phone number: (425) 888-1211

Notices to the Contractor shall be sent to the following address:

Stephen Wood  
AirNote LLC  
2622 – 239<sup>th</sup> Avenue SE  
Sammamish, WA 98075  
Phone Number: (425) 864-0700

16. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and

agree that venue shall be properly and exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its costs of suit, including attorneys' fees and expert witness fees.

BY THEIR SIGNATURES BELOW, the authorized agents of the parties enter into this Agreement as of the day and year first written above.

**CITY OF NORTH BEND, WASHINGTON**

**[CONTRACTOR]**

By: \_\_\_\_\_  
Kenneth G. Hearing, Mayor

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

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

**Attest/Authenticated:**

\_\_\_\_\_  
Susie Oppedal, City Clerk

**Approved As To Form:**

\_\_\_\_\_  
Michael R. Kenyon, City Attorney

## EXHIBIT A

Scope of Services. The Contractor shall furnish services including, but not limited to, the following:

### Purpose

1. Perform an audit of existing IT infrastructure and services
2. Provide routine IT services for 30 days
3. Assist with recommendations for a long-term IT service plan

### IT Audit

#### Computers

- Inventory of computers and their configurations

#### Software and Services

- Common products such as Windows, Office, Mail, etc.
- File storage and file sharing
- Specialized products such as accounting
- Administrative tools such as profile management, remote access, monitoring and alerting
- Data backup and archiving

#### Network Architecture

- External network connections (e.g. Comcast)
- DNS configurations
- Internal network topography, components, and routing
  - Within each physical location
  - Between locations

#### Security

- Authentication and access policies
- Firewalls
- A/V and anti-malware

#### Suggested Improvements

- Outline of areas for improvement in functionality, maintainability, and security with rough time and cost estimates

### IT Services

- Installation and troubleshooting for Windows, Office, and other common software
- Network troubleshooting
- Help-desk availability 0900-1800 business days
- Available as needed for emergencies (critical system failures)

**EXHIBIT B**

Cost.

- \$5,000 for completion of audit and 30 days of IT services, to run in parallel



**EXHIBIT D**

CITY OF NORTH BEND  
IDENTITY THEFT PREVENTION PROGRAM

I. PROGRAM ADOPTION

The City of North Bend developed this Identity Theft Prevention Program (“Program”) pursuant to the Federal Trade Commission’s Red Flags Rule (“Rule”), which implements Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003. This Program was developed with the oversight and approval of the City’s Finance Director. After consideration of the size and complexity of the City’s operations and account systems, and the nature and scope of the City’s activities, the City Council determined that this Program was appropriate for the City, and therefore approved this Program by the adoption of Ordinance No.1351 on the 21 day of April, 2009.

II. PROGRAM PURPOSE AND DEFINITIONS

A. Fulfilling Requirements of the Red Flags Rule.

Under the Red Flags Rule, every financial institution and creditor is required to establish an identity theft prevention program tailored to its size, complexity and the nature of its operation. The Program must contain reasonable policies and procedures to:

- Identify relevant red flags as defined in the Rule and this Program for new and existing covered accounts, and incorporate those red flags into the Program;
- Detect red flags that have been incorporated into the Program;
- Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
- Update the Program periodically to reflect changes in risks to customers or to the safety and soundness of the City from identity theft.

B. Red Flags Rule Definitions Used in this Program.

For the purposes of this Program, the following definitions apply:

Account. “Account” means a continuing relationship established by a person with a creditor to obtain a product or service for personal, family, household or business purposes.

Covered Account. A “covered account” means:

a. Any account the City offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and

b. Any other account the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from identity theft.

Creditor. “Creditor” has the same meaning as defined in Section 701 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a, and includes a person or entity that arranges for the extension, renewal or continuation of credit, including the City.

Customer. A “customer” means a person or business entity that has a covered account with the City.

Financial Institution. “Financial institution” means a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other entity that holds a “transaction account” belonging to a customer.

Identifying Information. “Identifying information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including name, address, telephone number, social security number, date of birth, government passport number, employer or taxpayer identification number or unique electronic identification number.

Identity Theft. “Identity theft” means fraud committed using the identifying information of another person.

Red Flag. A “red flag” means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

Service Provider. “Service provider” means a person or business entity that provides a service directly to the City relating to or in connection with a covered account.

### III. IDENTIFICATION OF RED FLAGS

In order to identify relevant red flags, the City shall review and consider the types of covered accounts that it offers and maintains, the methods it provides to open covered accounts, the methods it provides to access its covered accounts, and its previous experiences with identity theft. The City identifies the following red flags, in each of the listed categories:

A. Notification and Warnings from Credit Reporting Agencies - Red Flags.

- Report of fraud accompanying a credit report;
- Notice or report from a credit agency of a credit freeze on a customer or applicant;
- Notice or report from a credit agency of an active duty alert for an applicant; and
- Indication from a credit report of activity that is inconsistent with a customer’s usual pattern or activity.

B. Suspicious Documents - Red Flags.

- Identification document or card that appears to be forged, altered or inauthentic;
- Identification document or card on which a person’s photograph or physical description is not consistent with the person presenting the document;
- Other document with information that is not consistent with existing customer information (such as a person’s signature on a check appears forged); and
- Application for service that appears to have been altered or forged.

C. Suspicious Personal Identifying Information -Red Flags.

- Identifying information presented that is inconsistent with other information the customer provides (such as inconsistent birth dates);

- Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on a driver's license);
- Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
- Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
- Social security number presented that is the same as one given by another customer;
- An address or phone number presented that is the same as that of another person;
- Failing to provide complete personal identifying information on an application when reminded to do so (**however, by law social security numbers must not be required**); and
- Identifying information which is not consistent with the information that is on file for the customer.

D. Suspicious Account Activity or Unusual Use of Account - Red Flags.

- Change of address for an account followed by a request to change the account holder's name;
- Payments stop on an otherwise consistently up-to-date account;
- Account used in a way that is not consistent with prior use (such as very high activity);
- Mail sent to the account holder is repeatedly returned as undeliverable;
- Notice to the City that a customer is not receiving mail sent by the City;
- Notice to the City that an account has unauthorized activity;
- Breach in the City's computer system security; and
- Unauthorized access to or use of customer account information.

E. Alerts from Others - Red Flag.

- Notice to the City from a customer, a victim of identity theft, a law enforcement authority or other person that it has opened or is maintaining a fraudulent account for a person engaged in identity theft.

IV. DETECTING RED FLAGS

A. New Accounts.

In order to detect any of the red flags identified above associated with the opening of a **new account**, City personnel will take the following steps to obtain and verify the identity of the person opening the account:

- Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
- Verify the customer's identity (for instance, review a driver's license or other identification card);

- Review documentation showing the existence of a business entity; and
- Independently contact the customer.

B. Existing Accounts.

In order to detect any of the red flags identified above for an **existing account**, City personnel will take the following steps to monitor transactions with an account:

- Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
- Verify the validity of requests to change billing addresses; and
- Verify changes in banking information given for billing and payment purposes.

V. PREVENTING AND MITIGATING IDENTITY THEFT

In the event City personnel detect any identified red flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the red flag:

A. Prevent and Mitigate Identity Theft.

- Monitor a covered account for evidence of identity theft;
- Contact the customer with the covered account;
- Change any passwords or other security codes and devices that permit access to a covered account;
- Not open a new covered account;
- Close an existing covered account;
- Reopen a covered account with a new number;
- Not attempt to collect payment on a covered account;
- Notify the Finance Director for determination of the appropriate step(s) to take;
- Notify law enforcement; or
- Determine that no response is warranted under the particular circumstances.

B. Protect Customer Identifying Information.

In order to further prevent the likelihood of identity theft occurring with respect to City accounts, the City shall take the following steps with respect to its internal operating procedures to protect customer identifying information:

- Secure the City website but provide clear notice that the website is not secure;
- Undertake complete and secure destruction of paper documents and computer files containing customer information;

- Make office computers password protected and provide that computer screens lock after a set period of time;
- Keep offices clear of papers containing customer identifying information;
- Request only the last 4 digits of social security numbers (if any);
- Maintain computer virus protection up to date; and
- Require and keep only the kinds of customer information that are necessary for City purposes.

## VI. PROGRAM ADMINISTRATION

### A. Oversight.

The Finance Director or other designated city employee at the level of senior management shall be responsible for developing, implementing, and updating the Program.

The Finance Director shall also be responsible for the Program administration, for appropriate training of City staff on the Program, for reviewing the annual staff report required under the Program, as well as any other staff reports regarding the detection of red flags and the steps for preventing and mitigating identity theft, determining which steps of prevention and mitigation should be taken in particular circumstances, and considering periodic changes to the Program.

### B. Staff Training and Reports.

City staff responsible for implementing the Program shall be trained either by or under the direction of the Finance Director in the detection of red flags, and the responsive steps to be taken when a red flag is detected. Additionally, a compliance report shall be provided annually to the Finance Director. The annual compliance report shall at a minimum address the following:

1. The effectiveness of the City's policies and procedures in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts;
2. Service provider arrangements;
3. Significant incidents involving identity theft and the City's response; and
4. Recommendations for material changes to the Program.

### C. Service Provider Arrangements.

In the event the City engages a service provider to perform an activity in connection with one or more covered accounts, the City shall take the following steps to require that the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.

- Require, by contract, that service providers acknowledge receipt and review of the Program and agree to perform their activities with respect to City covered accounts in compliance with the terms and conditions of the Program and with all instructions and directives issued by the Finance Director relative to the Program; or
- Require, by contract, that service providers acknowledge receipt and review of the Program and agree to perform their activities with respect to City covered accounts in compliance with the terms and conditions of the service provider's identity theft prevention program and will take

appropriate action to prevent and mitigate identity theft; and that the service providers agree to report promptly to the City in writing if the service provider in connection with a City covered account detects an incident of actual or attempted identity theft or is unable to resolve one or more red flags that the service provider detects in connection with a covered account.

D. Customer Identifying Information and Public Disclosure.

The identifying information of City customers with covered accounts shall be kept confidential and shall be exempt from public disclosure to the maximum extent authorized by law, including RCW 42.56.230(4). The City Council also finds and determines that public disclosure of the City's specific practices to identify, detect, prevent, and mitigate identity theft may compromise the effectiveness of such practices and hereby direct that, under the Program, knowledge of such specific practices shall be limited to the Finance Director and those City employees and service providers who need to be aware of such practices for the purpose of preventing identity theft.

VII. PROGRAM UPDATES

The Program will be periodically reviewed and updated to reflect changes in risks to customers and to the safety and soundness of the City from identity theft. The Finance Director shall at least annually review the annual compliance report and consider the City's experiences with identity theft, changes in identity theft methods, changes in identity theft detection and prevention methods, changes in types of accounts the City maintains and changes in the City's business arrangements with other entities and service providers. After considering these factors, the Finance Director shall determine whether changes to the Program, including the listing of red flags, are warranted. If warranted, the Finance Director shall present the recommended changes to the City Council for review and approval.





## City Council Agenda Bill

<b>SUBJECT:</b>		<b>Agenda Date: October 18, 2016</b>	<b>AB16-113</b>
<b>A Resolution Authorizing Execution of an Interlocal Agreement with the Association of Washington Cities Risk Management Service Agency (AWC-RMSA)</b>		Department/Committee/Individual	
		Mayor Ken Hearing	
		City Administrator – Londi Lindell	
		City Attorney – Mike Kenyon	
		City Clerk – Susie Oppedal	
		Community & Economic Development – Gina Estep	
		Finance – Dawn Masko	
Cost Impact: N/A	Public Works – Mark Rigos		
Fund Source: N/A			
Timeline: Immediate			
<b>Attachments:</b> Resolution, AWC-RMSA Interlocal Agreement (redline)			
<p><b>SUMMARY STATEMENT:</b></p> <p>The Association of Washington Cities Risk Management Service Agency (AWC-RMSA) is a municipal self-insurance pool that provides property and liability insurance for the City of North Bend and over 100 other Washington cities. At their November 2014 meeting, the AWC-RMSA Board of Directors created a five-member committee to review the AWC RMSA Bylaws and Interlocal Agreement. The Committee, comprised of RMSA Board and Operating Committee members, RMSA General Counsel, and AWC staff, met several times during 2015 and 2016 to review and update both the RMSA Bylaws and Interlocal Agreement.</p> <p>The Bylaws provide for the governance and regulation of the AWC-RMSA. The Interlocal Agreement provides for self-insurance pooling and group purchasing power of insurance coverage, while receiving risk management services and property and liability claims administration.</p> <p>This is the third time that the RMSA Board of Directors has updated the Interlocal Agreement. These updates are primarily housekeeping in nature, providing updated definitions and clarification of wording in the articles. Attached is a red-line version showing the AWC-RMSA Board approved changes. The changes will become effective on January 1, 2017, after at least 75% of all members of the AWC-RMSA pass a resolution adopting the updated Interlocal Agreement.</p>			
<p><b>COMMITTEE REVIEW AND RECOMMENDATION:</b> This item was provided to the Finance &amp; Administration Committee prior to the Council meeting for review.</p>			
<p><b>RECOMMENDED ACTION:</b> <b>MOTION to approve AB16-113, a resolution authorizing the execution of an Interlocal Agreement with AWC-RMSA.</b></p>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 18, 2016			



## RESOLUTION

### A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT WITH ASSOCIATION OF WASHINGTON CITIES RISK MANAGEMENT SERVICE AGENCY

**WHEREAS**, the Association of Washington Cities Risk Management Service Agency (AWC-RMSA), authorized and formed under RCW 48.62, provides its members pooled self-insurance providing cost stability and the potential for long-term savings; and

**WHEREAS**, AWC-RMSA is sponsored by the Association of Washington Cities as a service to Washington cities and towns; and

**WHEREAS**, the City of North Bend has reviewed and analyzed the AWC-RMSA Interlocal Agreement, bylaws, and coverages, for consistency with city code of the City of North Bend; and

**WHEREAS**, the City of North Bend acknowledges that as a member of the AWC-RMSA, the City of North Bend shall be subject to assessments and any future reassessments as required by statute and the AWC-RMSA; and

**WHEREAS**, the City of North Bend concludes that the Interlocal Agreement of the AWC-RMSA would be beneficial in managing the municipal risks involved in providing services to our citizens;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The City of North Bend does hereby agree to enter into and abide by the Interlocal Agreement, which, along with this Resolution, constitutes a contract between the City of North Bend and the AWC-RMSA.

**Section 2.** The Mayor is authorized to enter into the Interlocal Agreement with AWC-RMSA, in a form as attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18<sup>TH</sup> DAY OF OCTOBER, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Kenneth G. Hearing, Mayor**

\_\_\_\_\_  
**Michael R. Kenyon, City Attorney**

Effective:  
Posted:

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
**Susie Oppedal, City Clerk**



**INTERLOCAL AGREEMENT OF**  
**THE ASSOCIATION OF WASHINGTON CITIES**  
**RISK MANAGEMENT SERVICE AGENCY**  
**(AWC-RMSA)**

DRAFT

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**INTERLOCAL AGREEMENT:  
OF THE ASSOCIATION OF WASHINGTON CITIES  
RISK MANAGEMENT SERVICE AGENCY**

**PREAMBLE**

State law authorizes the formation of pooling organizations to provide such insurance, to reduce the amount and frequency of the Members' losses, and to decrease the cost incurred by the Members in the handling and litigation of claims. This Agreement provides for self-insurance pooling and/or the economical purchase of primary Insurance and/or Excess Insurance coverage for all Local Governmental Entities. ~~This Agreement is made and entered into in the State of Washington by and among the Members organized and existing under the Constitution or laws of the State of Washington, hereinafter collectively referred to as "Members", and individually as "Member", which are parties signatory to this Agreement. Said Members are sometimes referred to herein as "Parties".~~

**RECITALS**

**WHEREAS**, Chapter 48.62 RCW provides that two or more local governmental agencies may, by Interlocal Agreement, provide insurance for any purpose by one or more of certain specified methods;

**WHEREAS**, the Association of Washington Cities, the sponsoring entity, of the Risk Management Service Agency ("Agency"), would like to maintain the long-standing relationship that has been achieved over the years because of the mutual goals of both entities, which is to support all cities and towns in Washington State;

**WHEREAS**, the Association of Washington Cities as sponsor of the Agency desires to provide its Members, as well as other Local Governmental Entities, the opportunity to jointly self-insure or pool their primary risks to enhance their ability to control their insurance programs and coverages;

**WHEREAS**, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling their self-insured losses and jointly purchasing excess insurance and administrative services in connection with a ~~Joint protection~~ Self-Insurance program for said parties; and

**WHEREAS**, it appears economically feasible and practical for the parties to this Agreement to do so;

**NOW, THEREFORE**, in consideration of all of the mutual benefits, covenants and agreements contained herein the parties hereto agree as follows:

**ARTICLE 1  
Definitions**

The following definitions shall apply to the provisions of this Agreement:

- 1.1 \_\_\_\_\_ **"Administrative Agent,"** shall mean the Association of Washington Cities that provides ~~third party administration (TPA) services to the Agency.~~ the contracted administrative services for the Agency.

- 1.2 “Agency” shall mean the Association of Washington Cities Risk Management Service Agency (RMSA).
- ~~1.3~~ ~~X.XX~~—“Agreement” shall mean the Interlocal Agreement, however amended, among and between the Agency and the Member.
- 1.43 “Assessment” shall mean the monie~~se~~ys paid by the ~~m~~ Members to the Agency.
- 1.54 “Association” shall mean the Association of Washington Cities.
- 1.65 “Board of Directors” or “Board” shall mean the governing body of the Risk Management Service Agency (RMSA) as duly elected by the members of the Agency.
- ~~X.XX~~1.7 ———“Bylaws” shall mean the document(s) that provides for the governance and operation of the Agency. “Bylaws” mean the Bylaws adopted by the Board of Directors of the Agency and all duly adopted amendments and revisions thereto, however amended.
- 1.86 “Claim(s)” ~~shall mean demands made against the Agency arising out of occurrences which are within the Agency's Joint Protection Program as developed by the Board of Directors.~~ mMeans a demand for payment for damages against the Agency arising out of occurrences within the Coverage Agreement; or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.
- ~~1.9X.XX~~ ———“Coverage Agreement” shall mean the coverage document(s) established by the Board of Directors and intended to address the general claims operations of the Agency.
- 1.107 “Excess insurance” shall mean that insurance purchased or other financing arrangements made on behalf of the Agency to protect the funds of the Agency against catastrophes or against an unusual frequency of losses during a single year.
- 1.118 “Fiscal Year” shall mean that period of 12 months, from January 1 to December 31, which is established as the fiscal year of the Agency.
- 1.129 “Insurance” shall mean and include self-insurance through a funded program and/or commercial insurance contract.
- ~~1.13X.XX~~ ———“Interlocal Agreement” means an Agreement established under the Interlocal Cooperation Act defined in Cchapter 39.34 RCW which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and therefore, to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.
- 1.140 ~~“Joint Protection Program” shall mean the program established by the Board of Directors and intended to address the general operation of the Agency.~~
- ~~1.14X.XX~~ ———“Joint Self-Insurance Program” means two or more Local Government Entities which have entered into a cooperative risk sharing Agreement subject to regulation under 48.62 RCW.
- 1.154 “Local Governmental Entity” shall mean every unit of local government, both general purpose and special purpose, and shall include, but not be limited to, counties, cities, towns, port districts,

public utility districts, water districts, sewer districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi municipal corporations.

1.16X.XX —“**Member**” – shall mean any eligible entity which participates in the Agency, pays the annual Assessment and is signatory to the Agency’s Interlocal Agreement.

1.17X.XX —“**Member Standards**” shall mean the required ~~and~~ advisory standards ~~were~~ adopted by the Board of Directors in an effort to provide consistent administrative practices for members, with the goal of reducing property and liability losses.

1.182 “**Operating Committee**” shall mean the standing advisory committee ~~of the Agency to the Board~~.

1.19X.XX —“**Reassessment**” shall mean additional monies ~~sevs~~ paid by the Members to the Joint Self-Insurance Program if claims shall exceed assets.

1.20 “**Risk Sharing**” means a decision by the Members of a Joint Self Insurance Program to jointly absorb certain or specific financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of Insurance or reinsurance as a member of a Joint Self Insurance Program formed under Chapter 48.62 RCW.

1.2143 “**Signatory**” or “**Signatories**” shall mean those parties who sign this Agreement, including execution by ~~C~~counterpart, thereby becoming a Member of the Agency bound by the terms of this Agreement.

1.22X.XX —“**Special Committee**” – shall mean committees of the Agency created by the Board of Directors.

**ARTICLE 2**

**Purposes Risk Sharing**

2.1 This Agreement is entered into by the Members to provide for ~~Joint s~~Self-~~in~~Insurance pooling and/or the economical purchase of ~~primary~~ Insurance ~~and/or Excess Insurance~~ coverage, risk management services, and property and liability claims administration, ~~for all forms of Insurance available or required by law for Local Governmental Entities and for which state law authorizes the formation of pooling organizations to provide such Insurance,~~ Furthermore, the purpose of the Agreement is to reduce the amount and frequency of the Members' losses; and to decrease the cost incurred by the Members in the handling and litigation of claims. This purpose shall be accomplished through the exercise of the powers of the Members jointly in the creation of a separate public Agency, the Association of Washington Cities Risk Management Services Agency, to direct and administer a Joint ~~Protection~~Self-Insurance Program wherein the Members will engage in certain activities, including but not limited to the following:

2.1.1 ~~Pool their losses and Claims~~Risk Sharing;

2.1.2 Jointly purchase of insurance which may include, but is not limited to ~~Ee~~Excess ~~Insurance~~and or reinsurance; and

2.1.3 Jointly purchase of administrative and other services including:

2.1.1.1 Claims adjusting;

2.1.1.2 Data processing;

- 2.1.1.3 Risk management consulting;
- 2.1.1.4 Loss prevention;
- 2.1.1.5 Legal; and
- 2.1.1.6 Miscellaneous related services.

- 2.2 It is also the purpose of the Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional Local Government Entities organized and existing under the Constitution or laws of the State of Washington as may desire to become parties to this Agreement and ~~m~~Members of the Agency, subject to approval by the Board of Directors.
- 2.3 ~~It is also the purpose of t~~ This Agreement ~~to~~ may but is not required to provide, to the extent permitted by law, that the Agency may, at the discretion of its ~~d~~Directors, contract with non-member Local Government Entities in the State of Washington.

### **Article 3 Agency Offices**

- 3.1 Principal Executive Office  
The principal executive office for the transaction of business of the Agency shall be located at 1076 ~~South~~ Franklin St. SE, Olympia, WA 98501. The Administrative Agent in cooperation with the Board of Directors of the Agency shall have the authority to change the location of the principal executive office from time to time.
- 3.2 Other Offices  
Other business offices may be at any time be established by the Administrative Agent in cooperation with the Board of Directors of the Agency at any place or places where the Agency is qualified to do business.

### **ARTICLE 4 Parties to Agreement**

Each party to this Agreement certifies that it intends to and does contract with all other parties who are Signatories of this Agreement and, in addition, with such other parties as may later be added to and ~~S~~signatories of this Agreement pursuant to Article 14. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Articles 16 and 17, shall not affect this Agreement nor such party's intent to contract as described above with the other parties to the Agreement then remaining.

### **ARTICLE 5 Term of Agreement**

This Agreement shall become effective on January 1, 2010~~7~~, and shall be of unlimited duration, but not less than one year, and will continue unless terminated as hereinafter provided in Article 19.

### **ARTICLE 6 Financial Obligations of Agency**

Pursuant to Cha~~p~~ter. 48.62 RCW, of the State of Washington, the debts, liabilities, and obligations of the Agency shall not constitute debts, liabilities, or obligations of any ~~party~~ Member to this Agreement.

**ARTICLE 7**  
**Powers of the Agency**

- 7.1 Agency shall have the powers provided for by law and is hereby authorized to do all acts necessary for the exercise of said powers, including, but not limited to, any or all of the following:
- 7.1.1 Contract or otherwise provide for risk management, claims administration and loss ~~control~~ prevention services;
  - 7.1.2 Contract or otherwise provide legal counsel for the defense of Claims and/or other legal services;
  - 7.1.3 Consult with the Washington State Risk Manager and State Auditor;
  - 7.1.4 Jointly purchase Insurance coverage in such form and amount as the organization's participants may by contract agree;
  - 7.1.5 Incur debts, liabilities, or obligations;
  - 7.1.6 Acquire, receive, hold, or dispose of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities;
  - 7.1.7 Sue and be sued in its own name;
  - 7.1.8 Hire employees and agents; and
  - 7.1.9 Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law.
- 7.2 Said powers shall be exercised to the terms hereof and in the manner provided by law.

**ARTICLE 8**

**The Board of Directors and their Powers and Responsibilities**

- 8.1 The Agency, its funds and service programs shall be administered by a Board of Directors.
- 8.2 Number of Directors  
There shall be seven (7) Directors of the Agency, who shall be elected officials representing members of the Agency.
- 8.3 Acceptance of Appointment by Directors  
Each Director shall sign a document accepting their appointment as Director and agreeing to abide by the terms and provisions of this ~~Interlocal~~ Agreement and the Bylaws.
- 8.4 Powers and Responsibilities of the Board of Directors  
The Board of Directors of the Agency shall have the following powers and functions:
- 8.4.1 The Board shall have the power to review, amend, modify, adopt, override, or reject the Operating Committee's recommendations.
  - 8.4.2 The Board shall review, modify if necessary, and approve the annual operating budget of the Agency.
  - 8.4.3 The Board shall receive and review periodic accountings of all funds of the Agency.

- 8.4.34 Annually the Board shall review, amend, adopt, or reject the Operating Committee's recommendation of the ~~a~~Assessment, or Reassessment rate to be charged to the ~~m~~ Members of the Agency.
- 8.4.45 The Board ~~shall~~ may review, modify if necessary, and approve the ~~Joint Protection Program (JPP) Coverage Agreement, which identifies Agency and Member coverages,~~ the Agency's Bylaws, ~~and manuals~~ policies and Member Standards.
- 8.4.56 The Board shall have the power to conduct all business on behalf of the Agency, which the Agency may conduct under the provisions hereof and pursuant to law.
- 8.4.67 The Board shall determine and select ~~all necessary~~ Insurance, ~~including Excess Insurance,~~ necessary to carry out the Joint Self-Insurance Protection Program ~~of~~ for the Agency.
- 8.4.78 The Board shall have authority to contract for or develop various services for the Agency, including, but not limited to, an ~~a~~Administrative ~~a~~Agent, claims adjusting, loss ~~control~~prevention, risk management consulting services, independent actuary services, insurance brokerage services, independent claims auditing services, and ~~general~~ legal counsel.
- 8.4.89 The Board shall have such other powers and functions as are provided for in this Agreement, and the Bylaws, ~~or those~~ which are necessary to implement the purposes of this Agreement, including, but not limited to, the power to authorize contracts.

## ARTICLE 9 Operating Committee

The Operating Committee shall consist of nine (9) representatives from Members entities participating in the Agency. All members of the Operating Committee shall be appointed non-elected officials ~~not elected officials~~. It is the Board's intent that the Operating eCommittee assists is advisory to the Board and/or the Administrative Agent, with regarding the operations of the Agency, ~~and to keep the Board advised on all aspects of Agency operations including professional standards.~~

## ARTICLE 10 Coverage

- 10.1 The type and limits of the Insurance coverage provided for Members by the Agency shall be established by the Board of Directors.
- 10.2 The Board may arrange approve purchase of ~~a group policy~~ additional types or limits of coverage for Members interested in obtaining additional types or limits of coverage at additional cost to those participating of other Members. Such additional cost may include an administrative fee for the Agency's services.
- 10.3 The Board may arrange for the purchase of any other Insurance or services deemed necessary to protect the Agency or funds held by the Agency against catastrophe.

## ARTICLE 11 Bond Requirements

The Board may require that the Administrative Agent authorized to disburse funds of the Agency, provide a fidelity bond in the amount as set by the Board, and provide that such bond be paid by the Agency.

**ARTICLE 12**  
**Responsibility of the Agency**

~~12.1~~ The Agency shall perform the following functions in discharging its responsibilities under this Agreement:

- 12.~~412~~ Provide Insurance coverage as deemed necessary, including but not limited to a self-insurance fund and commercial insurance, as well as excess coverage or reinsurance, and other insurance, ~~s~~Such insurance, to be arranged by negotiation or bid, and/or purchase, as necessary;
- 12.~~223~~ Assist each Member's designated risk manager with the implementation of the risk management functions within the Member entity;
- 12.~~334~~ Provide loss prevention, ~~safety, and~~ consulting services to Members as required;
- 12.45 Provide Claims adjusting and subrogation services for Claims covered by the Agency's ~~Joint Protection Program;~~Coverage Agreement;
- 12.~~556~~ Provide loss analysis by the use of statistical studies, data processing, and record and file-keeping services, to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- 12.~~667~~ Assist Members, as requested, with review of their contracts to determine sufficiency of indemnity and ~~i~~Insurance provisions;
- 12.~~778~~ Conduct risk management audits to review the participation of each Member in the program. The audit shall be performed by appointed Agency staff or, at the discretion of the ~~a~~AAdministrative ~~a~~Agency, and/or an independent auditor may be retained by contract to conduct the audits;
- 12.~~889~~ Provide for the defense of any civil action or proceeding brought against any officer, employee, Board member, or other agent of the Agency, in their official or individual capacity or both, on account of an act or omission within the scope of their agency as an agent of the Agency;
- 12.~~9910~~ Abide by the rules and regulations as stated or hereinafter amended of RCW Chapter 48.62 and WAC ~~82-69;~~ 200-100; and
- 12.~~10101~~ The Agency shall have such other responsibilities as deemed necessary by the Board of Directors in order to carry out the purposes of the Agreement.

**ARTICLE 13**  
**Responsibilities of Members**

~~13.1~~ Members shall have the following responsibilities:

- 13.~~412~~ All ~~Agency m~~Members must maintain membership in the Association of Washington Cities.
- 13.~~223~~ Each ~~m~~Member shall appoint an employee of the member entity to be responsible for the risk management function within that member entity and to serve as a liaison between the Member and the Agency ~~as to risk management~~.
- 13.~~334~~ Each Member shall implement a risk management policy which shall~~ould include~~ maintain an active safety officer and/or committee, and shall consider all implementing~~completing~~ loss prevention recommendations, and complying with the Member Standards ~~of the Agency~~.

~~concerning including but not limited to the development and implementation of a loss control risk management policy to prevent unsafe and, and practice(s).~~

13.45 Each Member shall be responsible for payment of any Member-elected deductible, and/or appropriate deductible associated with the Member Standards.

~~13.4~~ Each Member shall maintain its own set of records, as a loss log, in all categories of loss to insure accuracy of the Agency's loss reporting system.

13.556 Each Member shall promptly pay its aAssessment, Reassessment, and any readjusted amount promptly to the Agency when due. After withdrawal or termination, each Member shall pay promptly to the Agency its share of any additional Reassessment and accrued interest at a rate determined by the Board, when and if required of it by the Board.

13.667 Each Member shall provide the Agency with such other information or assistance as may be necessary for the Agency to carry out the ~~Joint Protection Program under~~ provisions of this Agreement.

13.778 Each Member shall in any and all ways cooperate with and assist the Agency, and any insurer of the Agency, in all matters relating to this Agreement and covered losses, and will comply with all Bylaws, ~~rules, and regulations~~ policies, procedures and Member Standards as adopted or amended by the Board of Directors.

~~13.889 All members shall cooperate with the Agency and assist with investigations, making settlements, and defense or prosecution of suits; cooperate and assist the Agency in enforcing any right of contribution, indemnity or subrogation in which the Agency may have an interest by virtue of a payment made pursuant to the Bylaws, interlocal a Agreement or the Joint Protection Program (JPP); attend hearings and trials and assist in the securing and giving evidence and obtaining the attendance of witnesses; use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss of or damage to the property herein insured.~~  
All members shall cooperate with the Agency and assist with any investigations, settlement discussions, defense or prosecution of suits, and cooperate and assist the Agency in enforcing any right of contribution, indemnity, or subrogation in which the Agency may have an interest by virtue of a payment made pursuant to the Bylaws, this Agreement, or the Coverage Agreement. Members shall also assist the Agency and attend hearings and trials as well as securing and giving evidence and obtaining the attendance of witnesses. Further, the members shall undertake appropriate due diligence and concur in exercising all things reasonably practicable to avoid or diminish any loss of or damage to the property insured under this agreement.

## ARTICLE 14

### New Members

14.1 Additional Members shall be permitted to become Signatories to this Agreement, ~~and to the Joint Protection Program~~. All potential members to the Agency must be members of the Association of Washington Cities or become members prior to acceptance into the Agency. The ~~Directors~~ Agency shall allow entry into the program of new members approved by the Board of Directors at such time during the year as the Board deems appropriate.

- 14.2 Members entering under this Article may be required to pay their share of expenses as determined by the Board, including those necessary to analyze their loss data and determine their ~~a~~Assessment.

## ARTICLE 15 Defense of Agents

- 15.1 For purposes of this article, "agent" means any person who is or was: a ~~d~~Director, an Operating Committee member, a Special Committee member, an officer, or an agent acting on behalf of the Agency or Administrative Agent.
- 15.~~4~~2 The Agency shall provide for the defense of any agents and paying of any valid judgments and claims brought against any such agent arising from their actions or conduct in their official or individual capacity or both, on account of an act or omission within the scope of their responsibility; provided, however, this section shall not apply to those occurrences covered by an Agency policy of liability insurance or if the claim or judgment results from the intentional misconduct of said agent.

## ARTICLE 16 Withdrawal

- 16.1 A Member signing this Agreement may not withdraw as a party to this Agreement and as a Member of the Agency for a one-year period commencing on the date said Member signs the Agreement.
- 16.1.1 After the initial one-year non-cancellable commitment provided pursuant to this Agreement, a Member may withdraw only at the end of ~~the Agency's any~~ Fiscal Year, provided ~~the Member~~ has given the Agency a minimum of 12-month written notice of its intent to withdraw from this Agency.
- 16.2 A Member shall be entitled to withdraw from the Agency where ~~the Member~~ presents to the Board of Directors evidence demonstrating a material breach of contract by the Agency as regards its obligations to the Member. The Member shall be allowed to withdraw from the agency within ninety (90) days of any finding by the Board of Directors that a material breach of contract by the Agency has occurred. The withdrawal of any Member under the conditions identified here shall not however free it from any and all requirements made of any withdrawing Member.
- 16.3 No Member withdrawing from the Agency shall be entitled to payment or return of any Assessment, Reassessment, contributions or monies contributed to the Agency or to the distribution of any assets of the Agency. No member shall be entitled to any payment or return of any assessment paid by the member to the Agency or any agency insurer or to any distribution of the Agency's assets.

## ARTICLE 17 Termination by Agency

- 17.1 The Agency shall have the right to terminate any Member's participation in the ~~Joint Protection Program Agreement~~ upon a motion approved by a three-quarters (75%) vote of 66% or more of the entire Board of Directors. ~~The Board of Directors may, p~~Prior to taking action on such a motion, the Board may, but is not required to, request that the Operating Committee review and make recommendations to the Board on any allegation giving rise to the request to terminate, including but not limited to failure to: comply with a written condition, disregard of ~~safety or~~ risk management recommendations or Member sStandards, noncompliance with any provision of this ~~Interlocal Agreement,~~ and/or the Bylaws of the Agency.

17.2 Any Member so ~~cancelled~~ terminated from the Agency, shall be given at least one hundred eighty (180) days notice prior to the effective date of the ~~cancellation~~ termination. Any Member so ~~cancelled~~ terminated shall have a period of up to six (6) months coverage under the terms of this Agreement, or may affect alternate insurance or self-insurance arrangements if it so desires. Upon written receipt of confirmation from the terminating Member that the terminating Member has in force valid insurance or membership in another risk sharing pool, the effective date of the termination may be adjusted by the Agency. Any Member so ~~cancelled~~ terminated shall be treated as if it had voluntarily withdrawn.

17.3 Upon termination from this Agreement, a ~~no~~ Member shall not be terminated from the agency shall be entitled to payment or return of any Assessment, Reassessment, contributions or monies contributed to the Agency or to the distribution of any assets of the Agency. No member shall be entitled to any payment or return of any assessment paid by the member to the Agency or any agency insurer or to any distribution of the Agency's assets.

17.4 A terminated Member shall be responsible for any Reassessment issued in the future covering dates the terminated entity was a Member of the Agency.

## ARTICLE 18

### Effect of Withdrawal or Termination

18.1 The withdrawal of any Member from this Agreement shall not terminate the same for purposes of continuing to comply with all conditions and requirements of the Agreement, and survives the withdrawal or termination of any Member.

18.2 No Member by withdrawing or terminating from the Agreement shall be entitled to payment or return of any ~~a~~ Assessment, Reassessment, consideration of property paid, or donated by the Member to the Agency, or to any distribution of assets.

18.3 The withdrawal or termination of any Member shall not ~~terminate~~ cease its responsibility to contribute its share or ~~a~~ Assessment, Reassessment, or funds to any fund or Joint Self-Insurance program created by the Agency until all Claims, or other unpaid liabilities, covering the period the Member was Signatory hereto have been finally resolved and a determination of the final amount of payments due by the Member or credits to the Member for the period of its membership has been made by the Board of Directors. In connection with this determination, the Board may exercise similar powers to those provided for in Article 17, *Termination by Agency*, of this Agreement.

18.4 The withdrawn or terminated Member shall be responsible for any applicable deductible that would have been applied related to a claim the same as if the Member was still in good standing with the Agency.

18.45 Any withdrawing - or terminated Member ~~may shall~~ not be permitted to rejoin the Agency, or allowed to submit an application to rejoin the Agency for a period of three (3) years after the effective date of the Member's withdrawal or termination without Board approval.

## ARTICLE 19

### Termination and Distribution

19.1 This Agreement may be terminated at any time by the written consent of three-fourths (75%) of the Members, provided, however, that this Agreement and Agency shall continue to exist for the purpose of paying all debts and liabilities, disposing of all Claims, distributing net assets, and otherwise ~~winding up and~~ liquidating the affairs of the Agency. The Board of Directors is vested with all powers of the Agency during such ~~winding up and~~ liquidation, including the power to require Members, including those ~~which~~ who were ~~are~~ Members at the time the claim arose or at

the time the loss was incurred, to pay their share of any additional amount of Reassessment deemed necessary by the Board for final disposition of all Claims, losses, and liabilities covered by this Agreement. Such additional Reassessment shall be determined and thereafter adjusted, if necessary.

- 19.2 Upon termination of this Agreement, all assets of the Agreement Agency shall be distributed only among the parties that are Members in good standing of the ~~Joint Protection Program Agency on the date of termination of this Agreement.~~ The assets shall be distributed in accordance with and proportionate to their ~~cash payments~~ Assessment, Reassessment and property contributions made during the term of this Agreement. The Board shall determine such distribution within six (6) months after the last pending claim or loss covered by this Agreement has been finally disposed of.
- 19.3 The Board is vested with all powers of the Agency for the purpose of ~~winding-up~~ liquidating and dissolving the business affairs of the Agency. These powers shall include the power to require Members, including those which were Members at the time the claim arose or at the time the loss was incurred, to pay their share of any additional amount of assessment deemed necessary by the Board for final disposition of all Claims and losses covered by this Agreement. A Member's share of such additional assessment shall be determined on the same basis as that provided for annual assessments, and shall be treated as if it were the next year's annual assessment for that Member.

## ARTICLE 20

### ~~Bylaws and Manual~~ Policy, Procedures and Member Standards

The Board ~~has developed~~ may adopt Agency Bylaws, ~~and a policy~~ ies, -and procedures, ~~manual and Member Standards or other documents~~ that governs the day-to-day operations of the Agency. Each Member shall have access in electronic or written format. ~~electronically or in written format~~ ~~Each Member shall receive a copy of any Bylaws, policy statement, or manual developed under this Article.~~

## ARTICLE 21

### Notices

Notices to Members hereunder shall be sufficient if mailed to the last address, or electronic mail, provided to the Agency by the respective Member postal mail will be deemed received three (3) days after mailing.

## ARTICLE 22

### Amendment

This Agreement may be amended at any time by the written approval of the majority three-quarters (75%) of all Members of the Agency. Amendments to the Agreement shall be adopted by ordinance or resolution of the governing board or council of each Member, signed by an authorized representative of each member, and a certified copy returned to the Agency

## ARTICLE 23

### Enforcement

The Agency is hereby granted the authority to enforce this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any City Member which signed this Agreement, the substantially prevailing party in such dispute shall be entitled to its costs and reasonable attorney's fees.

## ARTICLE 24

### Prohibition Against Assignment

No Member may assign any right, claim, or interest it may have under this Agreement, except to a successor entity following reorganization. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund, assessment, or asset of the Agency. Should any participating Member reorganize in accordance with the statutes of the State of Washington, the successor in interest, or successors in interest, may be substituted as a Member upon approval by the Board.

## ARTICLE 25

### Severability

In the event that any article, provision, clause, or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, clauses applications, or occurrences, and this Agreement is expressly declared to be severable.

## ARTICLE 26

### Agreement Complete

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

## ARTICLE 27

### Conflicts

In the event of a conflict between this Agreement and the adopted Bylaws, policies, or procedures, or the Member Standards, this Agreement shall take precedence."

### Article 28

### Supersession

This Agreement supersedes and replaces all prior Interlocal Agreements and amendments thereto pertaining to the Agency."

### Article 29

### Signature in Counterparts

This Agreement may be executed in any number of Counterparts and each of such Counterparts shall for all purposes constitute one Agreement, binding on all Members, notwithstanding that all Members are not Signatories to the same Counterpart. All references herein to this Agreement are deemed to refer to all such Counterparts.

### Article 30

### Section Headings

The section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the sections they identify and introduce."

### Article 31

### Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington."

### Article 32

### Time

Time is of the essence in this Agreement and each and every provision hereof.

**ARTICLE 332830**  
**Authorization of Signature**

Each Member signing this Agreement has passed the required Ordinance or Resolution authorizing and approving this Agreement, a certified copy of which Ordinance or Resolution is attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by authorized officials thereof.

Association of Washington Cities (AWC)  
Risk Management Service Agency (RMSA)

\_\_\_\_\_  
(Member Name)

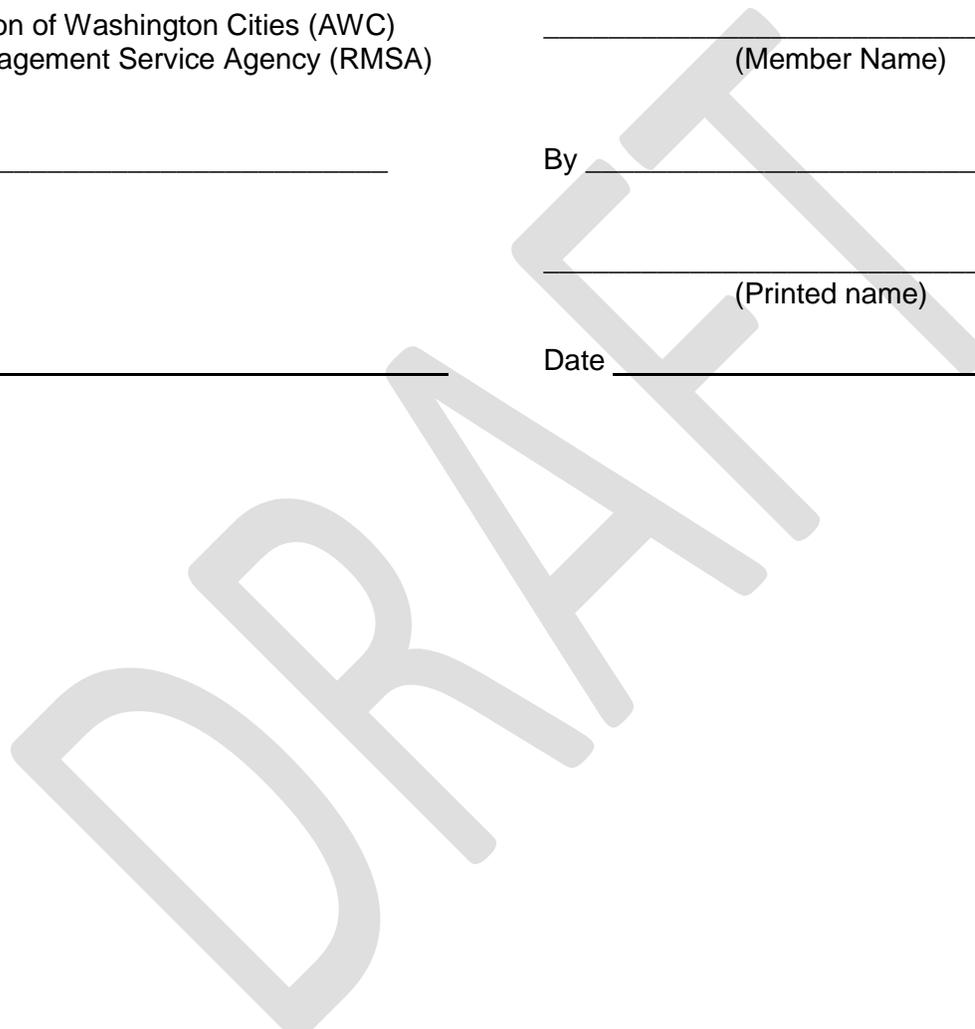
By \_\_\_\_\_

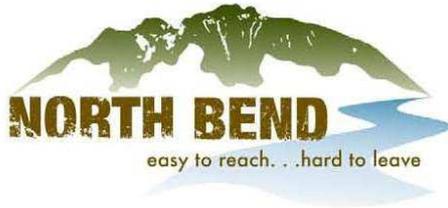
By \_\_\_\_\_

\_\_\_\_\_, Mayor  
(Printed name)

Date \_\_\_\_\_

Date \_\_\_\_\_





## City Council Agenda Bill

<b>SUBJECT:</b>		<b>Agenda Date: October 18, 2016</b>		<b>AB16-114</b>	
<p><b>A Resolution Adopting a Post Issuance Compliance Policy</b></p> <p>Cost Impact: None</p> <p>Fund Source: N/A</p> <p>Timeline: Immediate</p>		Department/Committee/Individual			
		Mayor Ken Hearing			
		City Administrator – Londi Lindell			
		City Attorney - Mike Kenyon			
		City Clerk – Susie Oppedal			
		Community & Economic Development – Gina Estep			
		Asst City Admin/Finance Director – Dawn Masko		X	
		Public Works – Mark Rigos			
<b>Attachments:</b> Resolution, Exhibit A – Post Issuance Compliance Policy					
<p><b>SUMMARY STATEMENT:</b></p> <p>Effective September 2011, the Internal Revenue Service (IRS) required that tax-exempt debt issuers indicate on bond forms to be submitted to the IRS (Form 8038-G) if written post-issuance compliance policies and procedures are in place. Based on their audits of local government’s compliance with post-issuance requirements, the IRS identified to the tax-exempt debt issuer community clear expectations of what policies and procedures should be in place to ensure compliance with IRS requirements. The IRS has made it clear that the absence of such policies will be considered a red flag that could result in an audit of post-issuance compliance for a portion or all of a local government’s tax-exempt bonds issued.</p> <p>While technically not required by the IRS, adoption of a Post Issuance Compliance Policy is an indicator to the IRS that the City is complying with provisions of the Internal Revenue Code for tax-exempt debt issuance. The attached Post Issuance Compliance Policy, drafted by the City’s bond counsel Pacific Law Group, addresses the need to adopt a policy that clearly outlines the post-issuance process to be used by the City, and assigns responsibility for those duties to specific staff. The Finance Director will be responsible for ensuring that the policy is followed and checklists and records are maintained.</p> <p>While the City already complies with post-issuance compliance regulations, adopting a Post Issuance Compliance Policy provides tools to help ensure the City’s ongoing obligations with respect to its bond issues are met. It also allows the City to “check the box” on IRS Form 8038-G regarding having written policies in place. The Policy is in line with published policies of other Washington cities.</p>					
<p><b>COMMITTEE REVIEW AND RECOMMENDATION:</b> This item was reviewed by the Finance and Administration Committee at their October 4, 2016 meeting and was recommended for approval and placement on the consent agenda.</p>					
<p><b>RECOMMENDED ACTION: MOTION to approve AB16-114, a resolution adopting a Post Issuance Compliance Policy.</b></p>					
<b>RECORD OF COUNCIL ACTION</b>					
<i>Meeting Date</i>		<i>Action</i>		<i>Vote</i>	
October 18, 2016					



## RESOLUTION

### A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, ADOPTING A POST ISSUANCE COMPLIANCE POLICY

**WHEREAS**, the City of North Bend issues from time to time certain bonds and other obligations that may be subject to federal tax and federal securities laws; and

**WHEREAS**, the City now desires to ratify and adopt a post issuance compliance policy addressing, among other matters, federal tax and federal securities laws applicable to the City's bonds and other obligations; and

**WHEREAS**, the City's bond counsel has reviewed the attached policy and recommends formal ratification and adoption;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The "Post Issuance Compliance Policy" which is attached as Exhibit A and incorporated by reference, is hereby ratified and adopted as the official policy of the City of North Bend for meeting, among other requirements, the City's obligations under federal tax and securities laws applicable to the City's bonds and other obligations.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18<sup>TH</sup> DAY OF  
OCTOBER, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Kenneth G. Hearing, Mayor**

\_\_\_\_\_  
**Pacifica Law Group LLP**

**ATTEST/AUTHENTICATED:**

Effective:  
Posted:

\_\_\_\_\_  
**Susie Oppedal, City Clerk**



**EXHIBIT A**

**City of North Bend, Washington  
Post Issuance Compliance Policy  
(for Governmental Bonds)**

**Scope.** This Post Issuance Compliance Policy addresses the City of North Bend, Washington’s (“City”) compliance with federal tax, federal securities and state law requirements and contractual obligations applicable to the City’s tax-advantaged governmental bond issues. The policy applies generally to all of the City’s tax-exempt governmental bonds, and other bonds subject to comparable requirements. As used in this policy, references to “bonds” include bonds, lines of credit, bond anticipation notes, and equipment and other financing leases.

**Purpose.** This policy is intended to improve the City’s ability to:

- Prevent violations in bond requirements from occurring,
- Timely identify potential violations, and
- Correct identified violations through appropriate remedial steps.

**Schedule of Review.** The policy is to be reviewed at least annually and upon each issuance of new bonds, including refunding bonds. In connection with this periodic review, the City will consider whether the policy should be amended or supplemented:

- To address any particular requirements associated with the new bond issue, or
- To reflect general changes in legal requirements since the prior bond issue.

**Requirements at Bond Closing.** Numerous federal tax, federal securities and state law requirements must be met in connection with a bond issue. In some circumstances (e.g., revenue bonds) rate and other covenant requirements will also need to be satisfied. These requirements are addressed in the bond transcript completed at bond closing, and confirmed in certain respects by the legal opinions included in the bond transcript. For each bond issuance, the Responsible Officer (defined below) will create a written schedule for due diligence reviews, with the appropriate officials set forth below, based upon the expectations set forth in the transcript documents.

**Requirements after Bond Closing.** Other federal tax, federal securities law and state law requirements and contractual obligations require on-going monitoring after the issuance of the bonds.

- Primary Responsibility. The Finance Director (the “Responsible Officer”) will undertake post-issuance compliance relating to the City’s bonds. The Responsible Officer is familiar with the provisions of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations (the “Regulations”) governing the tax-exempt status of the bonds and with the federal securities law requirements governing the bonds, including SEC Rule 15c2-12. The Responsible Officer may delegate tasks to other officers or staff of the City or to outside attorneys or other experts.
- Officials or employees responsible for review. The following officers and employees of the City are identified as the responsible persons for reviewing compliance with the City’s

**EXHIBIT A**

post-issuance obligations. Each responsible individual is to institute a calendaring system to track compliance with tasks in a timely manner.

- Federal tax requirements, including arbitrage, use of proceeds, use of facilities and IRS filings:
  - ✓ Arbitrage, IRS Filings: Responsible Officer
  - ✓ Use of Proceeds: Responsible Officer
  - ✓ Use of Facilities: Responsible Officer
  
- Continuing disclosure requirements:
  - ✓ Annual Filing: Responsible Officer
  - ✓ Material Event Notices: Responsible Officer
  - ✓ Prior to filing each annual filing or material event notice, the Responsible Officer is to circulate the draft filing or notice to bond counsel or to responsible department heads for subject matter covered.
  
- The Responsible Officer is responsible for reviewing the other requirements under this policy.
  
- The responsible persons identified above may need to confer, from time to time, with the City’s bond counsel and/or financial advisor, to confirm the applicability and scope of the requirements outlined in this policy. For reference, the contact information for these advisors is provided below:
  - ✓ Pacifica Law Group LLP, as bond counsel
    - Contact: Deanna Gregory at 206-245-1716 or Deanna.gregory@pacificallawgroup.com or
    - Alison Benge at 206-602-1210 or Alison.benge@pacificallawgroup.com
  
- Training of the responsible official/employee. The City provides opportunities for training to the responsible individuals, specifically including the following training opportunities:
  - At or after bond closing, a conference call or meeting with bond counsel to review the requirements applicable to a new bond issue.
  - Participation in in-house training sessions, CPE seminars, or seminars/webinars conducted by professional organizations (e.g., GFOA, WFOA, PSFOA)
  
- Records to be Maintained. The following documents are maintained in connection with each bond issue. The goal is to retain adequate records to substantiate compliance with federal tax, securities law, state law and other contractual requirements applicable to the City’s bonds. Generally records should be maintained for the term of the bonds (plus the term of any refunding bonds) plus three years. Unless otherwise specified, the following records are to be maintained in the office of the Responsible Officer.
  - Complete bond transcript (provided by bond counsel) in CD or hard copy.

**EXHIBIT A**

- Records of investment of bond proceeds in a format showing the date and amount of each investment, its interest rate and/or yield, the date any earnings are received and the amount earned, and the date each investment matures and if sold prior to maturity, the sale date and sale price.
  - Records of expenditure of bond proceeds in a format showing the amount, timing and the type of expenditure.
  - Records of invoices or requisitions, together with supporting documentation showing payee, payment amount and type of expenditure, particularly for projects involving multiple sources of funds.
  - Records necessary to document the allocation of bond proceeds and other sources of funds to particular projects or portions of projects.
  - Records documenting the final allocation of bond proceeds to projects, including any reallocations of bond proceeds, in a format showing the timing and substance of the reallocation, if applicable.
  - Records demonstrating compliance with arbitrage and rebate requirements, including arbitrage calculations, documentation of spending exceptions to rebate, rebate reports and IRS filings and payments.
  - Copies of contracts relating to the use of the bond-financed facility including leases, concession agreements, management agreements and other agreements that give usage rights or legal entitlements with respect to the facility to nongovernmental persons (e.g., advertising displays, cell tower leases, and naming rights agreements).
  - Copies of contracts relating to ongoing compliance with respect to the bonds, such as Calculation Agency Agreements or filings.
  - Copies of any filings or correspondence with the IRS, the SEC or other regulatory body.
- Investment of Bond Proceeds. In general, bond proceeds and certain other funds can only be invested at a rate that exceeds the yield on the bonds under limited circumstances. Furthermore, amounts earned by investing above the bond yield must be rebated to the IRS, unless the City qualifies as a small issuer or a spending exception is met. The arbitrage and rebate requirements for each bond issue are detailed in the federal tax certificate. The Responsible Officer will monitor the investment and expenditure of the funds and accounts listed below. The Responsible Officer will determine whether the bond issue meets the requirement for one of the expenditure exceptions to arbitrage rebate. The Responsible Officer will determine whether a rebate calculation is necessary and, if so, will perform the calculation or engage a rebate consultant. The Responsible Officer will arrange for the payment of any required rebate to the IRS together with the appropriate IRS form on the dates described below.
    - Funds to Monitor.
      - ✓ Bond or debt service funds/accounts
      - ✓ Project or construction funds/accounts
      - ✓ Debt service reserve funds/accounts
      - ✓ Other accounts with bond proceeds or amounts pledged to pay bonds
    - Arbitrage Reports; Rebate May Be Due.
      - ✓ During construction, monitor expenditures to confirm satisfaction of expected exceptions to rebate (such as six month exception, 18 month exception, 24 month exception)

**EXHIBIT A**

- ✓ The first rebate payment is due five years after date of issue plus 60 days
  - ✓ Rebate is due every succeeding five years, if there are unspent gross proceeds of the bonds
  - ✓ Final rebate payment is due 60 days after early redemption or retirement of the bonds
- Limitations on Type of Investments. Bond proceeds must be invested as permitted under state law. In addition, the bond resolution or any bond insurance agreement may further limit the permitted investments.
- Use of Bond Proceeds During the Construction Period. Monitoring the expenditure of bond proceeds is necessary to assure that the required amount of bond proceeds are expended for capital expenditures and that not more than 10% of the bond proceeds are expended for projects that will be used for in a private trade or business (including by the federal government and nonprofit entities).
    - The Responsible Officer, in consultation with the appropriate Project Manager, is responsible for reviewing the transcript for the bonds, and in particular the authorizing documents and the federal tax certificate, as well as invoices and other expenditure records to monitor that the bond proceeds are spent on authorized project costs.
    - If, at the completion of the project, there are unspent bond proceeds the Responsible Officer, conferring with bond counsel, will direct application of the excess proceeds for permitted uses under federal tax law, state law, and bond authorization documents.
    - If the project involves bond proceeds and other sources of funds and included both governmental and nongovernmental use of the financed facilities the Responsible Officer in consultation with the Project Manager will undertake a final reconciliation of bond proceeds expenditures and expenditures of other funds with project costs no later than 18 months after the later of the date of expenditure or the date that the project is placed in service (but in no event more than five years after the date of issue).
    - Any change in the scope of the project financed with bond proceeds should be reviewed and documented.
  - Refundings.
    - For advance refunding escrows, confirm that any scheduled purchases of State and Local Government Series or open market securities are made as scheduled.
    - On the redemption date, confirm that the refunded bonds have been redeemed and cancelled.
    - Promptly following the redemption date, confirm that all proceeds of the bonds and all proceeds of the refunded bonds have been spent. Verify that excess proceeds, if any, of the bonds do not exceed an amount permitted by the Regulations.
  - Use of Bond-Financed Facilities. Monitoring (and limiting) any private use of the bond-financed facility is important to maintaining the federal tax treatment of governmental bonds. In general, no more than 10% of the bond-financed facility can be used in a private trade or business (including by the federal government and nonprofit entities). Private use

**EXHIBIT A**

can arise through any of the following arrangements, either directly or indirectly.

- Types of Private Use
  - ✓ Selling all or a portion of the facility
  - ✓ Leasing all or a portion of the facility
  - ✓ Entering into a management contract for the facility (except for qualified management contracts under IRS Rev. Proc. 97-13)
  - ✓ Use of all or a portion of the facility for research purposes under a research contract (except for qualified research contracts under IRS Rev. Proc. 97-14)
  - ✓ Entering into contracts giving “special legal entitlement” to the facility (for example, selling advertising space or naming rights)
  
- Procedures for monitoring private use; procedures reasonably expected to timely identify noncompliance.
  - ✓ All leases and other contracts involving bond-financed property will be sent prior to execution to the Responsible Officer for review.
  - ✓ The Responsible Officer will confer with personnel responsible for bond financed projects at least annually to discuss any existing or planned use of bond-financed or refinanced facilities.
  - ✓ Private use for each bond-financed project will be calculated annually.
  
- Procedures ensuring that the City will take steps to timely correct noncompliance.
  - ✓ Consult with bond counsel regarding any private use or proposed change in use with respect to bond-financed property.
  - ✓ If noncompliance will be remediated under existing remedial action provisions or tax-exempt bond closing agreement programs contained in the Regulations or other published guidance from the IRS, determine the deadline for taking action and proceed with diligence to take the required remedial actions.
  - ✓ If remedial actions are unavailable, determine whether to make a submission to the Tax Exempt Bonds Voluntary Closing Agreement Program (“VCAP”) under Internal Revenue Manual 7.2.3.
  
- Reissuance. A significant modification of the bond documents may result in bonds being deemed refunded or “reissued.” Such an event will require, among other things, the filing of new information returns with the federal government and the execution of a new arbitrage certificate. Bond counsel should be consulted in the event of modification of the bond documents.
  
- Continuing Disclosure. The City is required to make annual filings with the Municipal Securities Rulemaking Board (“MSRB”) as described in the continuing disclosure undertaking for each bond issue (which may include tax-exempt or taxable bonds), and to file notice of certain material events.
  - Submissions will be made in electronic form through the MSRB’s web-based system known as Electronic Municipal Market Access (“EMMA”), currently available at <http://www.emma.msrb.org>. Submissions will be made in word-searchable PDF.

**EXHIBIT A**

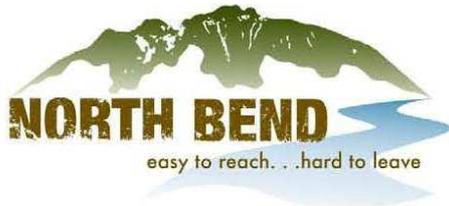
- Annual filings
  - ✓ Financial information and operating data about the City included in the Official Statement for the bonds
  - ✓ Change in fiscal year
  - ✓ Other information described in the continuing disclosure undertaking
  - ✓ Audited financial statements. If audited information is not available by this date, unaudited information must be filed with the audited information filed as soon as it is available.
  - ✓ These reports must be filed no later than nine months after the end of the City's fiscal year (currently September 30).
  
- Material event notices.
  - ✓ The City is required to provide or cause to be provided to the MSRB, in a timely manner, notice of certain events with respect to the bonds. Amendments to SEC Rule 15c2-12 (the "Rule") in 2010 expanded the list of events requiring disclosure and added a 10-day compliance period for undertakings effective after December 1, 2010.
  - ✓ Generally, if any of the following events occur, the City shall provide, or cause to be provided, to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of the any of the following events with respect to the bonds:
    1. Principal and interest payment delinquencies
    2. Non-payment related defaults, if material
    3. Unscheduled draws on debt service reserves reflecting financial difficulties
    4. Unscheduled draws on credit enhancements reflecting financial difficulties
    5. Substitution of credit or liquidity providers, or their failure to perform
    6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the bonds, or other material events affecting the tax status of the bonds
    7. Modifications to the rights of bondholders, if material
    8. Bond calls, if material, and tender offers
    9. Defeasances
    10. Release, substitution, or sale of property securing repayment of the Bonds, if material
    11. Rating changes (both upgrades and downgrades)
    12. Bankruptcy, insolvency, receivership or similar event of the City
    13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material

**EXHIBIT A**

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material

- Procedure for ensuring that notice of the above events is provided to the responsible individual(s) identified above: Finance Director
- Periodic check of information regarding bonds on EMMA. Prior to each new bond issue, the City will search EMMA for its continuing disclosure filings to confirm proper filings have been made.

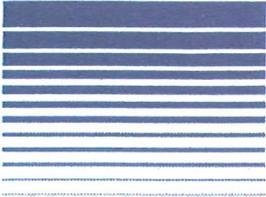




## City Council Agenda Bill

<b>SUBJECT:</b>	<b>Agenda Date: October 18, 2016</b>	<b>AB16-115</b>
<b>A Motion Authorizing a Contract with Otto Rosenau &amp; Associates, Inc. for Special Inspection Services on the Torguson Park Capital Improvement Project</b>	Department/Committee/Individual	
	Mayor Ken Hearing	
	City Administrator – Londi Lindell	
	City Attorney - Mike Kenyon	
	City Clerk – Susie Oppedal	
	Community & Economic Development – Gina Estep	
	Finance – Dawn Masko	
	Public Works – Mark Rigos, P.E.	X
Cost Impact: Not to Exceed \$17,353.20		
Fund Source: Park Impact Fees		
Timeline: Immediate		
<b>Attachments:</b> Exhibit A - Work, Scope and Fee		
<p><b>SUMMARY STATEMENT:</b></p> <p>The City of North Bend is moving forward this year with construction of the Torguson Park Capital Improvements Project. The project requires special inspection and testing services for soil bearing verification, soils compaction, reinforced concrete, reinforced masonry, lateral framing, anchoring systems, and other items. The International Building Code requires that individuals performing such testing and inspection services have specific expertise and/or licenses to ensure that the contractor’s work in these specific areas meets building code requirements. The special inspector will ensure that the City’s contractor meets the requirements and protect the City in the event of failed workmanship or improper materials.</p> <p>Most cities do not employ staff with the specific expertise and licensing required by the International Building Code for this work. Otto Rosenau &amp; Associates, Inc. (“ORA”) has been chosen to provide the City with geotechnical engineering, construction inspection and materials testing necessary for the tasks described above and included in the Scope of Work attached hereto as Exhibit A. ORA provided responsive inspection support on the picnic shelter and replacement bridge in association with the EJ Roberts Park improvements performed earlier this year. The City’s Building Official and Public Works Director find ORA’s rate structure to be reasonable, and highly recommend the City contract with ORA to perform the necessary special inspection and testing services for the Torguson Park Capital Improvements Project.</p>		
<p><b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The Transportation &amp; Public Works Committee reviewed this item on October 12<sup>th</sup> and recommended approval and placement on consent agenda.</p>		
<p><b>RECOMMENDED ACTION: MOTION to approve AB16-115, authorizing a contract with Otto Rosenau &amp; Associates, Inc. to provide special inspection services for the Torguson Park Capital Improvement Project, in a form and content acceptable to the City Attorney, in an amount not to exceed \$17,353.20.</b></p>		
<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
October 18, 2016		





# OTTO ROSENAU & ASSOCIATES, INC.

Geotechnical Engineering, Construction Inspection & Materials Testing

6747 M. L. King Way South, Seattle, Washington 98118-3216 USA  
Tel: (206) 725-4600 • Toll Free: (888) OTTO-4-US • Fax: (206) 723-2221  
WBE W2F5913684 • WABO Registered Agency • Website: www.ottorosenau.com

October 4, 2016  
Proposal No.: 16-0816

Mr. Mark Rigos  
City of North Bend  
PO Box 896  
North Bend, WA 98045

**Re: Construction Inspection and Materials Testing Services  
Torguson Park 2016 Capital Improvements  
750 East North Bend Way  
North Bend, Washington**

Dear Mr. Rigos:

Otto Rosenau & Associates, Inc. (ORA) is pleased to provide you with this proposal to provide special inspection and materials testing services in support of the referenced project. This proposal presents a project description, scope of work, and proposed fee. All work will be performed in accordance with the attached Terms, Definitions, and General Conditions.

**PROJECT DESCRIPTION:** The project involves construction of trails plazas, structures, utilities, site furniture and landscaping located in Torguson Park.

**SCOPE OF WORK:** The architect, civil engineer, structural engineer, and applicable building codes dictate which elements of the project require inspection or testing. Based on our understanding of your project, the anticipated scope of work for the testing and inspection services includes, but is not limited to, the following items:

- Soil bearing verification
- Soils compaction
- Reinforced concrete
- Reinforced masonry
- Lateral framing
- Proprietary anchors

ORA proposes to provide appropriately licensed and qualified engineers or inspectors to perform the inspection and testing tasks. The results of field tests and inspections will be communicated to the owner's and contractor's representative as soon as practical. Items that do not conform to the project specifications will be logged and tracked until corrective action is completed. Handwritten reports will be prepared and left on-site after each inspection. Typewritten reports will be distributed to the appropriate project team members and jurisdiction.

**PROPOSED FEE:** Otto Rosenau and Associates, Inc. propose to provide the above described services on a unit fee basis where we will charge only for the services we perform. Our unit fees are presented on the attached Fee Schedule.

Based on our review of the project drawings and specifications dated May 4, 2016 and on our past experience on similar projects, we suggest a budget of **\$17,353.20**, be established for the inspection and testing services. The actual total fee for inspection and testing services is dependent on the efficiency, performance, and schedule of the general contractor, subcontractors, and material suppliers.

**Otto Rosenau & Associates, Incorporated**  
Geotechnical Engineering, Construction Inspection & Materials Testing

City of North Bend  
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**SCHEDULE:** We are prepared to begin work on your project as required by the construction schedule. Appropriate personnel will be dispatched to the project on an on-call basis in response to requests from the authorized field representative. Though we may be able to respond to last minute or emergency calls for inspection, we request 48 hours' notice for inspections.

**CLOSURE:** Thank you for this opportunity to work with you on your project. If this proposal is accepted, please indicate so by signing and returning one copy to us via fax (206-723-2221), email ([accounting@ottorosenau.com](mailto:accounting@ottorosenau.com)), or mail as an authorization to proceed.

*This proposal, including the Terms, Definitions, and General Conditions and proposed unit fees, is accepted by:*

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

We look forward to working with you. If you have any questions, please contact me at (206) 725-4600.

Very truly yours,  
**OTTO ROSENAU & ASSOCIATES, INC.**

  
Walter C. Hansen  
Project Manager

  
Judi Rosenau-Payseno  
President

WCH:JRP:rt

Attachments: Estimated Budget  
Fee Schedule  
Terms, Definitions, and General Conditions

**Otto Rosenau & Associates, Incorporated**  
 Geotechnical Engineering, Construction Inspection & Materials Testing

City of North Bend  
 Torguson Park 2016 Capital Improvements  
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**ESTIMATED BUDGET**

Description of Services	Quantity	Unit	Fee	Extension
Geotechnical Engineer (P.E.) ( <i>Soil bearing verification</i> ) - Assumes 2 trips	10	Hr	\$134.00	\$1,340.00
Soils Compaction Testing - Assumes 15 trips and 2 sample pick-up trips	81	Hr	\$72.00	\$5,832.00
Soil Grain Size Distribution (Sieve Analysis; D422)	4	Ea	\$96.00	\$384.00
Soil Moisture-Density Relationship (Proctor; D1557)	4	Ea	\$191.00	\$764.00
Reinforced Concrete Testing and Inspection - Assumes 8 inspection trips and 8 sample pick-up trips	64	Hr	\$67.00	\$4,288.00
Concrete Test Specimens (C39)	32	Ea	\$18.00	\$576.00
Structural Masonry Testing and Inspection - Assumes 1 inspection trip and 1 sample pick-up trip	10	Hr	\$67.00	\$670.00
Masonry Half-Size Grouted/Ungouted Block Prisms (C314)	3	Ea	\$100.00	\$300.00
Lateral Framing Inspection - Assumes 2 trips	10	Hr	\$67.00	\$670.00
Proprietary Anchor Inspection ( <i>Epoxy, Mechanical Anchors, etc.</i> ) - Assumes 2 trips	10	Hr	\$67.00	\$670.00
Associated Mileage ( <i>Portal to Portal at current Gov't rate</i> ) - Assumes 41 trips x 80 miles/round-trip	3280	Mile	\$0.54	\$1,771.20
Final Inspection/Review/Report	1	Hr	\$88.00	\$88.00
Project Management ( <i>Report Review, Inspector Supervision</i> )		Hr		No Charge
Administrative ( <i>Report Typing and Distribution</i> )		Hr		No Charge
<b>Total Estimated Budget:</b>				<b>\$17,353.20</b>

**Notes:**

- 1) Additional services are available, and will be provided upon request, at our published rates and fees.

City of North Bend  
 Torguson Park 2016 Capital Improvements  
 Proposal No.: 16-0816  
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**FEE SCHEDULE**

Description of Services	Unit	Fee
<b>I. Labor (Personnel) Rates:</b>		
Administrative Staff – Standard Report Typing & Distribution	Hour	No Charge
Project Manager – Standard Report Review & Inspector Supervision	Hour	No Charge
Project Manager – Attend Meetings, Consultation, etc. (If Required)	Hour	\$88.00
Geotechnical Engineer (P.E.)	Hour	\$134.00
Geologist	Hour	\$100.00
Engineering Technician	Hour	\$88.00
Soils/Asphalt Compaction Testing Technician	Hour	\$72.00
Special Inspector: a) Reinforced Concrete (Includes Reinforcing Steel) b) Prestressed Concrete c) Shotcrete d) Structural Masonry e) Proprietary Anchors – Epoxy, Expansion Anchors, etc. f) Lateral Framing – Nailing, Straps, etc. g) Miscellaneous – Spray-Applied Fireproofing, Seismic Ties, etc.	Hour	\$67.00
Structural Steel and Welding Inspector	Hour	\$72.00
Nondestructive Testing Technician (UT/MT/PT)	Hour	\$76.00
Certified Welding Inspector/ Consultant (American Welding Society – CWI)	Hour	\$76.00
Pull Testing Technician (2-Man Crew)	Hour	\$156.00
<b>II. Laboratory (Materials) Testing:</b>		
Soil Grain Size Distribution – Sieve Analysis (D422)	Each	\$96.00
Soil Moisture-Density Relationship – Proctor (D1557)	Each	\$191.00
Asphalt Oil Content by Ignition with Gradation	Each	\$196.00
Asphalt Rice Density (D2041/ WSDOT T-209)	Each	\$89.00
Compressive Strength Test – Concrete Cylinders/ Grout/ Mortar (C39/C109/C1019)	Each	\$18.00
Fireproofing Density Specimens (E605)	Each	\$71.00
Fireproofing Cohesion/Adhesion Tests (E736)	Each	\$31.00
Masonry Prisms/Concrete Masonry Units (C1314)	Each	\$100.00
Shotcrete Test Panel (Includes 4 Cores; C1140)	Each	\$200.00
Sawcutting of Test Specimens	Each	\$6.00
<b>III. Miscellaneous/Reimbursable Expenses:</b>		
Associated Mileage (Portal to Portal)	Mile	\$0.54
Project Associated Reimbursable Items (e.g. Parking Fees, Consumable Safety Gear, Cure Box, Temperature Recording Device, Subcontractor Services, etc.)	Lot	Cost + 15%
Final Inspection/Review/Report	Hour	\$88.00

Note: Additional services are available, and will be provided upon request, at our published rates and fees.

**TERMS, DEFINITIONS, AND GENERAL CONDITIONS**

**1. Scope of Work**

Otto Rosenau and Associates, Inc. (herein "ORA") is performing inspection, materials testing, geotechnical engineering, or other services performed by ORA as described in its proposal accepted by Client, (herein the "Work"), which shall be subject to these Terms, Definitions, and General Conditions. The Client accepts sole responsibility for determining whether the quantity and nature of the Work ordered by Client is adequate and sufficient for Client's needs.

**2. Notification of Work and Access to Site**

Advance notification for inspection and testing services is the responsibility of the Client and/or its representative. Inspection or testing services should be requested as far in advance as practical (preferably a minimum of two business days notification). The Client shall arrange and provide safe access to the site as required for ORA to perform the Work.

**3. Schedule of Work**

ORA's Work will be accomplished in a timely, workmanlike manner by ORA or its subcontractor at the prices or fees quoted. If ORA is required to delay commencement of the Work or if it is required to stop or interrupt the progress of its Work as a result of changes in scope requested for any reason by the Client, interruptions in the progress of construction, or causes beyond the control of ORA, additional charges may be applicable and payable by the Client.

**4. Estimated Budgets**

Whenever applicable and unless stated in our fee schedule, estimated budgets do not include overtime hours, re-inspections or retests of deficiencies, or services provided beyond our original scope. Our actual total fee will be determined on a unit-fee basis wherein we will charge only for work performed. The construction schedule and the performance of the general contractor, sub-contractors, and material suppliers will directly impact our actual total fee.

**5. Hours of Operation**

Regular work hours for ORA personnel are an eight hour shift between 6:00 am and 6:00 pm Monday through Friday, except for holidays. The holidays recognized are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day. In the event the holiday falls on a Saturday, the preceding Friday will be observed and in the event the holiday falls on a Sunday, the observance is recognized on Monday.

**6. Labor Rates and Minimum Charge**

For work on Saturdays, in excess of eight hours Monday through Friday, or for work performed before 6:00 am or after 6:00 pm, a premium rate of 1.5 times the regular rate will be charged. For work on Sundays, holidays, in excess of eight hours on Saturdays, and in excess of twelve hours Monday through Friday, a premium rate of 2.0 times the regular rate will be charged. All services are portal to portal from ORA's facility.

There shall be a three hour minimum charge per trip during regular work hours, a four hour minimum charge per trip for weekend and holiday, and an eight hour minimum charge per trip for night shifts. The applicable labor rate will apply depending upon the day/shift demand.

Late cancellations (less than 3 business hours' notice for day shift or 24 hours' notice for night shift) will be charged 50% of the minimum charge at the applicable rate.

**Otto Rosenau & Associates, Incorporated**

Geotechnical Engineering, Construction Inspection & Materials Testing

City of North Bend  
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Test samples may be required to remain on the jobsite undisturbed for 24 to 48 hours as per the codes, standards, or specifications and will be picked up as designated. All samples, including hold samples, tested or not, shall be charged at the published rate. The Client will be invoiced portal to portal at the applicable labor rate. Laboratory rush samples will be invoiced at 1.5 times the standard test rate.

As a professional services firm, ORA is not typically subject to prevailing wage agreements; however, should our services be subject to prevailing wage rates by Federal ruling, this proposal is null and void. A new proposal will be provided to account for additional services and increased wage rates associated with the ruling. This includes any apprenticeship programs, equal opportunity submittals, affirmative action, union referral statements, and/or certified payroll. These items were excluded from this proposal.

The client agrees that the labor rates quoted shall be increased annually in proportion to the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

**7. Invoicing and Payment**

Client shall be invoiced once each month for work performed during the preceding month. If an invoice is disputed, the Client must provide written notice within fourteen (14) calendar days, indicating all disputed amounts and reason Client believes amount to be in error. Client waives the right to dispute any invoice following this fourteen (14) day period.

ORA accepts the following methods of payment: cash, check, or credit card (Visa or MasterCard). Client agrees to pay each invoice within 30 days of the date rendered. Failure of Client to make payments within thirty (30) days of invoice shall constitute a full release of ORA from any and all claims which Client may have, whether in contract, in tort, or otherwise, whether known or unknown at the time. A service charge of one and a half percent per month will be added to all delinquent accounts. Invoices not paid within 60 days may result in ORA stopping Work until such invoices rendered are paid in full. Where legal action including assertion of lien rights becomes necessary to obtain payment for services provided, Client agrees to pay all collection costs, including any and all attorney's fees.

**8. Final Letter of Completion**

ORA will issue final letter of completion to the building department when requested by the Client or its representative. The Client understands that the final letter will be submitted only when all invoices have been paid in full. A guarantee that the Contractor has constructed the project in full accordance with the approved plans and specifications is neither intended nor implied.

**9. Hazardous Materials**

The Client, landowner, and its agents shall accept sole responsibility to notify appropriate agencies in regard to any hazardous substances discovered by ORA on the project site. ORA is expressly relieved from any obligations to report the presence of hazardous substances to any and all regulatory agencies.

**10. Indemnification**

ORA has not included in its fee and is not responsible for the cost of restoration of damage that may occur due to Work performed. Client agrees to indemnify and save ORA harmless from all claims, suits, losses, costs and expenses including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to ORA's Work or arising from subsurface or latent conditions or damage to subsurface structures, lines, or conduits. In return, ORA agrees to indemnify and hold Client harmless from any and all claims, suits, costs, and expenses subject to the foregoing limitations, including reasonable attorney's fees and court costs, but only to the extent of ORA's negligence. Client shall provide same protection to ORA to the extent of its negligence.

City of North Bend  
Torguson Park 2016 Capital Improvements  
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In the event that client or its principals shall bring suit, cause of action, claim, or counterclaim against ORA, the party initiating such action shall pay to ORA the costs and expenses incurred by ORA to investigate, answer, and defend itself including reasonable attorney's fees, witness fees and court costs to the extent that ORA shall prevail in such suit. Notwithstanding any other provision herein, should ORA or any of its employees be found to have been negligent in performing services or work, client and all parties claiming as a result thereof agree that the maximum aggregate amount of liability of ORA and its officers, employees, and agents shall be limited to the total amount of the fee paid to ORA for its Work.

ORA may engage the services of other contractors/consultants on behalf of Client for the provision of professional services. ORA shall be held harmless, and assumes no liability, for the services of said contractor/consultant. As such, ORA shall be held harmless from any claim which may arise out of the actions of the contractor/consultant.

**11. Insurance**

ORA is covered by General/Professional Liability Insurance for bodily injury and property damage arising directly from our negligent acts or omissions. If Client requires additional coverage beyond our limits, ORA will obtain additional insurance to the limits the Client requests at the Client's expense.

If additional insured status is required by written contract, only those parties that we are actually doing work for directly would be eligible for coverage as an additional insured on our policy.

**12. Provisions**

Client agrees it will not engage or employ any employees of ORA for a minimum of two years after completion of ORA services for this project.

A fuel surcharge will apply if average price of regular unleaded fuel exceeds \$3.50 per gallon.

The ordering of work from ORA or use of any reports or information provided by ORA shall constitute acceptance of the terms of ORA's proposal and these terms and conditions.

All quotations are based upon standard non-overtime hourly rates. Unless otherwise agreed, this proposal terminates in 90 calendar days from the date of issue unless accepted in writing within said 90 days.

Concrete test specimens will be made according to ASTM C31 with the exception of sections 10.1.2 and 12.1.5. These items refer to initial curing of the samples. If the client would like the samples cured in accordance to these sections, arrangements can be made (applicable fees apply) to provide a cure box/tank, temperature recorders, etc. Unless otherwise agreed, test specimens or samples will be disposed of immediately upon completion of test.

ORA may dispose of project inspection files after a period of ten years. Client may request in writing to extend the file retention period or obtain custody in lieu of disposal, subject to mutual agreement upon a retention/custody agreement, including fees to be paid ORA.

**13. Entire Agreement**

This agreement constitutes the entire understanding of the parties and there are no representations, warranties or understandings made other than those as set forth herein. This agreement may be modified only in writing, signed by each of the parties. No work can be performed prior to written acceptance of this proposal.





## City Council Agenda Bill

<b>SUBJECT:</b>		<b>Agenda Date: October 18, 2016</b>	<b>AB16-116</b>
<b>A Resolution Authorizing a Developer Extension Agreement with John Day Homes for Cedar Falls South</b>		Department/Committee/Individual	
		Mayor Ken Hearing	
		City Administrator – Londi Lindell	
		City Attorney - Mike Kenyon	
		City Clerk – Susie Oppedal	
		Community & Economic Development – Gina Estep	
		Finance – Dawn Masko	
		Public Works – Mark Rigos, P.E.	
Cost Impact: N/A			
Fund Source: N/A			
Timeline: Immediate			
<b>Attachments:</b> Resolution, Exhibit A – Developer Extension Agreement			
<p><b>SUMMARY STATEMENT:</b></p> <p>John Day Homes has submitted a preliminary plat application for the “Cedar Falls South” development, which is a 30-Lot Subdivision south of the existing Cedar Falls development located at the terminus of Salish Ave SE. Before the plat can be recorded, certain infrastructure improvements will need to be constructed including extensions of the City’s water, sewer, stormwater, and street systems. Per Chapter 18.27 of the North Bend Municipal Code, the developer must enter into a Developer Extension Agreement (DEA) with the City to design and construct these improvements, post the necessary bonds, and pay for all City expenses related to the review, inspection, and administration of the agreement.</p> <p>Accordingly, a DEA for Cedar Falls South has been prepared, reviewed by the City Attorney, and reviewed by John Day Homes.</p> <p>Once the improvements are constructed, a Bill of Sale will be signed by John Day Homes and it will be presented to the Council along with a proposal to accept the improvements for ownership and maintenance by the City.</p>			
<p><b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The DEA was brought up during the Transportation and Public Works Committee meeting on Oct 12, 2016 and was recommended for approval on the Consent Agenda.</p>			
<p><b>RECOMMENDED ACTION: MOTION to approve AB16-116, a resolution authorizing the Developer Extension Agreement with John Day Homes for the Cedar Falls South 30 Lot Plat.</b></p>			
<b>RECORD OF COUNCIL ACTION</b>			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
October 18, 2016			



# RESOLUTION

## A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, AUTHORIZING THE DEVELOPER EXTENSION AGREEMENT WITH JOHN DAY HOMES FOR CEDAR FALLS SOUTH 30 LOT SUBDIVISION INFRASTRUCTURE

**WHEREAS**, John Day Homes has applied for and received preliminary plat approval for the proposed Cedar Falls South 30 Lot Subdivision south of the existing Cedar Falls Development located at the terminus of Salish Ave S.E.; and

**WHEREAS**, the conditions of approval for finalizing the Cedar Falls South 30 Lot Subdivision include the installation of infrastructure in accordance with City standards; and

**WHEREAS**, application was made with the City to extend the City’s water system, sewer system, street system, and storm drainage system for the proposed Cedar Falls South 30 Lot Subdivision; and

**WHEREAS**, the City has prepared a Developer Extension Agreement for the required improvements; and

**WHEREAS**, the applicant will be required to pay fees and deposits for plan review and construction inspections along with applicable storm charges; and

**WHEREAS**, the City will be requiring that all deposits, fees, permits, bonds, and insurance be in place prior to any infrastructure work;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The Developer Extension Agreement with John Day Homes for infrastructure work associated with the proposed Cedar Falls South 30 Lot Subdivision is approved, in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18<sup>TH</sup> DAY OF OCTOBER, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Kenneth G. Hearing, Mayor**

\_\_\_\_\_  
**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Effective:  
Posted:

\_\_\_\_\_  
**Susie Oppedal, City Clerk**

Resolution



**DEVELOPER EXTENSION AGREEMENT  
CONTRACT DOCUMENTS**

**Water, Sewer, Stormwater, and Street**

**DEVELOPER EXTENSION AGREEMENT  
CONTRACT DOCUMENTS**

**Water, Sewer, Stormwater, and Street**

**PROJECT TITLE:** Cedar Falls South - 30 Lot Plat

**DATE:** \_\_\_\_\_, 2016

**DEVELOPER NAME:** John Day Homes

**MAILING ADDRESS:** PO Box 2930 North Bend, WA 98045

**PHONE:** (425) 831-4901

**CONTACT:** John Day (jday@johndayhomes.com)

**CITY OF NORTH BEND  
A MUNICIPAL CORPORATION OF  
THE STATE OF WASHINGTON**

**MAYOR: Kenneth G. Hearing**

**City Council**

**Brendon Elwood  
Alan Gothelf  
Trevor Kostanich  
Ross Loudenback  
Jeanne Pettersen  
Jonathan Rosen  
Martin Volken**

**City of North Bend  
211 Main Avenue North  
P. O. Box 896  
North Bend, WA 98045  
(425) 888-1211 FAX (425) 831-6200**

**City Staff**

**City Administrator: Londi Lindell  
City Attorney: Mike Kenyon  
Public Works Director: Mark Rigos, P.E.**

**DEVELOPER EXTENSION AGREEMENT  
CONTRACT DOCUMENTS**

**Water, Sewer, Stormwater, and Street**

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**CHECKLIST**  
**for Constructing Extensions**  
**to the Water, Sewer, Stormwater, and Street Systems**

**Name of Extension: Cedar Falls South – 30 Lot Plat**

**Owner:**

Name: John Day Homes  
Address: PO Box 2930  
North Bend, WA 98045  
Phone: (425) 831-4901

**Developer:**

Name: John Day Homes  
Address: PO Box 2930  
North Bend, WA 98045  
Phone: (425) 831-4901

**Developer’s Agent:**

Name: Ken W. Shipley, PLS  
Core Design, Inc.  
Address: 14711 NE 29<sup>th</sup> Pl., Suite 101  
Bellevue, WA 98007  
Phone: (425) 885-7877

**Dates Accomplished:**

Water: \_\_\_\_\_  
Sewer: \_\_\_\_\_  
Stormwater: \_\_\_\_\_  
Streets: \_\_\_\_\_

**A. Approval of Agreement**

1. Signed Agreement Submitted (Developer)
2. Administrative, Legal and Engineering Fee and Deposits Paid (Developer)
3. Evidence of Environmental Compliance (Developer)
4. Environmental Significance (City Engineer)
5. Extension Agreement Approved (City)
6. Resolution Accepting Agreement (City)

**B. Required Before Plans are Prepared or Approved**

1. Preliminary Plat Map or Site Plan (scale 1"=20') (Developer)
2. Contour map with 2 contour intervals NAVD '88 Datum (scale 1"=20') (Developer) Eight sets of the Extension Construction Plans and 3 copies of Specifications if prepared by Developer's Engineer (Developer)

**C. Required Before Construction by Developer**

1. Approval of Developer's prepared Plans and Specifications (City Engineer)
2. Construction Cost Estimate and Bill of Sale forms (Engineer)
3. Plans and Specifications approved by appropriate outside Agencies as applicable (Engineer)
4. Application for and Receipt of Necessary Permits (Developer)
5. Performance Bond (Developer)
6. Certificate of Insurance (Developer)
7. All Required Easements Obtained, if applicable (Developer)

**D. Required Before Construction Begins**

1. Submittal of Material and Equipment List (Contractor/Developer)
2. Pre-construction Conference
3. Approval of Material and Equipment List (City Engineer)
4. 48-hours Notice of Start of Construction to City (Contractor/Developer)

**E. Required Before any Service is Connected**

1. All Extension Fees and Charges Paid (Developer)
2. Other Charges established by City Ordinance Paid (Developer)
3. Approval of Completion of Construction (City Engineer)
4. Executed Bill of Sale Delivered to City (Developer)
5. Resolution Accepting Facilities (City)
6. Substitution of Maintenance Bond for Performance Bond (Developer)

**F. To Be Done Prior to Warranty Expiration**

1. At 11 months after Acceptance, re-inspect all facilities and notify Developer of Deficiencies, if any (City)
2. Follow-up to Correct Deficiencies, if any (City)
3. Expiration of one-year warranty

**AGREEMENT TO CONSTRUCT EXTENSIONS TO  
WATER, SEWER, STORMWATER, AND STREET SYSTEMS**

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6. PAYMENT OF FEES AND CHARGES.....

7. PRELIMINARY ENGINEERING.....

8. INSURANCE AND INDEMNIFICATION.....

9. PERFORMANCE BOND.....

10. CONSTRUCTION CASH DEPOSIT.....

11. EASEMENTS.....

12. PERMITS.....

13. GRADING OF ROADS.....

14. MAINTENANCE OF CORRECT GRADES ON  
PIPE LINES.....

15. CONNECTION TO THE CITY’S SYSTEM.....

16. CONDITION PRECEDENT.....

17. FINAL ACCEPTANCE.....

18. LIMITATIONS ON ACCEPTANCE.....

19. WARRANTY OF AUTHORITY.....

20. ENFORCEMENT; ATTORNEYS FEES.....

**AGREEMENT TO CONSTRUCT EXTENSION TO  
WATER, SEWER, STORMWATER, AND STREET SYSTEMS**

John Day Homes Inc., a corporation (the "Developer"), hereby enters into this Agreement to Construct Extension to Water, Sewer, Stormwater, and Street Systems (the "Agreement") with the City of North Bend, a municipal corporation of the state of Washington ("City"), for permission to construct and install certain water mains and appurtenances or other water improvements, sewer mains and appurtenances or other sewer system improvements, stormwater mains and appurtenances or other stormwater system improvements, and/or street improvements or extensions in the public right-of-way and/or on private property in connection with the Cedar Falls South 30-Lot Plat (the "Extensions"), and to connect the same to the City's water, sewer, stormwater, and street systems.

**1. GENERAL**

- A. Upon approval of the City Council and execution of this Agreement, Developer is hereby authorized to construct extensions to the City's water, sewer, stormwater, and/or street systems subject to the following, each of which is incorporated herein by this reference and all of which are collectively referred to as the "Contract Documents" and included herewith:
  - 1. the terms and conditions of this Agreement, and all exhibits and addenda hereto;
  - 2. Performance Bond
  - 3. Maintenance Bond;
  - 4. Utilities Easement(s), if any;
  - 5. Bill of Sale;
  - 6. Standards for Preparation of Extension Plans and Specifications; and
  - 7. the General Conditions for Developer Extensions;
- B. Developer shall pay all costs of designing, engineering and constructing the Extensions. All construction shall be done to City standards and according to plans approved by the City.
- C. Upon final acceptance by the City of the Extensions as set forth herein, the City will provide water service, sewer service, and/or stormwater service through the Extensions to residential customers on Developer's Property (defined below) in accordance with applicable laws, rules, regulations, and resolutions and policies of the City.
- D. The term of this Agreement shall commence on the date of the last signature hereto, and shall expire on the date of final acceptance of the Extensions by the City.

**2. LOCATION OF EXTENSIONS**

The Extensions will be installed to serve the property owned by Developer (“Developer’s Property”), which is legally described as follows:

Cedar Falls South – 30 Lot Plat on King County Assessor Tax Parcel Number 152308-9196, 9193, AND 9198.

**PARCEL A:**

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;

THENCE SOUTH ON THE EAST LINE THEREOF 297 FEET; THENCE WEST 363.71 FEET; THENCE NORTH 297 FEET; THENCE EAST 363.71 FEET TO THE POINT OF BEGINNING; TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITY PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

**EASEMENT “A”**

THE NORTH 25 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.; EXCEPT PORTION FOR 432<sup>ND</sup> AVENUE SOUTHEAST;

**EASEMENT “B”**

THE SOUTH 25 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.; EXCEPT PORTION FOR 432<sup>ND</sup> AVENUE SOUTHEAST;

**EASEMENT “C”**

A STRIP 50 FEET IN WIDTH, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.;

THENCE WEST 25 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15 TO THE SOUTH LINE OF THE NORTH 594 FEET OF SAID SOUTHEAST QUARTER; THENCE WEST 363 FEET TO END OF CENTERLINE; EXCEPT PORTION THEREOF LYING WITHIN SAID NORTH 594 FEET; ALSO TOGETHER WITH AN EASEMENT RECORDED UNDER RECORDING NO. 7210130058, RECORDS OF KING COUNTY, WASHINGTON.

**PARCEL B:**

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;

THENCE WEST, 363.71 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH, 272 FEET; THENCE WEST, 395.29 FEET; THENCE NORTH, 272 FEET; THENCE EAST, 395.29 FEET TO THE POINT OF BEGINNING; TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITY PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

EASEMENT "A"

THE NORTH 25 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.; EXCEPT PORTION FOR 432<sup>ND</sup> AVENUE SOUTHEAST;

EASEMENT "B"

THE SOUTH 25 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.; EXCEPT PORTION FOR 432<sup>ND</sup> AVENUE SOUTHEAST;

EASEMENT "C"

A STRIP 50 FEET IN WIDTH, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.;

THENCE WEST 25 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15 TO THE SOUTH LINE OF THE NORTH 594 FEET OF SAID SOUTHEAST QUARTER; THENCE WEST 363 FEET TO END OF CENTERLINE; EXCEPT PORTION THEREOF LYING WITHIN SAID NORTH 594 FEET; ALSO TOGETHER WITH AN EASEMENT RECORDED UNDER RECORDING NO. 7210130058, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL C:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;

THENCE WEST, 759 FEET; THENCE SOUTH 272 FEET TO THE TRUE POINT OF BEGINNING; THENCE EAST 395.29 FEET; THENCE SOUTH 322 FEET; THENCE WEST 296.29 FEET; THENCE NORTH 198 FEET; THENCE WEST 99 FEET; THENCE NORTH 124 FEET TO THE TRUE POINT OF BEGINNING; TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITY PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

EASEMENT "A"

THE NORTH 25 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.; EXCEPT PORTION FOR 432<sup>ND</sup> AVENUE SOUTHEAST;

EASEMENT "B"

THE SOUTH 25 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORHTEAST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M.; EXEPT PORTION FOR 432<sup>ND</sup> AVENUE SOUTHEAST:

EASEMENT "C"

A STRIP 50 FEET IN WIDTH, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, , W.M.;

THENCE WEST 25 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15 TO THE SOUTH LINE OF THE NORTH 594 FEET OF SAID SOUTHEAST QUARTER; THENCE WEST 363 FEET TO END OF CENTERLINE; ALSO TOGETHER WITH AN EASEMENT RECORDED UNDER RECORDING NO. 7210130058, RECORDS OF KING COUNTY, WASHINGTON. EXCEPT PORTION THEREOF, LYING WITHIN THE ABOVE DESCRIBED MAIN TRACT. ALL SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

The Extensions will be installed in the Developer's Property, in property subject to easements benefitting Developer's Property, and/or in the property of other persons contributing to the costs of the Extensions (said other persons hereby join in this Agreement and are referred to as "Additional Owners") and in such other properties described in this Agreement. The property of Additional Owners is described as follows ("Additional Owners' Property"): None.

### 3. DESCRIPTION OF EXTENSION

#### A. Water Extension

The proposed water extension will consist of approximately 1,193± linear feet of 8-inch water mains and other applicable water system facilities and appurtenances located within the Developer's Property as shown on the preliminary plat or site plan attached hereto as **Exhibit A**, which is incorporated herein by this reference.

#### A. Sewer Extension

The proposed sewer extension will consist of approximately 1,356± linear feet of 8-inch sewer mains and other applicable sewer system facilities and appurtenances located within the Developer's Property as shown on **Exhibit A**.

#### B. Stormwater Extension

The proposed stormwater extension will consist of approximately 1,285± linear feet of 6-inch to 12-inch stormwater mains, 8,920± square feet of LID infiltration trenches and other applicable stormwater system facilities and appurtenances located within the Developer's Property as shown on **Exhibit A**.

C. Street Extension

The proposed street extension will consist of approximately 1,326± linear feet of street and alleys, including installation of new sidewalks, curbs, gutters, asphalt concrete surfacing, street trees, street lights and pavement marking and striping of all new surfacing located within the Developer's Property as shown on **Exhibit A**.

D. Modifications to Described Extensions

The City may require that the above-described water, sewer, stormwater, and street extensions be modified (including changes in design and location) during the preparation of construction plans and specifications as deemed necessary by the City. The construction plans and specifications, when approved by the City, shall be deemed the documents describing the sewer, stormwater, and street extensions to be authorized for construction by Developer under this Agreement.

**4. EXTENSION FEES, DEPOSITS, AND CHARGES**

Extension fees, costs and charges shall be paid by Developer for the services and costs listed below, at the rate set forth in Section 5 herein:

A. City Administrative Services

1. Review and revisions, if necessary, to the Agreement and preparation of resolutions accepting the Agreement and amending the City's Comprehensive Plan (if required).
2. General consultation with Developer regarding the requirements of the City, the procedures for Developer to make the Extensions, and the administration of the Agreement.
3. Preliminary review of the proposed development and preliminary determination of the water, sewer, stormwater, and street facilities required to extend services to Developer's Property.

B. City Basic Engineering

1. Preparation of construction plans and specifications or review and approval of construction plans and specifications prepared by Developer's engineer.
2. Preparation of the construction cost estimate and bill of sale forms.

3. Submittal of contract plans and specifications to the appropriate regulatory agencies for approval.
4. Review of this Agreement for purposes of state and county permits, where applicable.
5. Consultation with Developer during the period of the Agreement regarding design of the Extensions, the City's specifications, and other City requirements.
6. Review for environmental compliance.

C. City Construction Engineering Services

1. Schedule and conduct pre-construction conference.
2. Review of construction stakes provided by Developer's engineer and surveyor as described in Paragraph 6 of the General Conditions for Developer Extensions.
3. Daily inspection of the construction in progress as required to ensure that the construction of the Extensions are in accordance with the approved construction plans and specifications.
4. Inspection of the tests required by the specifications and inspection of any re-testing which may be necessary.
5. Final inspection of the completed Extension and preparation of the inspection report setting forth any deficiencies that may exist.
6. Re-inspection of deficient work.
7. Final review of the completed Extensions and examination of the required documents to ensure that the City has legal title to the necessary easements and/or rights-of-way, review and approval of Developer's warranty and bill of sale, and preparation of a final recommendation of acceptance of the completed Extensions.
8. Revision of plans to conform to construction records.

D. Reimbursement for City's Legal Services

1. Review and revisions, if necessary, to the Agreement and preparation of resolutions accepting the Agreement and amending the City's Comprehensive Plan (if required).
2. Preparation of easements as required.
3. Preparation and/or review of Developer's Performance Bond, Insurance Certificate, and other performance guarantees and security.
4. Preparation of reimbursement agreement, if required.
5. Any other legal services required by the City in conjunction with this Agreement and administration of the Extensions.

E. Additional City Legal, Engineering, and Other Professional Services

1. Revision of the contract plans and specifications and work occasioned by the need, request or act of Developer related thereto, or review and approval of revisions prepared by Developer's engineer.
2. Additional legal and/or engineering fees may be charged on a time-and-expense basis where a special contract is required and/or special problems arise with such third parties as King County, Boundary Review Board, State of Washington, or others, in order for the City to enter into this Agreement and/or comply with SEPA or NEPA which requires the representation of the City's legal counsel and/or Engineering Consultant.
3. Any other work reasonably required by the City in conjunction with this Agreement and/or administration of the Extensions.

F. Other Costs

1. All other fees and additional charges as required by governmental agencies.

G. Connection Charges and Reimbursement Amount

1. *Connection Charges*

The City has established charges for connection to the sewer, and storm water systems. The amounts of the charges are established by ordinance and are subject to amendment based on adjustments in the cost of providing new facilities, the actual cost of facilities and improvements previously constructed and changes in the City's Comprehensive Plan which may alter the nature, extent and cost of these facilities.

2. *Reimbursement Amount*

Where Developer's Property is served in whole or in part by an existing extension constructed by others and transferred to the City, and a reimbursement agreement was in effect at the time Developer submitted its development application, Developer shall pay a reimbursement to the City representing the fair and equitable share of the existing extension to which all or a portion of Developer's Property may be connected.

The reimbursement for existing facilities is established by resolution of the City Council based on the actual cost of construction of the facility and a proration of the cost of that facility so that the properties which are benefited may connect to the facility. The reimbursement will vary for each existing facility based on its cost and the benefitting property.

3. *Service Charges*

Developer acknowledges and agrees that the City may impose service charges and other taxes and fees as allowed by law upon property owners/residents for water, sewer, stormwater, and street services. Nothing in this Agreement shall be construed to restrict or prohibit the City's imposition of such charges, fees, or taxes.

**5. CALCULATION OF COSTS, FEES, AND CHARGES**

A. Administrative and Other Services

Fees and charges for all administrative and other services and reimbursements described in Sections 4(A) through 4(E) will be invoiced by the City on an actual time and expense basis. The term "time and expense basis" shall mean the City's actual cost for services rendered by the City staff or its contractors or consultants.

B. Other Costs and Charges

Payment for the fees, charges, and costs described in Sections 4(F) and 4(G) shall be based on actual incurred costs or in such amount as is established by City ordinance for such fee, cost, or charge.

**6. PAYMENT OF FEES AND CHARGES**

A. Developer Deposit

The City will provide Developer with an itemized monthly invoice for Processing Costs, including staff time and invoices from contracted consultants, if any, commencing on the fifth day of the month following the first month during which the City incurs Processing Costs. Developer shall pay the City’s invoice on or before the 20<sup>th</sup> day (or fifteen days after mailing of the invoice by the City, whichever is later), subject to the provisions of the Memorandum of Understanding paragraph 2.6, together with any additional amounts required to maintain the required credit balance as required by Memorandum of Understanding paragraph 2.3. If any sum required to be paid hereunder is not timely remitted, the City may suspend processing until payment is made, and/or may terminate the Memorandum of Understanding and require the deposit of the full estimated amount of Processing Costs.

The City’s initial estimate for the fees, costs and charges is set forth below. Developer shall deposit the total amount indicated upon execution of this Agreement:

1.	Administrative	\$ 500.00 (Estimate)
2.	Remaining Engineering Services	\$ 10,000.00 (Estimate)
3.	Construction Inspection	\$ 36,000.00 (Estimate)
4.	Legal Services	\$ 2,000.00 (Estimate)
5.	Final Plat Processing	\$ 8,000.00 (Estimate)
6.	Construction Cash	\$ 0.00
7.	Other Costs	\$ 0.00
TOTAL ESTIMATE AMOUNT		\$ 56,500.00

B. Connection Charge and Reimbursement Estimate

All connection charges and reimbursement amounts shall be paid by Developer to the City prior to the issuance of any building permit, in accordance with the current City of North Bend Taxes, Rates and Fees Schedule. Acceptance of the completed Extensions by the City and provision of services to Developer’s Property shall be in accordance with this Agreement and applicable North Bend Municipal Code requirements.

A preliminary estimate of the Connection, Impact and Reimbursement Fees is attached hereto as **Exhibit B** and incorporated by this reference. The fees are subject to the City’s Taxes, Rates, and Fees Schedule and subject to change by the City.

**7. PRELIMINARY ENGINEERING**

In order to receive City review and approval of the Extensions, Developer shall furnish two (2) copies of the plat map, topographic map and proposed roads profile sheets in

electronic format prior to the City's ordering of the engineering plans from its Engineer. The contour elevation and road profile elevations shall be referenced to NAVD '88 datum. In the event Developer's engineer prepares the construction plans and specifications, the above information shall be a part of the extension construction plans to be reviewed and approved by the City's Engineer.

The final plat map shall be to the scale of 1-inch = 20 feet. The contour map shall have a scale of 1-inch = 20 feet and contour intervals of two (2) feet or less. The road profile sheets shall be to the scale of 1-inch = 20 feet.

Developer shall provide a minimum of one benchmark, datum being NAVD '88, on the project site; and the elevation and location of the benchmark shall be indicated on the maps furnished by Developer.

## **8. INSURANCE AND INDEMNIFICATION**

### **A. Insurance Requirements**

Developer shall procure and maintain insurance covering public liability and injury and property damage to third parties, in which the City and the City's Engineer shall be named additional insureds, to the extent required in Paragraph 10 of the General Conditions, without interruption from commencement of construction of the Extensions through thirty (30) days after the completion of the Extensions. Developer's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit Developer's liability to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. Before beginning construction of the Extensions, Developer shall furnish the City with original certificates of insurance and a copy of the amendatory endorsements, including but not limited to the additional insured endorsements, evidencing these insurance requirements have been satisfied. A copy of the certificates of insurance shall be included with the final Contract Documents, and a cover page is included for that purpose.

### **B. Indemnification**

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**9. PERFORMANCE BOND**

Prior to beginning construction of the Extensions, Developer shall furnish to the City a Performance Bond between Developer and the City, in the form approved by the City and included herewith as part of the Contract Documents, in an amount equal to the City Engineer's estimated cost of the Extensions in existing public rights-of-way.

The performance bond shall assure and guarantee compliance with this Agreement, the satisfactory completion of all Extensions, payment of all fees required herein, restoration of any impacted pre-existing City facilities in accordance with the terms of this Agreement, and shall hold the City harmless from any claims resulting therefrom.

**10. CONSTRUCTION CASH DEPOSIT**

Developer may provide the City with a cash deposit in lieu of the performance bond required by Section 9 herein. No construction shall be commenced until the cash deposit is accepted by the City. This cash deposit shall be conditioned and held subject to the same terms as the Performance Bond in Section 9, and will be refunded to Developer upon satisfactory completion of the Extensions and connection of the Extensions to the existing system; provided, that in the event pre-existing City facilities have not been repaired or restored as required by this Agreement, the City may, in addition to any other rights it may have, retain the total amount of the cash deposit as liquidated damages or such portion of said deposit as may be necessary to defray such costs.

**11. EASEMENTS**

Any necessary easements shall be obtained by Developer at its sole cost and expense in the form approved by the City and included herewith as part of the Contract Documents. The easement(s) shall name the City as grantee, and a copy of each easement shall be delivered to the City before Developer begins construction on the Extensions. Upon completion of the Extensions and prior to acceptance of the Extensions by the City, a title insurance policy insuring the City's clear title to the easement, in a sum not less than \$5,000 per 500 feet of easement, shall be provided to the City by Developer.

**12. PERMITS**

All the necessary permits from any governmental agency shall be obtained by Developer directly and the City shall be provided with a copy of all permits obtained by Developer before construction commences. The City shall not be required to appeal the denial of any such permit, and the risk of obtaining and complying with all permits and approvals rests solely with Developer.

**13. GRADING OF ROADS**

Developer shall grade all roads to the design sub grade elevation prior to the start of construction on any utility and shall advise the City in writing of any changes which may be contemplated during construction.

If Developer changes the sub grade elevation of the road after completion of the Extensions or any part thereof, Developer shall be responsible for all costs incurred to raise or lower the utility as required as a result of said change in sub grade elevation.

**14. MAINTENANCE OF CORRECT GRADES ON SEWER PIPELINES**

Developer and its contractor shall maintain the correct grades between manholes and shall check all the intermediate grade stakes by means of a taut grade wire between at least three intermediate grade stakes. In the event that the grade stakes do not line up, the work shall be stopped until the situation is corrected. The contractor shall make certain that all sewers slope toward the connection to the existing sewer and run at a constant grade between manholes.

**15. CONNECTION TO THE CITY'S SYSTEM**

Not less than 48 hours prior to the time that connection to the City's system is desired, the contractor shall notify the City Engineer and/or City inspector. All connections to the existing system and all testing of the new line shall be at a time and in the manner specified by the City and shall be conducted in the presence of the City's authorized representative. Where connections to the City's water or sewer system would, in the opinion of the City, create unacceptable disruption to service, such connection shall be made by live tap.

**16. CONDITION PRECEDENT**

The City's obligation to allow connection of the Extensions to the City's system, or to provide water, sewer, stormwater service or street extensions to Developer's Property, shall not arise until Developer has complied with all terms and conditions of this Agreement, and all applicable ordinances, resolutions and requirements of the City, including payment of all fees and charges.

The City shall not be obligated to provide water, sewer, stormwater, or street services to Developer's Property or Additional Owner's real property unless or until the construction of the Extensions has been completed and title accepted by the City.

**17. FINAL ACCEPTANCE**

Following the City Engineer's final inspection and approval of the Extensions as having been completed in accordance with the plans and specifications of this Agreement, Developer shall convey ownership to all or such portions of the Extensions to the City as directed by the City.

Upon acceptance of ownership by the City, the Extensions shall be the property of the City and subject to the control, use, and operation of the City, and to all applicable regulations and charges as established by the City from time to time.

Prior to such acceptance, Developer shall execute and deliver to the City a bill of sale and a maintenance bond as follows:

A. The bill of sale for the Extensions (or portion thereof) shall be provided in the form approved by the City and included herewith as part of the Contract Documents and containing the warranty set forth in Paragraph 23 of the General Conditions for Developer Extensions, entitled "Warranties of Developer." For plans prepared by Developer's engineer, Developer shall also provide the City with as-built record drawings on mylar and on computer disk in AutoCAD format, certified by a licensed professional land surveyor.

B. The maintenance bond shall be provided in the form approved by the City and included herewith as part of the Contract Documents, and shall assure and guarantee Developer's obligations to correct defects in design, labor and/or materials as provided in this Agreement, and to defend, indemnify and hold harmless the City as provided in this Agreement. The maintenance bond shall continue in force from the date of acceptance and transfer of ownership for a period of one (1) year. The maintenance bond shall be in an amount equal to ten percent (10%) of the cost of said Extensions, or Five Thousand And No/100 Dollars (\$5,000.00), whichever is greater.

**18. LIMITATION ON ACCEPTANCE**

A. Completion

The Extensions shall be complete and accepted within five (5) years of the date of execution of this Agreement by the City.

B. Failure to Commence Construction

In the event Developer, after the receipt of approved construction plans from the City, has not commenced construction, and if the City determines, in its absolute discretion, that it is necessary that the Extensions be completed in order that the City can provide water, sewer, stormwater and/or street service to Developer's Property, then the City may give Developer and Additional Owners notice (by certified mail to the addresses shown herein) that

construction of the water, sewer, stormwater, and street improvements must be commenced within sixty (60) calendar days of mailing said notice. If construction is not commenced within the time specified in said notice, the City may terminate this Agreement by written notice to Developer and Additional Owners. In such event, the City shall retain all payments and deposits made by Developer to the City and the City may, at its discretion, proceed with construction of the water, sewer, stormwater and/or street improvements.

If a delay in the City's preparation of the plans or the City's review of Developer's prepared plans is occasioned by failure of Developer to provide necessary data or information to the City's engineer for a period of sixty (60) days after notice of the need for such data or information, then the City may terminate this Agreement by written notice to the Developer.

C. Failure to Complete Construction

If the Extensions are not completed and accepted within five (5) years from the date this Agreement is executed by the City, Developer's rights under this Agreement shall cease unless the City consents to the renewal of the Agreement or the City and Developer enter a new agreement. In either event, Developer may be required to pay additional administrative fees and additional legal, engineering, and inspection costs as determined by the City.

In the event no new agreement or renewal of this Agreement is entered, the City, in its sole discretion, may proceed to require completion of construction under the provision of Developer's Performance Bond for any Extensions on Developer's Property, Additional Owner's Property, existing rights-of-way and/or easements.

**19. WARRANTY OF AUTHORITY**

The undersigned Developer and Additional Owners warrant that they constitute the exclusive owners of all of Developer's Property and Additional Owners' Property, and agree to provide, upon request of the City, title insurance at Developer's sole cost and expense, establishing to the satisfaction of the City that the parties executing this Agreement constitute the owners of all the real property described herein and have the authority to execute this Agreement with respect to said real property.

**20. ENFORCEMENT; ATTORNEYS' FEES**

The parties agree to resolve disputes under this Agreement by binding arbitration as provided in Section 28 of the General Conditions, and further acknowledge and agree that by submitting to the alternative dispute resolution process, they intend to surrender their right to have any dispute decided in a court of law by judge or jury. In the event that this Agreement is referred or placed into the hands of attorneys for enforcement of any portion, or if binding arbitration is instituted with respect to a dispute under this Agreement, then the prevailing party shall be paid its reasonable attorneys' fees and expert witness fees, costs, and all other reasonable expenses in connection therewith.

SIGNED this \_\_\_ day of \_\_\_\_\_, 2016.

Developer: \_\_\_\_\_

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

Additional Owners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

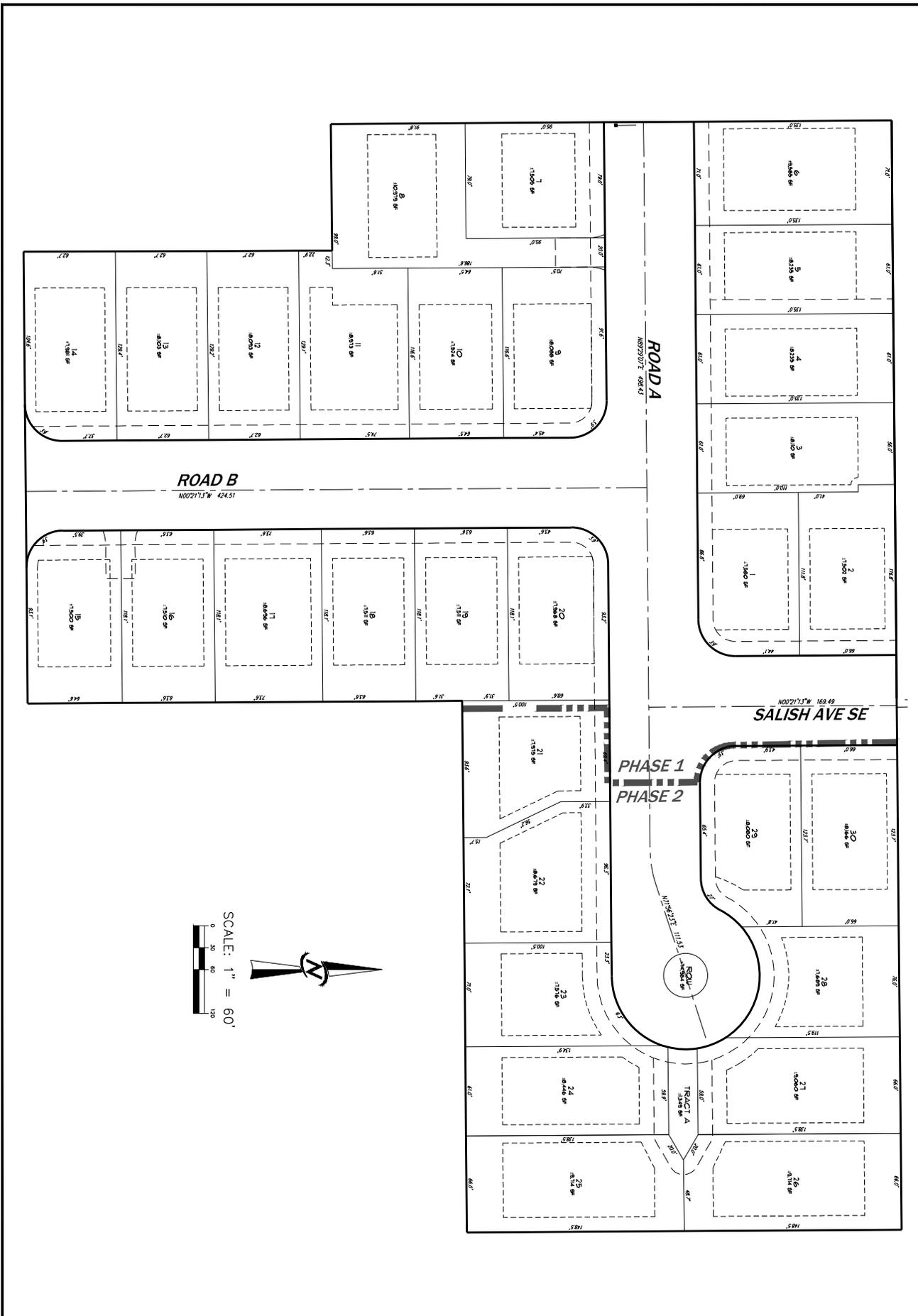
**CITY OF NORTH BEND**, King County, Washington

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

Kenneth G. Hearing, Mayor

**EXHIBIT A**

**Cedar Falls South  
30 Lot Subdivision  
Plat**



PROJECT NUMBER	1004
SHEET	1
DATE	DESIGNED
	DRAWN
	APPROVED
	KEN W. SHIPLEY PROJECT MANAGER

**EXHIBIT A: PRELIMINARY PLAT**  
**CEDAR FALLS SOUTH**  
**JOHN DAY HOMES**  
 P.O. BOX 2930  
 NORTH BEND, WA 98045

**CORE DESIGN**  
 ENGINEERING • PLANNING • SURVEYING  
 14711 NE 29th Place Suite 101  
 Bellevue, Washington 98007  
 425.885.7877 Fax 425.885.7963

NO.	REVISIONS	DATE

**EXHIBIT B**

**Estimate of  
Connection, Impact and Reimbursement Fees**

EXHIBIT B				
Cedar Falls South, 30 - Lot Plat				
Preliminary Estimate of				
Connection, Impact and Reimbursement Fees				
Total Number of Lots		30		26-Sep-16
Existing Lots				
Existing Utility Billing Information				
Water Tap	5/8"	0		
Irrigation		0		
Sanitary Sewer		0		
Flood		0		
Storm		0		
			<b>NBMC Reference</b>	<b>Current Fee as of 5/4/2015 Schedule</b>
				<b>Extended Cost</b>
<b>1 Water Extension</b>				
Additional Services			31 Includes one 5/8" Irrigation Meter (Assumed)	
General Facility Charge	13.38.020(A)	\$ 6,880.00	Payable at time of building permit issuance for each individual lot	\$ 213,280.00
Meter Installation Charge (Drop)	13.08.070(B)	\$ 252.95	5/8" Meter	\$ 7,841.45
Reimbursement Amount	\$ -			\$ -
Application Fee		\$ 50.00		\$ 1,550.00
Inspection Fee		\$ 154.00		\$ 4,774.00
<b>2 Sewer Extension</b>				
Additional Services			30	
General Facility Charge	13.38.040(A)	\$ 10,222.00	Payable at time of building permit issuance for each individual lot	\$ 312,780.00
Application Fee		\$ 50.00		
Inspection Fee		\$ 154.00		
ULID #6 Assessment based on March 20, 2012 Final Assessment Roll		\$ -	Per lot Share to be determined prior to final plat approval. Assessed per lot by monthly payment plan or lump sum payment.	\$ -
<b>3 Stormwater Extension</b>				
Additional Services			30	
General Facility Charge (Lot)	13.44.110(A)(1)	\$ 790.00	Payable at time of building permit issuance for each individual lot	\$ 23,700.00
General Facility Charge (Plat - Streets & Sidewalks)		\$ 790.00	Per Equivalent Service Unit based on the amount of impervious surface created for streets and sidewalks. 1 ESU = 2,920 square feet. Payable prior to recording of the final plat.	\$ 15,815.80
Impervious Areas:				
Sidewalk				
Area	11,315.00	SF		
Driveway Aprons				
Area	3,160.00	SF		
Handicap Ramps				
Area	500.00	SF		
Streets and Tracts				
Area	43,458.00	SF		
Pond Access				
Area	-	SF		
Total Impervious Area	58,433.00	SF		
ESU Equivalent	20.02	ESU		

EXHIBIT B					
Cedar Falls South, 30 - Lot Plat					
Preliminary Estimate of					
Connection, Impact and Reimbursement Fees					
4 Street Extension					
Additional Services			30		
Transportation Impact Fees	17.38.120	\$	10,671.06	Payable at time of building permit issuance for each individual lot	\$ 320,131.80
Reimbursement Amount			0.00		
5 Floodplain Management					
	14.12.050	\$	154.00	Payable at time of building permit issuance for each individual lot. Only for development in SFHA.	\$ -
6 School					
	17.32.10	\$	8,490.86	Payable at time of building permit issuance for each individual lot	\$ 254,725.80
7 Fire					
	17.34.10	\$	622.25	Payable at time of building permit issuance for each individual lot	\$ 18,667.50
8 Park					
	17.36	\$	4,634.00	Payable at time of building permit issuance for each individual lot	\$ 139,020.00
<b>TOTAL ESTIMATED FEES</b>					<b>\$ 1,312,286.35</b>

(1) Estimated Fees per the September 1, 2016 City of North Bend Taxes, Rates & Fees schedule.  
 (2) Subject to annual changes per City Code requirements.

## **PERFORMANCE BOND**

**CITY OF NORTH BEND**

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That we, \_\_\_\_\_  
\_\_\_\_\_ as Principal, and  
\_\_\_\_\_, as Surety, are held and firmly bound unto the City of  
North Bend ("the City") in the full sum of \_\_\_\_\_  
DOLLARS (\$\_\_\_\_\_), lawful money of the United States, for the payment of which, well  
and truly to be made, we bind ourselves, our heirs, executors and administrators, successors  
and assigns, jointly and severally, firmly by these presents.

WHEREAS, the conditions of this obligation are such that the Principal has entered or will enter  
into a developer extension agreement (the "Agreement") in writing with the City of North  
Bend, dated \_\_\_ day of \_\_\_\_\_, 20\_\_\_ for:

Contract No.: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and the terms, conditions and covenants specified in said Agreement, including all of the  
Contract Documents therein referred to, are hereby incorporated by reference as though fully  
set forth;

**NOW, THEREFORE,** if the Principal shall faithfully perform all the provisions and requirements  
of the Agreement, including all of the Contract Documents, according to the terms and  
conditions thereof, and shall hold the City of North Bend harmless from any loss or damage to  
any person or property by reason of any negligence on the part of the Principal, its contractor,  
and/or subcontractor in the performance of said work, and shall pay all laborers, mechanics,  
subcontractors and material men and all persons who shall supply such person or persons or  
subcontractors with provisions and supplies for carrying on of such work, and shall further  
indemnify and save harmless the City from any defect or defects in any of the workmanship or  
materials entering into any part of the work as defined in the Agreement which shall develop or  
be discovered within one (1) year after the final acceptance of such work, then this obligation  
shall be null and void; otherwise this obligation shall remain in full force and effect, and the City  
shall have the right to sue on this bond for any breach of the contract on this bond; provided,  
however, that the provisions of this bond shall not apply to any money loaned or advanced to  
the Principal or any subcontractor or other person in the performance of any such work.

**IT IS FURTHER DECLARED AND AGREED** that nothing of any kind or nature whatsoever that will not discharge the Principal shall operate as a discharge or a release of liability of the Surety, any law, rule of equity or usage relating to the liability of sureties to the contrary notwithstanding, and the Surety waives notice of any alteration, or extension of time, made by the City.

**SIGNED AND SEALED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal: \_\_\_\_\_ Surety: \_\_\_\_\_

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

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

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City/Zip: \_\_\_\_\_ City/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized

to execute the instrument and acknowledge it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

**Note:** A power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this performance bond.

## **MAINTENANCE BOND**

**CITY OF NORTH BEND**

**MAINTENANCE BOND**

Know all men by these presents, that we, \_\_\_\_\_, as Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of North Bend ("the City") in the full sum of \_\_\_\_\_ (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the conditions of this obligation are such that the Principal has entered or will enter into a developer extension agreement (the "Agreement") in writing with the City of North Bend, dated \_\_\_\_ day of \_\_\_\_\_, 20\_\_ for the following Extensions as described in the Agreement:

**AND WHEREAS**, the City requires a guarantee from the Principal against defective materials and workmanship in connection with maintenance of the Extensions;

**NOW, THEREFORE**, the Principal does hereby covenant and agree that it shall make any and all repairs or replacements which are necessary during the period of \_\_\_\_\_, by reason of defective materials or workmanship in connection with the Extensions. If such defective materials or workmanship occur within said period, the City shall give the Principal and Surety written notice thereof within fifteen (15) days after discovery by the City. When each such repair or replacement is made to the satisfaction of the City the obligation of the Principal and Surety shall be discharged as to such repair or replacement.

Any such repairs or replacements which are made pursuant hereto shall in like manner be subject to the terms and conditions hereof.

All suits at law or in equity to recover on this bond must be instituted within one (1) year after the expiration of the maintenance period provided for herein.

**SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal: \_\_\_\_\_ Surety: \_\_\_\_\_

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

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

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City/Zip: \_\_\_\_\_ City/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

**Note:** A power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this maintenance bond.

## **UTILITIES EASEMENT**

**WHEN RECORDED RETURN TO:**

CITY CLERK  
CITY OF NORTH BEND  
P O BOX 896  
NORTH BEND, WA 98045

GRANTOR:  
GRANTEE:  
ASSESSOR'S TAX PARCEL NUMBER:  
ABBREVIATED LEGAL DESCRIPTION:  
LEGAL DESCRIPTION:

**EASEMENT AGREEMENT**

This Easement Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by and between \_\_\_\_\_ ("Grantor") and the City of North Bend ("Grantee").

1. Recitals.

a. The Grantor is the owner of that certain real property legally described on the attached **Exhibit A**, which is incorporated herein by this reference ("Parcel A").

b. The Grantee is a municipal corporation of the state of Washington, and this Easement Agreement is for the benefit of Grantee.

c. This Easement Agreement sets forth the terms and conditions under which the Grantor will grant the Grantee an easement in the portion of Parcel A described below.

2. Grant of Easement. For valuable consideration, receipt and sufficiency of which is acknowledged, the Grantor warrants, grants and conveys to the Grantee, a perpetual and exclusive easement over, across and under that portion of Parcel A which is legally described on the attached **Exhibit B**, which is incorporated herein by this reference ("Easement Area").

3. Purpose of Easement. The Easement is granted for the purpose of the installation, operation and maintenance of \_\_\_\_\_ (the "Improvements"). Grantee

and its agents, designees and/or assigns shall have the right at such times as deemed reasonably necessary by Grantee, to enter upon Parcel A to inspect, construct, reconstruct, operate, maintain, repair, and replace the Improvements.

4. General Provisions.

a. Binding Effect. This Easement Agreement shall be binding upon and inure to the benefit of the parties and their successors, heirs, assigns, and personal representatives and all persons claiming by, through or under the parties hereto. The Easement created shall run with the land.

b. Applicable Law. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively in King County, Washington.

c. Attorneys' Fees. In the event that any suit or other proceeding is instituted by either party to this Easement Agreement arising out of or pertaining to this Easement Agreement, including but not limited to filing suit or requesting an arbitration, mediation, or other alternative dispute resolution process, and appeals and collateral actions relative thereto, (collectively, "Proceedings"), the substantially prevailing party as determined by the court or in the Proceedings shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and all costs and expenses incurred relative to such suit or Proceedings from the substantially non-prevailing party, in addition to such other relief as may be awarded.

d. Entire Agreement. This Easement Agreement contains the entire agreement between the parties with respect to this matter. It may not be modified except in writing signed by the party against whom enforcement of the modification is sought.

e. Waiver. The waiver by a party of a breach of any provision of this Easement Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

f. Severability. If for any reason any portion of this Easement Agreement shall be held to be invalid or unenforceable, the holding of invalidity or enforceability of that portion shall not affect any other portion of this Easement Agreement and the remaining portions shall remain in full force and effect.

g. Notices. Any notice required or desired to be given under this Agreement shall be deemed given if in writing delivered to the party, or sent by certified mail to the address listed below for that party:

GRANTOR:

GRANTEE:

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR: \_\_\_\_\_

GRANTEE: \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)

NOTARY PUBLIC in and for the State of Washington

My appointment expires \_\_\_\_\_

**BILL OF SALE**

**FILED FOR RECORD AT REQUEST OF:**

CITY CLERK  
CITY OF NORTH BEND  
P O BOX 896  
NORTH BEND, WA 98045

## BILL OF SALE

**KNOW ALL MEN BY THESE PRESENTS** that for and in consideration of the sum of One and No/100 Dollars (\$1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Seller(s) \_\_\_\_\_, do(es) by these presents hereby convey, set over, assign, transfer and sell to the **City of North Bend** (the "City"), a municipal corporation of the state of Washington, the following described water system, wastewater collection system, storm drainage system, curbs, and/or street paving and warrants against defects in labor or materials appearing within one (1) year from the date hereof:

Commonly known as:

Seller warrants that he/she/they/it is/are the sole owner(s) of all the property described above and has/have full power to convey all rights herein conveyed and agree to hold the City of North Bend harmless from any and all claims which might result from execution of this document.

Seller warrants that the property above described is free from all liens and encumbrances and Seller warrants and will defend the property hereby sold to City and its successors and assigns against the lawful claims and demands of all persons.

By accepting and recording this instrument, the City accepts and agrees to maintain the water system, wastewater collection system, storm drainage system, curbs, and street paving as part of the City's water system, wastewater collection system, stormwater system, and street system in the same manner as though it had been constructed by the City.

IN WITNESS WHEREOF the Seller(s) has/have executed these presents this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Seller: \_\_\_\_\_ Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM:

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

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

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

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

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

**STANDARDS FOR PREPARATION  
OF EXTENSION PLANS AND SPECIFICATIONS**

CITY OF NORTH BEND

**STANDARDS FOR PREPARATION OF EXTENSION  
PLANS AND SPECIFICATIONS**

1. GENERAL.....
2. DESIGN BY DEVELOPER’S ENGINEER.....
3. DESIGN SPECIFICATIONS AND CRITERIA.....
4. EASEMENTS/RIGHTS-OF-WAY.....
5. CONSTRUCTION DRAWING FORMATS.....

**CITY OF NORTH BEND**

**STANDARDS FOR PREPARATION OF EXTENSION  
PLANS AND SPECIFICATIONS**

**1. GENERAL**

The following standards are to be followed in the design of extensions to the water, sewer, stormwater systems, and streets of the City, and the preparation of plans and specifications for the construction of these extensions. These standards are to be followed except where specific deviations are approved by the City.

**2. DESIGN BY DEVELOPER'S ENGINEER**

**A. Selection of Engineer.** Developer shall have the right to select its own engineer to design and prepare the plans or have the City Engineer perform such design and preparation. Developer's Engineer shall only have authority to design and prepare the plans for the extension to the City's water, sewer, stormwater system, and streets. The design shall conform in all respects to City specifications and must be approved by the City Engineer prior to commencement of construction. Failure by the City to discover errors, omissions, or discrepancies in the plans shall not relieve Developer of the responsibility to ensure that the plans prepared by Developer's Engineer conform in all respects to City specifications.

Should Developer elect to use its own Engineer to design and prepare the plans, at the time of development and submission of this Agreement to the City for execution, Developer shall notify the City in writing of the person or firm proposed to do the work. Nothing contained in this Agreement shall create any contractual rights between the City and any person or firm employed by Developer to design and prepare the plans.

**B. Reliance.** The reliance of the Developer's Engineer on any information provided by the City for design purposes will be addressed as follows:

In the event Developer elects to use its own Engineer to design and prepare the plans, the City shall make available to Developer such information as it may have regarding existing utilities and obstructions. Such information is not guaranteed; it is made available to Developer for such value as it may have. Incompleteness or errors in this information shall not be the cause of claim against the City Engineer or the City, nor shall it relieve Developer of the responsibility for repairing any damage its activities may cause to such utilities. It shall be Developer's responsibility to contact all necessary utilities and determine what existing utilities and obstructions may exist.

When the Developer proposes to design and to prepare construction plans using his own engineer, a pre-design conference with the City's Engineer is recommended, but not required, to ensure there is a clear understanding of the City standards and the specific improvements required to extend the City water, sewer, stormwater and street systems to serve Developer's Property.

**C. Ownership of Designs.** The originals of all plans prepared by Developer's Engineer and as modified to reflect as-built conditions shall be delivered to the City upon completion of construction and shall become the property of the City. Neither Developer nor Developer's Engineer shall have any rights of ownership, copyright, trademark or patent to the plans.

### 3. DESIGN SPECIFICATIONS AND CRITERIA

Construction materials, procedures, details, and designs shall comply with the latest revisions to the following applicable standards:

- Streets – WSDOT/APWA Standard Specifications for Road, Bridge, and Municipal Construction (latest edition), including Special Provisions contained in Divisions 2 through 9 and amendments to Division 1;
- Sewer – Washington State Dept. of Ecology's Criteria for Sewage Works Design; and
- Stormwater – King County Surface Water Design Manual (latest edition).
- Water – AWWA Standards

The design of Extensions shall be consistent with the City's approved Comprehensive Plans, North Bend Municipal Code, the regulations and standards of the Department of Health, Eastside Fire and Rescue, and all other applicable state, county, and local agency regulations.

Specific criteria established by the City are as follows:

#### **A. Water System**

1. Minimum size for all water mains shall be 8-inches except where the water main is permanently dead ended with no future potential for extension, is less than 300 feet in length, and does not include a fire hydrant.
2. All water service lines shall be 1" or larger. Dual services are ***not*** allowed.
3. Water mains shall be located at a uniform 10 feet north and east of centerline. Fittings will be used when necessary to maintain, as closely as possible, the uniform offset from centerline.
4. Wherever possible, valves shall be clustered at the tee or crosses of connecting intersecting water lines.
5. All fittings, fire hydrants and other appurtenances shall be located on the plans by street centerline station and offset or easement baselines.
6. All water mains 4 inches and larger shall be ductile iron pipe. The ductile iron pipe shall be class 52 except where trench, backfill and loading dictate a stronger class pipe.

7. The locations and size of oversized mains or special structures such as a pressure reducing stations shall be designated by the City Engineer.
8. Water lines shall be looped and dead-end lines avoided if possible.
9. Water lines shall be extended to the boundaries of the property being served providing access to all adjacent properties that will require future service.
10. All water service lines are to be installed at 90° to the water main and street centerline.

**B. Sewer System**

1. Minimum size for all sewer pipe shall be 8-inches except where line is less than 150 feet and will not be extended.
2. Minimum slope on all sewer pipe shall comply with Department of Ecology standards except for 8-inch. Minimum slope for 8-inch sewer pipe shall be 0.005 feet/foot except where a lesser slope is specifically approved by the City Engineer.
3. All sewer pipe invert elevations at manholes shall be computed to the center of the manhole.
4. Where the combined slope of the sewer line entering or exiting a manhole is less than 0.05 feet per foot, a drop of 0.1 foot shall be provided between the invert of the new sewer pipe and existing sewer pipes.
5. The location and size of oversized sewer lines shall be designated by the City Engineer.
6. All sewer manholes shall be located at street centerline or 6-foot south or west of street centerline.
7. Location of all sewers shall not exceed a horizontal distance or more than 10 feet from street centerline.
8. Sewer lines shall be designed such that the invert elevation of the side sewer stub at the property line is at least 4 feet deep and below the lowest expected floor elevation of the structure to be served such that the slope of the service line from the property line to the building is at least 0.02 feet/foot. The invert elevation of the connection plus the rise of the side sewer to the property line shall be based on its length and minimum slope of 0.02 feet/foot plus 1.0 foot. The design elevation of the side sewer stub shall be shown on the construction plan.
9. Sewer lines shall be extended to the boundaries of the property being served providing access for future service of adjacent properties.
10. All side sewer service lines shall be 6-inches or larger. Dual services are ***not*** allowed.
11. Clean-outs for all side sewers shall be located at the property line of the lots being served and at bends and 100-foot intervals on the private properties.

**C. Stormwater System**

Mainline Stormwater System:

1. Minimum size for all storm drain pipe shall be 12-inches, except that those pipes which connect curb inlets to main storm drains may have a minimum diameter of 8-inches,

and a maximum length of 60 linear feet if conflicts with other utilities prevent the use of 12-inch diameter pipe.

2. Minimum slope of storm drains shall be 0.005, except that larger diameter pipe may be installed at a smaller slope if approved in advance by the City Engineer.
3. Maintain uniform line and grade between all catch basins.
4. Install catch basins at all changes of line, grade, change in pipe size or material, at all pipe intersections and at ends of all storm drain pipe, except driveway culverts and at maximum drain spacing of 300 feet. Maximum length of overland drainage shall be 300 feet.
5. Extend mainline storm sewers to boundary of project to serve adjacent upstream properties.
6. Design location of pipe shall be along south and west street curbs, except as required to match existing utilities.
7. Minimum depth of cover over top of pipe shall be 2 feet, unless otherwise approved by the City Engineer.
8. Extend service lines to property line where under future paving, curbs or sidewalks.
9. Notice pipe size, length, slope and invert elevations in profile on each run between catch basins.
10. Drainage facilities must be designed in accordance with the latest version of the King County Surface Water Design Manual.
11. In areas where open ditches are allowed, they shall be constructed with minimum depth of 3 feet, minimum side slope of one and one-half feet horizontal to one vertical, with driveway culverts 12 inch minimum diameter.
12. Culvert ends shall be beveled and shall be protected with quarry spall armor for full depth of ditch, or pipe ends shall be vertical with concrete headwalls.

**D. Footing and Downspout Drain:**

1. Minimum diameter shall be 6-inches to property line.
2. Minimum slope shall be 1% or minimum 3 feet per second velocity, whichever is greater.
3. Provide 3 foot minimum depth at property line, or deeper if required by lot topography.
4. Provide individual drain for each house or lot.
5. All drain lines shall enter the storm system at catch basins

**E. On-Site Detention:**

On-site detention of stormwater shall be designed and installed in accordance with the latest version of the King County Surface Water Design Manual for all development or redevelopment.

**F. Streets**

1. Right-of-way width shall be in accordance with the street's classification.

2. All intersections shall be 90 degree, unless approved in advance by the City Engineer.
3. Street extensions shall be laid out to promote efficient vehicular circulation.
4. All rights-of-way shall be extended to property lines to avoid landlocking adjacent parcels, unless otherwise approved through the platting process.
5. Maximum permitted road grade is 15%.
6. Adequate transverse slope must be provided for surface water drainage.
7. Maximum dead end street length is 300 feet.

#### **4. EASEMENTS/RIGHT-OF-WAY**

Whenever water, sewer, and/or stormwater lines are located outside of public street rights-of-way, easements shall be of sufficient width to allow for future replacement of the facility without damage to permanent adjacent improvements. In general, if the water, sewer, and/or stormwater line is located in the center of the easement, its minimum width shall be 15 feet. Special circumstances may require additional widths, such as for deep sewer lines.

#### **5. CONSTRUCTION DRAWING FORMATS**

The City desires to maintain a consistent format to its construction drawings, and therefore requires that all construction drawings conform to the following format unless exceptions are approved in advance by the City's Engineer.

The following format and requirements are minimum for normal type system extensions. Unusual or special facilities or construction requirements may dictate additional drawings and drawing requirements.

- A. Sheet size: 22" x 34" mylar.
- B. Water, Sewer, Stormwater, and Street Plan – A separate construction plan is required at a scale of 1-inch = 20 feet, showing all existing or proposed utilities, existing or proposed street surfacing and improvements, street centerline and stationing, street right-of-way margins, street names, legal identifications of properties such as lot number or tax parcel number, section subdivision lines, all property lines and all easements.
- C. Water Plan – Show the following:
  1. Size, material, location and length of each water main. Length measured between fittings or appurtenances.
  2. Station and offset to all fittings and valves and listing of each fitting and the type of connection (e.g., flanges (FL), mechanical joint (MJ), etc).
  3. Station and offset to all appurtenances such as fire hydrants, blow off and air/vacuum release assemblies.

Details showing how the connection to the existing water system is to be made and how the new mains are to be tested and sampled for analysis prior to connection. Location of all water services and whether the service is a double or single.

D. Sewer Plan – Show the following:

1. Station and offset to each manhole. Number each manhole consecutively in the new sewer system based on an agreed upon numbering system. Begin at the connection to existing system and proceed upstream. Branch lines shall use the subnumber of the manhole on the line number.
2. Show the size, material, slope, and length of each sewer line between manholes.
3. Show the location of all side sewer stubs and the invert elevation at the end of the stub.
4. Show details as necessary to direct the contractor in making connections to the existing system and to protect existing facilities during construction of the new sewers.
5. All other work and materials required for the construction of the extension shall be clearly shown and concisely illustrated on the plan.

E. Street/Stormwater Plan – Show the following:

1. Station and offset to each catch basin. Number each catch basin consecutively in the new storm water system based on an agreed upon numbering system. Begin at the connection to existing system and proceed upstream. Branch lines shall use the subnumber of the catch basin on the line numbered.
2. Show the size, material, slope, and length of each stormwater line between catch basins.
3. Show details as necessary to direct the contractor in making connections to the existing system and to protect existing facilities during construction of the new storm water system
4. All other work and materials required for the construction of the extension shall be clearly shown and concisely illustrated on the plan.
5. Right-of-way width, pavement width, sidewalk and landscaping location.
6. Location of stormwater facilities.
7. Radius and tangent points of all curves.
8. Grading plan showing location and extent of all cuts and fills.
9. Specification of pavement, gutter, curb, and sidewalk materials.

E. Water, Sewer or Stormwater Profile – Profiles of proposed sewer mains shall be provided on the associated plan drawing of the sewer mains. Profile shall be shown directly under the plan layout of the pipe. Profiles of proposed storm pipes shall be similarly provided on the associated plan drawing of the street/storm systems. The scale of these drawings shall be 1-inch = 20 feet horizontal and 1-inch = 5 feet vertical.

F. Sewer Profile – Show the following:

1. For each manhole, show the rim elevation, invert elevation of all sewer entering or leaving the manhole, and the manhole number and location (street station and offset).
2. Show the sewer line profile and the existing and proposed ground lines. Identify the size, material, slope, and horizontal length of the sewer line on the profile.
3. Above the ground line indicate the profile location by street name or other right-of-way designation.
4. Show all crossing utility and designate special materials or construction procedures that may be required.
5. Provide a legend to clearly illustrate the composition of the profile.

**GENERAL CONDITIONS  
FOR DEVELOPER EXTENSIONS**

**CITY OF NORTH BEND**

**GENERAL CONDITIONS  
FOR DEVELOPER EXTENSIONS**

- 1. SCOPE .....
- 2. DEFINITIONS .....
- 3. PLANS AND SPECIFICATIONS; OMISSIONS AND DISCREPANCIES. ....
- 4. STATUS OF CITY ENGINEER. ....
- 5. SURVEYS, PERMITS, LAWS, AND REGULATIONS. ....
- 6. CONSTRUCTION STAKING. ....
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- 15. SAMPLES. ....
- 16. DETERMINATION OF "OR EQUAL" .....
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- 18. PAYMENT OF PREVAILING WAGES .....
- 19. PROTECTION OF WORK AND PROPERTY AND SAFETY. ....
- 20. EXISTING UTILITIES OR OBSTRUCTIONS. ....
- 21. REPLACING IMPROVEMENTS. ....
- 22. SUPERINTENDENCE AND SUPERVISION .....
- 23. WARRANTIES OF DEVELOPER. ....
- 24. CORRECTION OF DEFECTS OCCURRING WITHIN WARRANTY PERIOD. ....
- 25. SUBLETTING AND SUBCONTRACTING .....
- 26. SEPARATE CONTRACT; INTERFERENCE WITH OTHER DEVELOPERS .....
- 27. LOSS OF MARKERS .....
- 28. DISPUTE RESOLUTION. ....

**GENERAL CONDITIONS  
FOR EXTENSIONS CONSTRUCTED BY DEVELOPERS**

**1. SCOPE**

Set forth below are general conditions for extension of the City's sewer, stormwater systems, and streets by developers. Reference to or requirements for non-applicable conditions for any particular application will be construed to have no meaning relative to the performance of such work. All other conditions shall be strictly followed.

**2. DEFINITIONS**

The following terms, as used in developer extension agreement contract documents, shall be defined and interpreted as follows:

- A. "Agreement" shall mean the Agreement to Construct Extension to Water, Sewer, Stormwater, and Street Systems entered into by the Developer and the City.
- B. "City" shall mean the City of North Bend, King County, Washington.
- C. "City Engineer" shall mean the consulting engineer employed by the City or contracted by the City for the administration of this Agreement.
- D. "Contract Documents" shall have the meaning ascribed in the Agreement.
- E. "Developer" shall mean the person, partnership, firm, or corporation identified in the Checklist, and shall include Developer's agents, employees, and subcontractors.
- F. "Developer's Engineer" shall mean the engineering firm, and that firm's representatives, which may be approved by the City to act as the engineer for the Extensions to be performed under this Agreement.
- G. "Extensions" shall have the meaning ascribed in the Agreement .
- H. "Or Equal" shall mean any manufactured article, material, method, or work which, in the opinion of the City Engineer, is equally desirable or suitable for the purposes intended in the Specifications and the Contract Documents as compared with similar articles specifically mentioned therein.
- I. "Plans" shall mean all instructions, shop drawings, and other official drawings (and reproductions of the same) made or to be made pertaining to the Extensions or to any structure connected therewith, including supplemental instructions, drawings

or documents furnished by the City Engineer at Developer's request, which, in the City Engineer's sole discretion, are necessary for the proper construction of the Extensions, provided that all such supplemental drawings and instructions must be consistent with the Contract Documents.

- J. "Specifications" shall mean the design specifications and criteria identified in the Standards for Preparation of Extension Plans and Specifications.

3. **PLANS AND SPECIFICATIONS; OMISSIONS AND DISCREPANCIES**

Developer shall carefully study and compare all Plans and Specifications and other instructions and shall, prior to ordering material or performing work, report in writing to the City Engineer any error, inconsistency, or omission in respect to design, construction or cost which Developer may discover. If Developer, in the course of this study or in the construction of the Extensions, finds any discrepancy between the Plans, or any such errors or omissions in respect to design, construction, or cost in drawings or in the layout as given by points and instructions, it shall be Developer's duty to inform the City Engineer immediately in writing, and the City Engineer shall promptly check the same. Any work done after such discovery will be done at Developer's risk.

4. **STATUS OF CITY ENGINEER**

- A. Except for the method or manner of performing the work, the Extensions are to be constructed under the general supervision and to the complete satisfaction of the City Engineer, or his/her duly authorized representative, who shall use his/her reasonable discretion and professional experience as to the true interpretation and meaning of the project application, Plans, Specifications, and estimates and as to all questions arising as to proper performance of the work. The City Engineer has the authority to stop work whenever, in his/her opinion, such stoppage may be necessary to ensure proper execution of the contract. The City Engineer may also reject all work and materials which in his/her opinion, do not conform to the contract.
- B. The City Engineer shall use his/her reasonable discretion and professional experience to decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed and all questions as to the acceptable fulfillment and performance of the Agreement on the part of Developer. The decision of the City Engineer in such matters shall be final.
- C. The City Engineer may direct the sequence of conducting work when it is in locations where the City is doing work either by contract or by its own forces or where such other work may be affected by the Extensions, in order that conflict may be avoided and the Extensions be harmonized with work under other contracts, or with other work being done in connection with, or growing out of, operations of the City.

Nothing in this Section 4(C) shall be interpreted to relieve Developer of its obligations or liabilities under the Contract Documents.

- D. Neither the City Engineer nor his/her representatives have the authority to waive the Developer's obligation to perform work in accordance with the Contract Documents. However, the City Engineer shall have the authority to authorize minor field changes. Failure or omission on the part of the City Engineer or his/her representatives to condemn unsuitable, inferior, or defective work and/or labor or material or equipment furnished under the application shall not release Developer or his/her bond from performing the work in accordance with the Contract Documents.

**5. SURVEYS, PERMITS, LAWS, AND REGULATIONS**

- A. Developer shall furnish all property boundary surveys unless otherwise specified. Permits, permission under franchises, licenses, and bonds of a temporary nature necessary for the prosecution of the work, and inspection fees in connection therewith shall be secured and paid for by Developer. Where the City is required to secure such permits, permission under franchises, and licenses and bonds and to pay the fees, Developer shall reimburse the City for such costs incurred.
- B. Developer shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the construction of the Extensions and obligations under the Contract Documents. If Developer observes that the Contract Documents, or any part thereof, are inconsistent, Developer shall promptly notify the City Engineer in writing, and any necessary changes shall be made. If Developer performs any work contrary to such laws, ordinances, rules and regulations, or prior to obtaining permits, permission under franchises, licenses, and/or bonds as required to be furnished by or obtained by the City, Developer does so at its own risk.

**6. CONSTRUCTION STAKING**

Developer shall, at Developer's sole expense, furnish all construction points, stakes, and instructions necessary to control the horizontal and vertical placement of all facilities to be constructed by Developer pursuant to the Contract Documents. Construction points, stakes and instructions to be provided by Developer shall meet the following minimum requirements:

A. Water Extension

- 1. Horizontal location of all water mains at 50 foot stations offset 10 feet from the water main locations.
- 2. Two directional 10 foot offsets to locate all pipe intersections, cast iron bends, valves, hydrants, blow off assemblies, and air and vacuum assemblies.

3. A stake at the edge of the public right-of-way or easement adjacent the water main marking the horizontal locations of all water service meter box assemblies.
4. Sufficient horizontal and vertical reference marks to accurately locate and construct all other water facilities and structures such as pressure reducing stations.

B. Sewer Extension

1. One complete set of grade stakes and suitable offset stakes at each manhole. Developer shall provide to the City one (1) set of grade sheets (cut sheets) showing hub to sewer invert.
2. A stake at each property corner and a stake along the property line 20 feet off-set from the edge of the public right-of-way at each location where a side sewer stub is to be installed.
3. Sufficient horizontal and vertical reference marks and stakes to accurately locate and construct all other sewer facilities and structures to be constructed.

C. Stormwater Extension

1. One complete set of grade stakes and suitable offset stakes at each storm drain and intermediate grade stakes at an offset acceptable for construction at 50 foot intervals between storm drains. Developer shall provide to the City one (1) set of grade sheets (cut sheets) showing hub to storm water invert.
2. Sufficient marks to locate all surface features such as manhole covers, valve box covers, storm drain grades, and all other surface features requiring exposure to the surface of the roadway.
3. Double 20-foot offsets for each corner of storm structures such as vaults or tanks.

Developer shall perform all property surveys necessary for placement of the construction stakes including surveys of easements. Developer shall provide to the City drawings showing the bearing and dimensions of all property lines, ties to adjacent subdivisions and section control and the calculated closure of all control traverses. All surveying and construction staking shall be performed by a professional land surveyor licensed in the state of Washington.

7. **INSPECTION AND TESTS**

- A. Inspection of the work by the City and its authorized agents shall be strictly for the benefit of the City, and nothing contained herein shall be construed to relieve Developer of its obligations under this Agreement.
- B. The City Engineer and his/her representatives shall, at all times, have access to the Extensions for the purpose of inspecting and testing, wherever it is in preparation or progress, and Developer shall provide proper facilities for such access and for such inspection and testing.
- C. If any work should be covered up without approval or consent of the City Engineer, it must, if required by the City Engineer, be uncovered for inspection at Developer's expense.
- D. Re-examination of questioned work may be ordered by the City Engineer; and, if so ordered, the work shall be uncovered by Developer. If such work is found by the City Engineer to be in accordance with the Contract Documents, the City shall pay the cost of re-examination and replacement. If such work is found not in accordance with the Contract Documents, Developer shall pay such costs.
- E. Developer shall make tests of the work as required by the City Engineer at Developer's expense and shall maintain a record of such test.
- F. For a performance test to be observed by the City Engineer, Developer shall make whatever preliminary tests are necessary to assure that the materials and/or equipment are in accordance with the Specifications. If, for any reason, the test observed by the City Engineer is unsatisfactory, Developer shall pay all costs incurred by the City Engineer for the inspection and supervision of all further testing.
- G. Where work is performed outside of the normal 40-hour work week, Developer shall pay City's additional costs for inspection and supervision, if applicable.
- H. Where the Plans, Specifications, City Engineer's instructions, laws, ordinances, or any government authority require any work to be specifically tested or inspected, Developer shall give the City Engineer timely notice of the date fixed for such inspection. Required certificates of inspection by authorities other than the City Engineer shall be secured by Developer and copies provided to the City Engineer.
- I. Inspection during construction will be provided as deemed necessary by the City Engineer.
- J. Written notice of deficiencies, adequately describing the same, shall be given to Developer upon completion of each inspection, and Developer shall correct these deficiencies within seven (7) days of notice thereof, or as agreed upon in writing by both parties, and before final inspection will be made by the City Engineer.

- K. A representative of Developer or Developer's contractor shall arrange a time with and accompany the City Engineer on the final inspection and subsequent inspections, if required, thereafter.
- L. Deficiencies discovered at the final inspection shall be corrected within seven (7) days' notice thereof or as agreed upon by both parties, and in no instance shall service be provided until said deficiencies are corrected and the extension passes re-inspection.
- M. All costs incurred by the City for inspection, including the fees and charges of its City Engineer, except as specifically provided for in this section, shall be paid by Developer, and a deposit for this may be required in advance by the City.
- N. Neither inspection nor acceptance by the City shall relieve Developer of any responsibility or liability, whether to the City or others, provided in the Contract Documents.

**8. PLANS AND SPECIFICATIONS ACCESSIBLE**

- A. The City shall furnish one (1) copy of Plans and Specifications to Developer, who shall keep at least one (1) copy of the same constantly accessible at the construction site.
- B. Where shop drawings are required to be submitted for acceptance, one (1) copy of the approved shop drawings shall be kept constantly accessible at the construction site.

**9. OWNERSHIP OF DRAWINGS**

All Plans, Specifications and copies thereof prepared or furnished by the City Engineer are his/her property. They are not to be used on other work and, with the exception of the signed Agreement, and are to be returned to him/her upon completion of the work.

**10. INSURANCE**

The Developer shall carry liability and property damage insurance covering all work performed under the Contract Documents, including work done by subcontractors. This insurance shall name the City and its employees as co-insureds and shall be deemed primary coverage, with any insurance carried by the City classified as additional coverage. Unless otherwise specified, the insurance shall be carried as follows: Bodily Injury, each person - \$3,000,000, each accident; Property Damage, each accident - \$3,000,000.

11. **MATERIALS AND EQUIPMENT; MATERIALS AND EQUIPMENT LIST**

- A. Materials and equipment shall be new and as specified in the Contract Documents, or if not specified, shall be of a quality approved by the City Engineer. All materials and equipment furnished are warranted by Developer as new and as in compliance with the Plans and Specifications, if specified therein, and as suitable for the intended purpose. In addition thereto, the Developer shall furnish the City with copies of the supplier's warranty. Except in the event of fraud or bad faith by Developer, the warranty described in this Section 11(A) shall be limited to one (1) year.
- B. Developer shall file two (2) copies of its materials and equipment list with the City Engineer prior to commencing construction of the Extensions. This list shall include the quantity, manufacturer and model number, if applicable, of materials and equipment to be installed under the Contract Documents. This list will be checked by the City Engineer as to conforming with the Plans and Specifications. The City Engineer will pass upon the list with reasonable promptness, making note of required corrections.

Developer shall make any required corrections and file two (2) corrected copies with the City Engineer within one week after receipt of notice of required corrections. The City Engineer's review and acceptance of the lists shall not relieve Developer from responsibility for deviations from the Plans and Specifications or warranty for suitability for the intended purpose unless Developer has, in writing, called the City Engineer's attention to such deviations at the time of submittal and secured the City Engineer's written approval for such deviation.

12. **SHOP DRAWINGS**

All shop details, structural steel, pipe, machinery, equipment, schedules, bending diagrams, reinforcing steel, and other detail drawings furnished by the Developer, as required and provided for in the specifications. Developer shall check and verify all field measures. Developer shall submit with such promptness as to cause no delay in its own work or in that of any other contractor, two (2) copies, checked and approved by Developer, of all shop or setting drawings and schedules (all collectively herein referred to as "shop drawings") required for the work of the various trades in the construction of the Extensions or where requested by the City Engineer, and shall verify all field various trades in the performance of the work or where requested by the City Engineer and shall verify all field measurements or conditions to which the shop drawings are applicable. The City Engineer shall pass upon them with reasonable promptness making note of required corrections, including those related to design and artistic effect. Developer shall make any corrections required by the City Engineer and, within one (1) week after receipt of the notice of required corrections, shall file with the City Engineer two (2) corrected copies and furnish such other copies as may be needed by the City

Engineer. The City Engineer's acceptance of such drawings or schedules shall not relieve Developer from responsibility for deviation from drawings, Plans, or Specifications, unless Developer has, in writing, called the City Engineer's attention to such deviation at the time of submission and secured the City Engineer's written approval, nor shall it relieve Developer from responsibility for errors in shop drawings or schedules.

13. **CUTTING AND FITTING**

Developer shall do all cutting and fitting of its work that may be required to make any of the Extensions' several parts come together properly, and fit it to receive or be received by work of other developers or contractors shown or reasonably implied by the Plans and Specifications for the completed structure, and Developer shall restore all surfaces damaged by cutting and fitting as the City Engineer may direct.

14. **LABOR, MATERIALS, EQUIPMENT, FACILITIES, AND WORKMEN**

- A. Developer shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work, except as otherwise stipulated in the Contract Documents.
- B. The Developer shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any person unfit or not skilled in the work assigned to him/her. Employees or agents of Developer, who, in the opinion of the City Engineer, may impair the quality of the Extensions shall forthwith be discharged by Developer upon the written request of the City Engineer.
- C. During the term of the Agreement, neither party shall employ nor hire any employee of the other party, nor of the City Engineer, without the written consent of the other party. Neither party shall use any work performed or any information obtained from any employee hired in violation of this provision in making a claim against the other party.
- D. Necessary sanitation conveniences for the use of workmen on the job, properly secluded from public observation, shall be provided and maintained by Developer.

15. **SAMPLES**

The Developer shall furnish for approval all samples as directed by the City Engineer. The finished work shall be in accordance with approved samples. Approval of samples by the City Engineer does not relieve the Developer of performance of the work in accordance with the Contract Documents.

16. **DETERMINATION OF "OR EQUAL"**

The City Engineer shall make the determination regarding questions of "or equal" for any supplies or materials proposed by Developer. Developer shall pay to the City the cost of tests and evaluation by the City Engineer to determine acceptability of alternatives proposed by Developer, in accordance with Section 4 of the Agreement.

17. **ROYALTIES AND PATENTS**

Developer shall defend, indemnify and hold the City harmless for all claims and/or suits brought against the City by reason of infringement of patent rights or licenses on any material, machine, appliance, or process that Developer may use on the work or incorporate into the finished job. Such indemnity shall include the costs of defense by an attorney selected by Developer and approved by the City.

18. **PAYMENT OF PREVAILING WAGES**

Developer does not have to pay prevailing wages on projects without City funding.

19. **PROTECTION OF WORK AND PROPERTY AND SAFETY**

- A. Developer shall continuously maintain adequate protection of the work from damage and shall protect City's property from injury or loss arising in connection with and during the term of the Agreement. Developer shall make good any such damage, injury, or loss, except as may be directly due to the negligence of agents or employees of the City. Developer shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions.
- B. Developer shall bear the risk of loss or damage for all finished or partially finished work until accepted by the City.
- C. Developer shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local safety laws and building codes. Developer shall erect and properly maintain at all times, as required by the conditions and progress of the Extensions, all necessary safeguards for protection of workmen and the public, shall post danger signs warning against known or unusual hazards; and shall designate a responsible member of its organization on the construction site whose duty shall be the prevention of accidents. The name and position of such person so designated shall be reported in writing to the City Engineer by Developer.

**20. EXISTING UTILITIES OR OBSTRUCTIONS**

- A. Developer shall not enter upon or place materials on other private premises except by written consent of the individual owners, and Developer shall save the City harmless from all suits and actions of every kind and description that may result from its use of private property.
- B. Underground utilities of record shall be shown on the Plans insofar as it is possible to do so. These, however, are shown for convenience only, and the City assumes no responsibility for improper locations or failure to show utility locations on the construction plans. Any underground utilities found during the course of construction not properly shown on the Plans shall be recorded as to the nature, size, depth and orientation on the as-built drawings.
- C. Developer shall take adequate precautions to protect existing lawns, trees, shrubs, outside rights-of-way, sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto caused by its operations to the satisfaction of the City Engineer, except as otherwise provided in the Contract Documents.

**21. REPLACING IMPROVEMENTS**

Whenever it is necessary in the course of construction to remove or disturb culverts, driveways, roadways, pipelines, monuments, property stakes, or other existing improvements, whether on private or public property, they shall be replaced to a condition equal to or better than that existing before they were so removed and disturbed.

**22. SUPERINTENDENCE AND SUPERVISION**

Developer shall keep on the construction site during the construction of the Extensions a competent superintendent and any necessary assistants, all satisfactory to the City Engineer. The superintendent shall not be changed except with the consent of the City Engineer unless the superintendent ceases to be in Developer's employ. The superintendent shall represent Developer, and all directions given to the superintendent shall be as binding as though given to Developer. Instructions to Developer shall be confirmed in writing upon its request in each case. Developer shall give efficient supervision to the work, using its best skill and attention.

**23. WARRANTIES OF DEVELOPER**

Upon completion of the Extensions and approval and acceptance thereof by the City, Developer warrants to the City as follows:

- A. That Developer is the owner of the property and the same is free and clear of all encumbrances and that Developer has good right and authority to transfer title thereto to the City and will defend the title of the City against the claims of all third parties claiming to own the same or claiming an encumbrance against the same; and
- B. That the Extensions are in proper working condition, order, and repair as designed and that they are adequate and fit for the intended purpose of use as water, sewer, stormwater, and/or street systems, and as integral parts of the water, sewer, stormwater, and/or street systems of the City; and
- C. That all parts of the Extensions shall remain in proper working condition, order and repair as designed except where abused or neglected by the City; and that Developer shall repair or replace, at its own expense, any work or material which may prove to be defective during the period of this warranty. Developer shall obtain warranties and guaranties from its subcontractors and/or suppliers where such warranties or guaranties are specifically required herein and shall deliver copies of such to the City upon completion of the Extensions. When corrections of defects occurring within the warranty period are made, Developer shall further warrant corrected work for one (1) year after acceptance by the City.

Except in the event of fraud or bad faith by Developer, the warranty described in this Section 23 shall be limited to one (1) year.

**24. CORRECTION OF DEFECTS OCCURRING WITHIN WARRANTY PERIOD**

When defects occurring within the warranty period are discovered, Developer shall work to remedy any such defects within seven (7) days of notice of discovery thereof by the City, or as agreed upon in writing, and shall complete such work within a reasonable time as determined by the City. In emergencies, where damage or loss of service may result from delay, corrections may be made by the City immediately upon discovery; in which case the cost thereof shall be borne by Developer. In the event Developer does not commence and/or accomplish corrections within the time specified, the work shall be otherwise accomplished and the cost of same shall be paid by Developer.

Developer shall be responsible for any expenses incurred by the City resulting from defects in the Developer's work including actual damages, cost of materials, and labor expended by the City in making emergency repairs, and cost of engineering, inspection, and supervision by the City or City Engineer, as well as reasonable attorneys' fees and expert witness fees to be fixed by the court in any action which the City may commence against the Developer to enforce the provisions hereof.

**25. SUBLETTING AND SUBCONTRACTING**

Developer is fully responsible and liable to the City for the acts and omissions of its employees, subcontractors, and all other persons either directly or indirectly employed or contracted with by subcontractors. The City's consent to subcontracting part of the work shall in no way release Developer from responsibility under the Agreement, and Developer will be held in all respects accountable for the same as if no consent had been given. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the City.

**26. SEPARATE CONTRACT; INTERFERENCE WITH OTHER DEVELOPERS**

The City reserves the right to perform work with its own forces or to let contracts for work under similar general conditions in connection with this project or other projects. Developer shall afford the City and other contractors reasonable opportunity for the execution of their respective work.

**27. LOSS OF MARKERS**

The City shall not be responsible for costs to relocate service ends in the event of removal or destruction of the markers by parties other than the City.

**28. DISPUTE RESOLUTION**

A. Process for Alternative Dispute Resolution. The parties shall cooperate in good faith and deal fairly in performing their duties under the Contract Documents in order to accomplish their mutual objectives and avoid disputes. If a dispute arises, the parties shall resolve all disputes by the following progressive alternative dispute resolution process:

1. The parties shall first seek a fair and prompt negotiated resolution.
2. If negotiation is not successful, either party may demand binding arbitration in accordance with RCW 7.04.060; provided, that within twenty (20) days of the initial arbitration demand, the parties shall attempt to resolve the dispute by nonbinding third-party mediation. Mediation efforts shall not delay or affect the arbitration hearing date unless agreed by the parties.
3. If the dispute is not resolved through mediation within forty-five (45) days of the initial arbitration demand, the parties shall proceed with the binding arbitration; provided, that the mediator shall prepare and deliver to the arbitrator a final written recommendation for resolution of the dispute.

- B. Selection of Arbitrator. There shall be one arbitrator agreed upon by the parties, or, if the parties cannot agree on the identity of the arbitrator within ten (10) days of the initial arbitration demand, the arbitrator shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large, Complex Case Panel (or shall have similar professional credentials). The arbitrator shall be an attorney with at least fifteen (15) years' experience in the practice of law and shall reside in the Seattle/King County metropolitan area. Whether a claim is covered by the Contract Documents shall be determined by the arbitrator. All statutes of limitations which would otherwise be applicable in a court of law shall apply to any arbitration proceeding hereunder. The mediator shall be selected by the same manner as the arbitrator.
- C. Procedures. The arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules in effect on the date of the initial arbitration demand, as modified by this Section 28. There shall be no dispositive motion practice. As necessary to ensure a fair hearing, the arbitrator may authorize limited discovery, and may enter pre-hearing orders regarding (without limitation) scheduling, document exchange, witness disclosure and issues to be heard. The arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct or their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrator may determine to be appropriate. The parties intend to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing on material issues.
- D. Hearing – Law – Appeal Limited. The arbitrator shall hold a private hearing within ninety (90) days of the initial arbitration demand and shall take reasonable measures to conclude the hearing within three (3) days. The arbitrator's written decision shall be issued not later than fourteen (14) calendar days after the close of the hearing. These time limits are included in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator may for good cause afford or permit reasonable extensions, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator shall apply substantive law. Absent fraud, collusion or willful misconduct by the arbitrator, the award shall be final, and judgment may be entered in any court having jurisdiction over the parties. The arbitrator may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidation of this arbitration with any other arbitration proceeding involving common issues of law or fact or which may promote judicial economy, but shall not have the power to award punitive or exemplary damages.

- E. Provisional Remedies. Pending selection of the arbitrator, either party may request the AAA to unilaterally appoint an interim arbitrator for the limited purpose of awarding temporary or preliminary relief. This award may be immediately entered in any federal or state court having jurisdiction over the parties even though the decision on the underlying dispute may still be pending. Once appointed, the official arbitrator may, upon request of a party, issue a superseding order to modify or reverse such temporary or preliminary relief or may confirm such relief pending a full hearing on the merits of the underlying dispute, which order may be immediately entered in any federal or state court having jurisdiction over the parties, even though the decision on the underlying dispute may remain pending. Such relief may be granted by the arbitrator only after notice to and opportunity to be heard by the opposing party, unless the party applying for such relief demonstrated that its purpose would be rendered futile by giving notice.
- F. Attorneys' Fees and Costs. The arbitrator shall award attorneys' fees, expert witness fees, and costs to the prevailing party, but only if the award to the prevailing party exceeds the mediator's recommendation. Except as otherwise provided in the Agreement, neither party is entitled to payment of its attorneys' fees by the other party for disputes resolved prior to a final decision of the arbitrator.

Nothing in this Section 28 shall affect Developer's responsibility to reimburse the City for attorney fees and legal expenses in the normal course of the Agreement.

**CERTIFICATE(S) OF INSURANCE**





## City Council Agenda Bill

<b>SUBJECT:</b>		<b>Agenda Date: October 18, 2016</b>	<b>AB16-117</b>	
<b>A Resolution Approving a Developer Agreement with Bendigo Properties LLC for the Snoqualmie Valley Athletic Complex</b>		Department/Committee/Individual		
		Mayor Ken Hearing		
		City Administrator – Londi Lindell		
		City Attorney - Mike Kenyon		
		City Clerk – Susie Oppedal		
		Community & Economic Development – Gina Estep		X
		Finance – Dawn Masko		
		Public Works – Mark Rigos		
Cost Impact: \$0				
Fund Source: N/A				
Timeline: Immediate				
<b>Attachments:</b> Resolution, Exhibit A (Developer Agreement), Public Comment				
<b>SUMMARY STATEMENT:</b>				
<p>RCW 36.70B.170 and North Bend Municipal Code (NBMC) Section 18.27.010 authorize the City to enter into a development agreement with a person having ownership or control of real property within its jurisdiction. Bendigo Properties, L.L.C., the developer, owns or controls approximately 12 acres of land located between Bendigo Boulevard and Boalch Avenue NW, immediately south of Gardiner Creek. The developer desires to construct an athletic complex on the property with approximately four multi-purpose fields and an indoor athletic facility.</p> <p>The developer proposes construction of the project in two phases. The fields, associated parking, and street improvements are included in the first phase. The second phase will include the indoor facility and associated parking.</p> <p>A Determination of Non-Significance (“DNS”) was issued for the Development Agreement on September 21, 2016.</p> <p>The North Bend Planning Commission considered the Development Agreement during regular meetings on September 22, 2016, and October 13, 2016. A public hearing on the Development Agreement was held before the Planning Commission on October 13, 2016, in accordance with RCW 36.70B.200 and NBMC 18.27.025(A).</p> <p><b>Please note:</b> Council packet materials are being distributed in advance of the October 13<sup>th</sup> Planning Commission meeting and public hearing on this agenda item. Staff will provide additional information from the Public Hearing and the Final Planning Commission Recommendation to the Council at the October 18<sup>th</sup> City Council meeting.</p>				
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The North Bend Community and Economic Development Committee reviewed this agenda item on October 11, 2016 and held off on providing recommendation pending Planning Commission review on October 13 <sup>th</sup> .				
<b>RECOMMENDED ACTION: Motion to approve AB16-117, a resolution authorizing a Development Agreement with Bendigo Properties, LLC for the Snoqualmie Valley Athletic Complex.</b>				
<b>RECORD OF COUNCIL ACTION</b>				
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>		
October 18, 2016				



## RESOLUTION

### **A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTH BEND AND BENDIGO PROPERTIES, L.L.C. FOR THE SNOQUALMIE VALLEY ATHLETIC COMPLEX AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME**

**WHEREAS**, RCW 36.70B.170 and North Bend Municipal Code (NBMC) Section 18.27.010 authorize the City to enter into a development agreement with a person having ownership or control of real property within its jurisdiction; and

**WHEREAS**, Bendigo Properties, L.L.C. (“Developer”) owns or controls approximately 12 acres of land located between Bendigo Boulevard and Boalch Avenue NW, immediately south of Gardiner Creek (the “Property”); and

**WHEREAS**, the Developer desires to construct an athletic complex on the Property with approximately four multi-purpose fields and one indoor athletic facility (the “Project”); and

**WHEREAS**, the City Council desires to enter into a development agreement with Developer (the “Agreement”) to allow construction of the Project in two phases, and to provide for vesting of development rights in order to maximize efficient use of resources at the least economic cost to the public and to reduce economic costs of development; and

**WHEREAS**, RCW 36.70B.200 requires that a development agreement be approved by ordinance or resolution after a public hearing; and

**WHEREAS**, a Determination of Non-Significance (“DNS”) was issued for the Agreement and the Project described therein on September 21, 2016, in accordance with Chapter 43.21C RCW, the State Environmental Policy Act; and

**WHEREAS**, a public hearing on the Agreement was held before the Planning Commission on October 13, 2016, in accordance with RCW 36.70B.200 and NBMC 18.27.025(A); and

**WHEREAS**, the North Bend Planning Commission considered the Agreement during regular meetings thereof on September 22, 2016, and October 13, 2016, and issued its recommendation approving the Agreement on October 13, 2016;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1. Approval and Authority to Execute:** The City Council of the City of North Bend hereby approves the Development Agreement between the City of North Bend and Bendigo Properties L.L.C. for the Snoqualmie Valley Athletic Complex, in the form attached hereto as Exhibit A, and authorizes the Mayor to execute the same.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18<sup>TH</sup> DAY OF OCTOBER, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Kenneth G. Hearing, Mayor**

\_\_\_\_\_  
**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Effective:  
Posted:

\_\_\_\_\_  
**Susie Oppedal, City Clerk**

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF NORTH BEND  
AND BENDIGO PROPERTIES, L.L.C.  
FOR THE  
SNOQUALMIE VALLEY ATHLETIC COMPLEX**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and Bendigo Properties, L.L.C., a limited liability company organized under the laws of the State of Washington (“Developer”).

**WHEREAS**, Developer has proposed to construct four athletic fields and an athletic facility complex in the Neighborhood Business zoning district and within the Urban Separator Overlay District in the City of North Bend (the “Project”); and

**WHEREAS**, this form of development is consistent with North Bend’s Comprehensive Plan goals and policies for this area; and

**WHEREAS**, the City has agreed to allow the project to be built in two (2) separate phases; and

**WHEREAS**, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

**WHEREAS**, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use and mitigation of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

**WHEREAS**, a development agreement must be consistent with the applicable development regulations adopted by local government planning under chapter the Growth Management Act (RCW 36.70B.170(1)); and

**WHEREAS**, a development agreement must be approved by ordinance or resolution after a public hearing (RCW 36.70B.200); and

**WHEREAS**, on September 21, 2016, a Determination of Non-Significance (“DNS”) was issued for this Agreement and the Project described herein; and

**WHEREAS**, on October 6, 2016, a public hearing on this Agreement was held during a regular meeting of the North Bend Planning Commission; and

**WHEREAS**, on October X, 2016, the City Council passed Resolution No. XXX, approving and authorizing the Mayor to enter into this Agreement on behalf of the City;

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

**1. The Project Site.** The Project Site is approximately 12 acres of almost entirely vacant land located immediately south of Gardiner Creek east of Bendigo Boulevard (SR-202) and west of Boalch Avenue NW, comprised of King County Tax Parcel Nos. 0423089036, 5418700030, 5418700005, 5418700025, 5418700010, 5418700020, and more particularly described in the attached **Exhibit A**.

**2. The Project.** The Project is the development and use of the Project Site as an athletic complex with approximately four multi-purpose fields and one indoor athletic facility, hereafter referred to as the “SVAA Athletic Complex.” The Project will be completed in two (2) phases, as follows:

A. Phase 1

1. Design and build four (4) combination outdoor soccer/baseball fields;
2. Design and build paved parking lot(s) and associated parking lot landscaping as required for Phase 1 improvements, 4 combination outdoor soccer/baseball fields. The parking requirement for the 4 combination soccer/baseball fields is one parking space per four players. This yields a parking requirement of 50 parking spaces to accommodate the fields (25 players per roster x 2 teams per field x 4 fields = 50 parking spaces);
3. SEPA review (to cover both phases);
4. Provide an adequate number of portable sanitation units (honey buckets) with hand sanitation. These units shall be well maintained, kept clean, secured and screened from view from any public street. Screening shall include wood fencing and landscaping, placed to the rear of the units.
5. Design and build half street frontage improvements per North Bend Municipal Code (NBMC) or as modified below;
  - a. Boalch Avenue NW – North Bend Comprehensive Plan identifies Boalch Ave NW as a Minor Arterial and therefore the required half street improvements shall generally comply with NBMC 19.05.020 for arterials and the following modifications of said Section;
    - i. Two 11 foot travel lanes and 5-foot bike lane; and
    - ii. In lieu of the required, 7-foot planter strip and 6-foot concrete sidewalk, a minimum 8 foot biochannel/landscape strip, planted per NBMC 18.18 and an 8-foot paved asphalt meandering trail, designed to match and connect to the Meadowbrook Farm trail, shall be provided. The 8-foot biochannel/landscape strip shall be placed between the bike lane and the trail to provide additional pedestrian safety for trail users. The trail shall meander and may periodically undulate into the biochannel/landscape strip by up to two feet, leaving no less than approximately 6-foot biochannel/landscape strip in any location. When the trail meanders onto private property, an access easement in favor of the public shall be provided. The 8-foot meandering trail shall connect the Meadowbrook Farm by means of an

8-foot wide pedestrian bridge over and across Gardiner Creek. Bridge ownership and maintenance shall be conveyed to the City by Developer following acceptance by the City; and

- b. NE 14<sup>th</sup> Street shall be designed per NBMC 19.05.020 Collector Street.
  - c. Along SR 202/Bendigo Blvd an 8-foot wide meandering asphalt trail shall be provided. This trail shall connect to the sidewalk on NW 14th Street and Meadowbrook Farm.
6. North Bend Municipal Code 18.10.040 limits the maximum impervious surface area to 55% in the Urban Separator Overlay District. The fields are permeable and therefore will not be calculated as impervious surface for the sake of this provision; however the project shall meet the requirements of the KCSWDM for the purpose of stormwater drainage collection, conveyance and treatment.
  7. Design and build on-site storm drainage collection, conveyance, retention and detention, water quality treatment, and outfall systems;
  8. Obtain all necessary permits from the City;
  9. Obtain approval from WSDOT for proposed construction in SR-202 ROW;
  10. Preliminary design of off-site sanitary sewer system for project (see subsection (B) below for particulars); and
  11. Provide the City with a 5-year bond for on-site sewer lift station, off-site sanitary sewer forcemain, connection to WWTP's existing wet well, sleeved anchoring systems to undersides of Ribary Creek and South Fork bridges, and include, as an alternative to Phase 2, on-site men's and women's restroom facilities.
  12. A critical area study shall be provided. Any stream buffer alteration shall be adequately mitigated resulting in no net loss of buffer function and shall be approved by the City of North Bend. The applicant may utilize both buffer averaging and buffer reduction per the City's Critical Area regulations, and may reduce the buffer up to a total of 50% reduction, subject to providing mitigation approved by the City that ensures no net loss of buffer function.
  13. Field lights may be located in the building setbacks and shall comply with NBMC 18.40.080.
  14. To minimize impacts to adjacent properties or the dark night or sky, the field lights and the associated illumination shall utilize best available techniques to direct light to the fields and avoid light spillage.
- B. Phase 2
1. Design and build an approximately 75,000 square foot indoor athletic facility to include lobby, basketball courts and/or racquetball courts, and restrooms ("the Building"), and additional required parking and site infrastructure for the Building as necessary. Site and building related items:
    - (a) The number of restrooms shall accommodate all proposed uses on the site;
    - (b) Undergo building design review with the City CED Department and Building Department;

- (c) Building height may exceed the 30' maximum building height for the Urban Separator Overlay District per NBMC 18.10.040 by up to 20% to accommodate the taller ceilings necessary for indoor basketball courts.
  - (d) Building may exceed single-user ground floor square footage limitation in Commercial Design Standards given the large nature of the use (indoor basketball/sports courts).
  - (e) Fences, backstops, dugouts, and like accessory structures may be permitted within the building setback.
  - (f) Design and build paved parking lot(s) and associated parking lot landscaping as required for Phase 2 improvements, indoor athletic facility. The parking requirement for the indoor athletic facility is also being calculated per player, which is one parking space per four players. This yields a parking requirement of 72 parking spaces to accommodate the max number of players ( 15 players per roster x 2 teams per court x 12 courts = 90 parking spaces). The total number of required parking spaces for the site is 140 spaces;
2. Design and build water and sewer systems for the Building and connect to municipal facilities
- (a) Sanitary Sewer Service Items:
    - (i) A gravity sanitary sewer main and manhole system shall be installed along the Boalch Ave. NW ROW alignment (or approximately parallel to such) to provide service to those parcels along Boalch Ave. NW., but it shall not be required to extend into the abutment and/or supporting areas of the existing Gardiner Creek Bridge.
    - (ii) A gravity sanitary sewer main and manhole system shall be installed along the NW 14<sup>th</sup> St., ROW alignment (or approximately parallel to such) to provide service to those parcels along NW 14<sup>th</sup> St., but it shall not be required to extend into the Bendigo Blvd., N ROW, nor beyond the extensions of the project property boundaries into the NW 14<sup>th</sup> Street ROW.
    - (iii) The gravity sewer main systems shall not be required to be greater than 10-feet in depth at any deepest invert elevation and as site conditions allow.
    - (iv) The gravity sewer main systems are intended to provide future connection points for eventual conveyance to a proposed sanitary sewer lift station and force main (as part of Phase 2); and
  - (b) Water Service Items:
    - (i) A water main extension shall be extended, approximately, from a connection point to the existing water main in the Boalch Ave., NW ROW, into the site, with a connection to the existing water main in the NW 14<sup>th</sup> St., ROW.
    - (ii) The water main extension is intended to provide a water main "loop" and thereby improve available fire system flow rates and provide redundancy for flows, and is anticipated to be aligned along the project driveways (approximately north and west of the proposed building).
    - (iii) A cross and valve system shall be included, approximately at the northwest corner of the driveway system, with the intent of providing a

connection point for future water main extensions approximately in the Bendigo Blvd., N ROW.

5.

**3. Exhibits.** The following exhibits, attached hereto, are incorporated herein and made part of this Agreement by this reference:

- A. Exhibit A: Project Site – Legal Descriptions;
- B. Exhibit B: Draft Site Plan differentiating Phase 1 from Phase 2;
- C. Exhibit C: Preliminary Plan showing proposed right-of-way improvements; and
- D. Exhibit D: Site Plan showing proposed building pad locations.

**4. Effective Date and Duration.** This Agreement shall commence upon the effective date of the City Council resolution approving this Agreement (the “Effective Date”), and shall continue in force for a period of five (5) years (the “Initial Term”) unless extended or terminated as provided herein. Following the expiration of the Initial Term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

**5. Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

**6. Agreement Binding on Future Landowners.** From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Project Site to a person or entity (“Landowner”) who, unless otherwise released by the City, shall be subject to the applicable provisions of this Agreement related to such portion of the Project Site. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein. Notwithstanding, should construction of Phase 1 and 2 not commence prior to a sale, assignment or conveyance, any subsequent Landowner shall not be obligated to this Agreement.

**7. Planning and Development.**

A. **Development Standards.** Except as otherwise specifically provided in this Agreement, the Project shall be completed in accordance with all development and design standards of the North Bend Municipal Code, and all applicable environmental, building, and construction codes and regulations contained therein in effect at the time of permit submittal.

B. **Public Works.** Developer agrees to install right-of-way improvements, including curb, gutter, sidewalk, and bike lanes as generally depicted in **Exhibit C**. The final design shall be approved by the Public Works Director. Construction of right-of-way improvements shall meet all City standards and be installed before issuance of a certificate of occupancy for the Building. Upon completion, said right-of-ways will be the responsibility of the City for maintenance, repairs and liability, except the Developer shall be responsible for the maintenance of the LID biochannel in the right-of-way.

**8. Vested Rights.**

A. During the term of this Agreement, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented to by Developer.

B. This Development Agreement only covers those specific development standards addressed herein. The City's Development Regulations, including building, fire, public works, land use, and signage regulations shall govern unless specifically addressed in this Agreement. No vesting is created by this Agreement for any other development regulation that is not included in this Agreement. Notwithstanding the foregoing, Developer will have the full benefit of the vested rights doctrine in Washington State and will only be bound by those laws, statutes, regulations, ordinances and codes in effect at the time of permit submittal by Developer.

**9. Permits Required.** Developer shall obtain all permits required under the City Code for this Project.

**10. Minor Modifications.** Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the City Code, and shall not require an amendment to this Agreement.

**11. Further Discretionary Actions.** Developer acknowledges that the City's land use regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Project Site.

**12. Existing Land Use Fees and Impact Fees.**

A. Developer acknowledges and agrees that land use, building, fire, public works and sign fees adopted by the City as of the Effective Date of this Agreement may be increased by the City from time to time, and are applicable to permits and approvals for the Project Site, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, in accordance with Title 17 of the North Bend Municipal Code, and City will exercise reasonable efforts to explore mitigation of such fees, consistent with other applications and Projects in the City.

**13. Notice of Default/Opportunity to Cure/Dispute Resolution.**

A. In the event a party, acting in good faith, believes the other party has violated the terms of this Agreement, the aggrieved party shall give the alleged offending party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending party shall have thirty (30) days from receipt of written notice in which to cure the alleged breach. This notice requirement is intended to facilitate a resolution by the parties of any dispute prior to the initiation of litigation. Upon notice of an alleged breach, the parties agree to meet and agree upon a process for attempting to resolve any dispute arising out of this Agreement. A lawsuit to enforce the terms of this Agreement shall not be filed until the latter of (1) the end of the 30-day cure period or (2) the conclusion of any dispute resolution process.

B. After proper notice and expiration of the 30-day cure period, if the alleged default has not been cured or is not being diligently cured in the manner set forth in the notice, the aggrieved party may, at its option, institute legal proceedings in accordance with this Agreement. Additionally, the City may decide to enforce the City Code violations and obtain penalties and costs as provided in applicable provisions of the North Bend Municipal Code.

**14. Amendment; Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of the parties as provided in Section 27 herein, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see* RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Project Site as the City Council may deem necessary to the extent required by a serious threat to public health and safety.

**15. Termination.**

A. This Agreement shall expire and be of no further force and effect if:

1. The development contemplated in this Agreement and in associated permits and/or approvals issued by the City are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City; or
2. Developer does not construct the Project as contemplated by the permits and approvals obtained in connection with the Project and this Agreement, or submits applications for development of the Project Site that are inconsistent with this Agreement.

B. This Agreement shall terminate either (1) upon the expiration of the Initial Term identified in Section 4 above, or (2) when the Subject Property has been fully developed *and* all of Developer's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement under this Subsection 15(B), the City shall record a notice of such termination in a form satisfactory to the City Attorney.

C. This Agreement shall terminate upon Developer's abandonment of the Project. Developer shall be deemed to have abandoned the Project if a building permit for construction of the Building approved in this Agreement is not submitted to the City within 5 years of the Effective Date noted above.

D. In the event of termination under his Section 15(A) or (C), Developer shall relinquish the bond and the sewer improvements shall be constructed by the City.

**16. Effect of Termination on Developer Obligations.** Termination of this Agreement shall not affect any of Developer's obligations to comply with (a) the City Comprehensive Plan or any applicable zoning code(s), subdivision maps or other land use entitlements approved with respect to the Project Site; (b) any conditions or restrictions specified in this Agreement to continue after the termination of this Agreement; or (c) obligations to pay assessments, liens, fees or taxes, unless the termination or abandonment of the Project nullifies such obligations.

**17. Effect of Termination on City.** Upon termination of this Agreement, the entitlements, conditions of development, limitations on fees and any other terms and conditions vested pursuant to Section 8 herein shall no longer be vested hereby with respect to the Project Site (provided that vesting of such entitlements, conditions or fees may be established for the property pursuant to then-existing planning and zoning laws).

**18. Covenants Running with the Land.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land, and the benefits and burdens shall bind and inure to the benefit of the parties. Developer and every Landowner, purchaser, assignee or transferee of an interest in the Project Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, unless the Landowner or subsequent Landowner assignee or transferee has abandoned the project and no party has started construction of the Project, and shall be the beneficiary thereof and a party thereto, but only with respect to the Project Site, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Project Site sold, assigned or transferred to it. A copy of the fully executed Agreement shall be recorded in accordance with Section 29 herein.

**19. Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

**20. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this

Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle. This section shall survive the termination of this Agreement.

**21. No Presumption Against Drafter.** Developer represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement, that it has carefully read the foregoing Agreement, and knows the contents thereof, and signs the same as its own free act, and that it fully understands and voluntarily accepts the terms and conditions of this Agreement. Both parties have had the opportunity to have this Agreement reviewed and revised by legal counsel, and the parties agree that no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

**22. Notices.** Notices, demands, or correspondence to the City and Developer shall be sufficiently given if dispatched by prepaid first-class mail to the following addresses:

TO CITY:                   City Administrator  
                                  City of North Bend  
                                  P.O. Box 896  
                                  North Bend, WA 98045

TO DEVELOPER:       Wende Miller  
                                  Bendigo Properties, L.L.C.  
                                  6814 Denny Peak Dr. SE  
                                  Snoqualmie, WA 98065

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

**23. Assignment.** This Agreement shall be binding and inure to the benefit of the parties. Developer shall not assign its rights under this Agreement without the written consent of the City, which consent shall not unreasonably be withheld.

**24. Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in King County Superior Court.

**25. No Attorneys' Fees.** In the event of any litigation or dispute resolution process between the parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of costs or attorneys' fees or expert witness fees.

26. **Severability.** The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

27. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Changes made in accordance with Section 14 herein shall be incorporated by written amendments or addenda signed by both parties and made.

29. **Recording.** Developer shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date and shall provide the City with a conformed copy of the recorded document within thirty (30) days of the Effective Date.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind their respective organizations, and that such organizations have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

**CITY OF NORTH BEND**

**BENDIGO PROPERTIES, L.L.C.**

By: \_\_\_\_\_  
Kenneth G. Hearing, Mayor

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

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

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

**Attest/Authenticated:**

\_\_\_\_\_  
Susie Oppedal, City Clerk

**Approved As To Form:**

\_\_\_\_\_  
Michael R. Kenyon, City Attorney

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DRAFT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, did personally appear before me, the undersigned Notary Public in and for the State of Washington, \_\_\_\_\_, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Print name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
Commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, did personally appear before me, the undersigned Notary Public in and for the State of Washington, \_\_\_\_\_, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Print name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
Commission expires: \_\_\_\_\_

**EXHIBIT A:**

**PROJECT SITE – LEGAL DESCRIPTIONS**

**Parcel No. 0423089036**

PORTION OF SW 1/4 OF NW 1/4 - BEGIN SW CORNER TH S 88-56-06 E ALONG S LINE 311.83 FT TO ELY MGN OF SNOQUALMIE NORTH BEND ROAD & POB TH S 88-56-06 E 710.94 FT TO WLY MGN OF MEADOWBROOK NORTH BEND ROAD TH N 30-24-10 W ALONG SAID WLY MGN 301.66 FT TAP OF TANGENT CURVE TO RIGHT RAD OF 557.09 FT TH ALONG SAID CURVE THRU C/A OF 21-29-07 TO THREAD OF GARDNER CREEK TH WLY ALONG GARDNER CREEK TO ELY MGN OF STATE HIGHWAY R/W TH S 44-09-00 E ALONG SAID ELY MGN TO POB LESS CO ROAD BEING A PORTION OF TRACT C-1 OF MAY 1965 SURVEY

**Parcel No. 5418700030**

MEADOWBROOK TRACTS LESS CO RD

**Parcel No. 5418700005**

MEADOWBROOK TRS

**Parcel No. 5418700025**

MEADOWBROOK TRACTS LESS CO RD

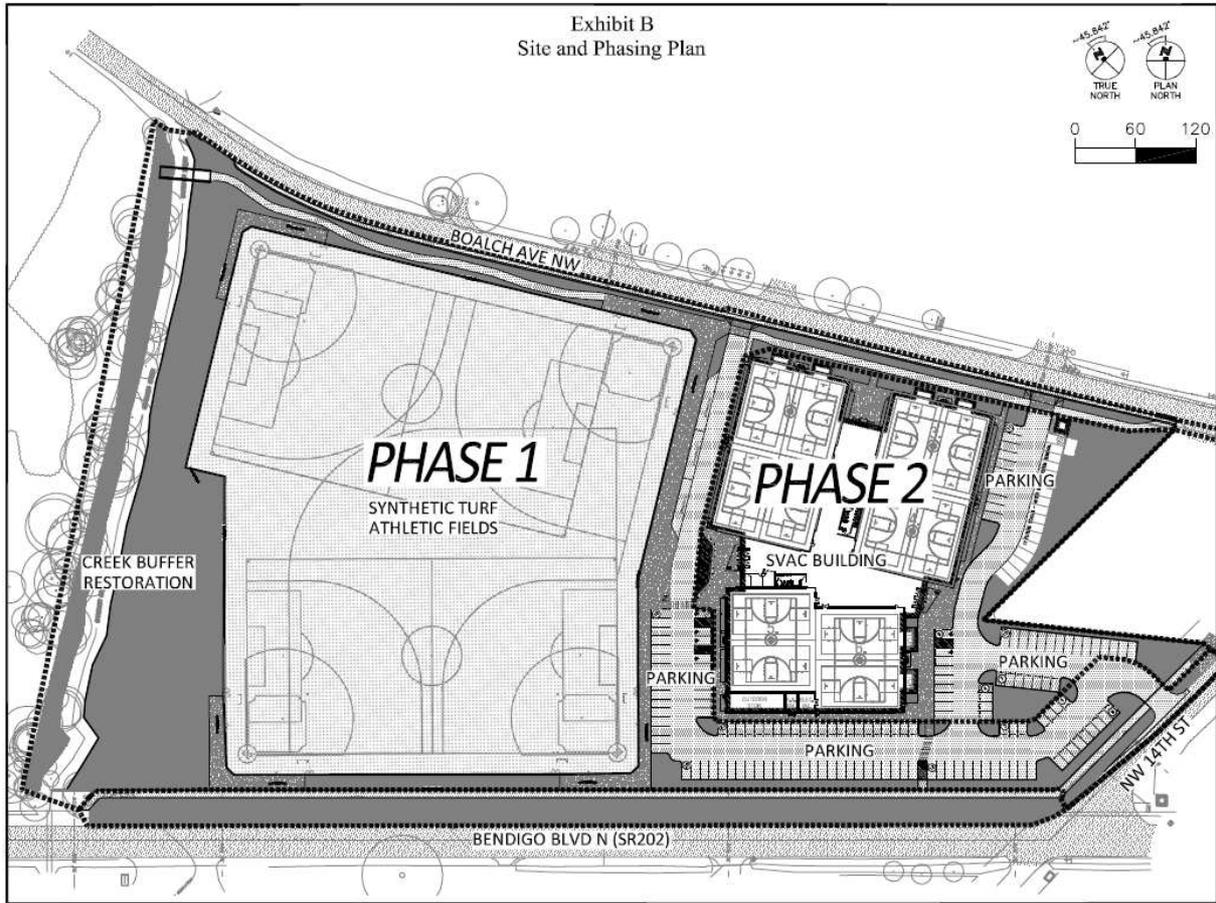
**Parcel No. 5418700010**

MEADOWBROOK TRACTS

**Parcel No. 5418700020**

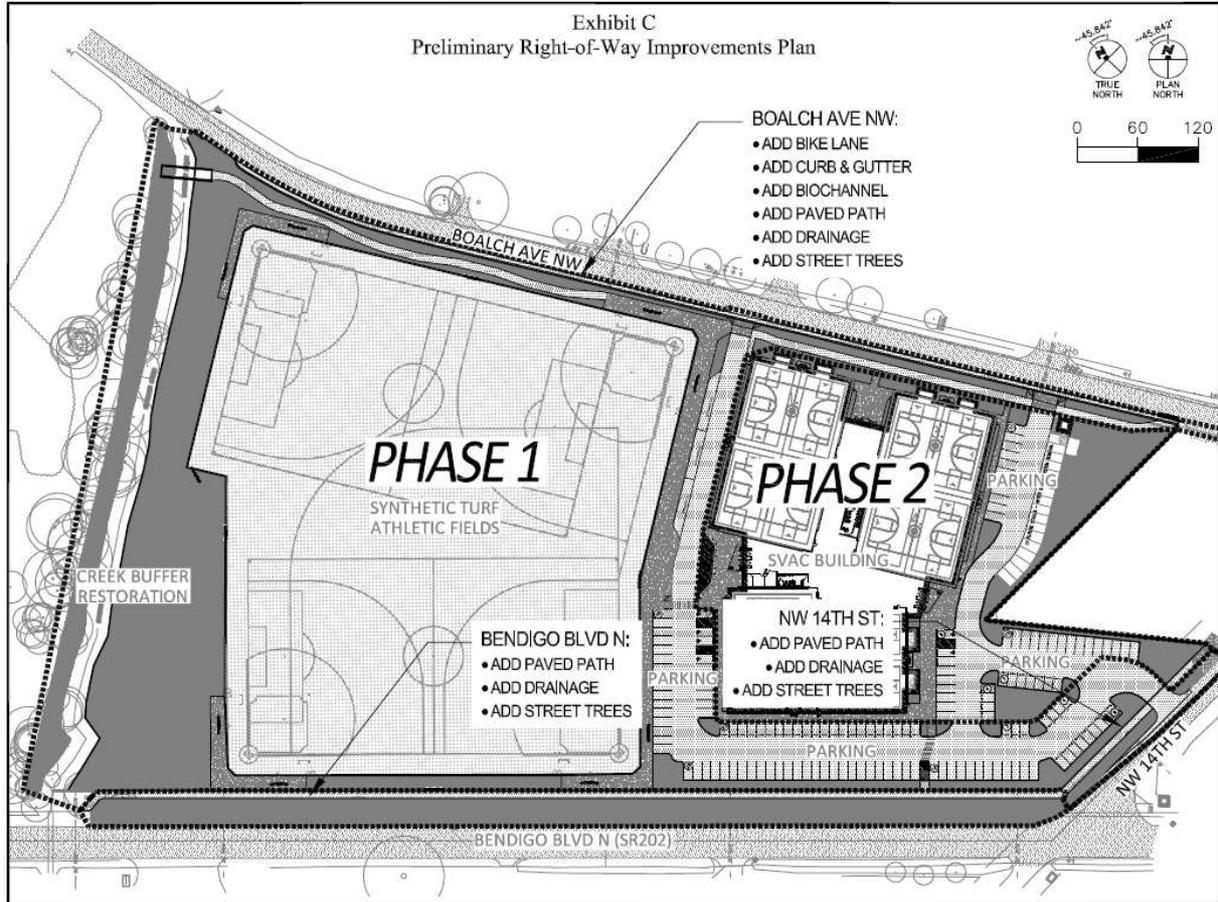
MEADOWBROOK TRACTS LESS CO RD

**EXHIBIT B:**  
**SITE PLAN DIFFERENTIATING PHASE 1 FROM PHASE 2**

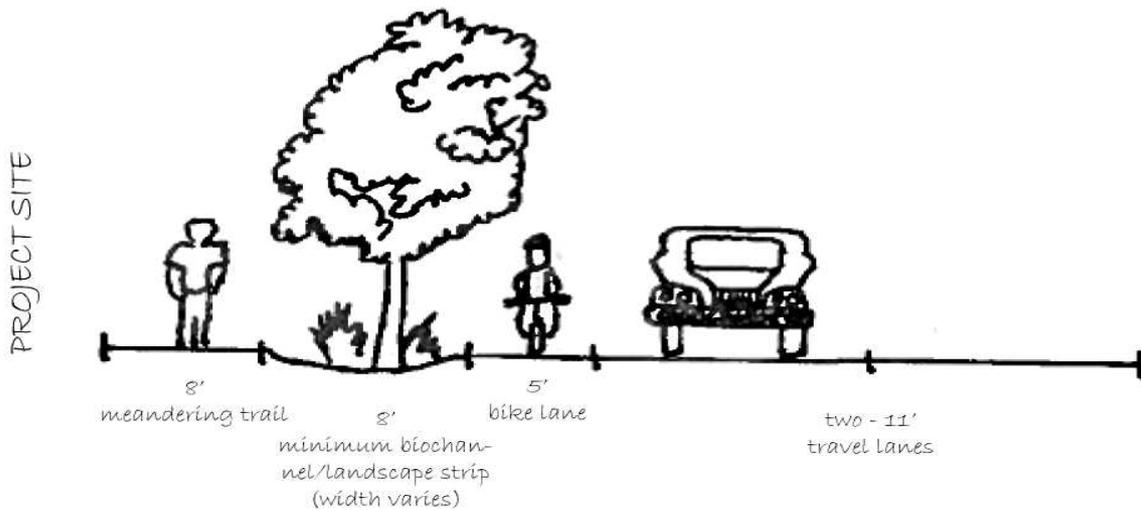


**EXHIBIT C:**

**CONCEPTUAL PLAN SHOWING PROPOSED RIGHT-OF-WAY IMPROVEMENTS**



**Street Design Sections for Boalch (1/2 street improvements)**





**Susie Oppedal**

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**From:** Ken Hearing  
**Sent:** Saturday, September 24, 2016 8:01 AM  
**To:** Londi Lindell; Susie Oppedal  
**Subject:** Fwd: North Bend Athletic Facility

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Terril Perrine <[tperrine@avionpartners.com](mailto:tperrine@avionpartners.com)>  
**Date:** 9/23/16 12:58 PM (GMT-08:00)  
**To:** CouncilMember Elwood <[BELWOOD@NORTHBENDWA.GOV](mailto:BELWOOD@NORTHBENDWA.GOV)>, CouncilMember Gothelf <[agothelf@NORTHBENDWA.GOV](mailto:agothelf@NORTHBENDWA.GOV)>, CouncilMember Rosen <[JROSEN@NORTHBENDWA.GOV](mailto:JROSEN@NORTHBENDWA.GOV)>, CouncilMember Pettersen <[JPETTERSEN@NORTHBENDWA.GOV](mailto:JPETTERSEN@NORTHBENDWA.GOV)>, CouncilMember Kostanich <[tkostanich@northbendwa.gov](mailto:tkostanich@northbendwa.gov)>, CouncilMember Volken <[mvolken@northbendwa.gov](mailto:mvolken@northbendwa.gov)>, CouncilMember Loudenback <[RLOUDENBACK@NORTHBENDWA.GOV](mailto:RLOUDENBACK@NORTHBENDWA.GOV)>, Elizabeth Gildersleeve <[EGILDERSLEEVE@NORTHBENDWA.GOV](mailto:EGILDERSLEEVE@NORTHBENDWA.GOV)>, Richard Ryon <[RRYON@NORTHBENDWA.GOV](mailto:RRYON@NORTHBENDWA.GOV)>, Scott Heller <[SHELLER@NORTHBENDWA.GOV](mailto:SHELLER@NORTHBENDWA.GOV)>, [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov), Mary Miller <[MMILLER@NORTHBENDWA.GOV](mailto:MMILLER@NORTHBENDWA.GOV)>, Jim Luckey <[JLUCKEY@NORTHBENDWA.GOV](mailto:JLUCKEY@NORTHBENDWA.GOV)>, Ken Hearing <[KHEARING@NORTHBENDWA.GOV](mailto:KHEARING@NORTHBENDWA.GOV)>  
**Cc:** Wes Dover <[wubby2@aol.com](mailto:wubby2@aol.com)>  
**Subject:** North Bend Athletic Facility

Mayor Ken, NB City Council and Planning Commission

I would like to bring to your attention the need for your support to approve the Miller Family plan for the North Bend Athletic Facility. As you are aware the Snoqualmie Valley is now classified as a 4A High School and the baseball program at the high school is considered one of the top in the state. Last year varsity was the Kingco 4A champions and we were ranked the number two school in the entire state. Our high school program has helped young players advance to college as student athletes and even to move on to play professional sports.

With the approval of the school upgrade, the entire baseball and softball fields have been torn down and are not expected to be operational for 3 or 4 years from now. Thus we are a powerhouse high school with no place to practice or play games.

The school and community have been working closely with the Miller's North Bend Athletic Facility and their plan to create a complex for the High School to use for next season. The challenge is they need to start this project now to meet the schedule for 2017. Additionally, as the past Chairman of the North Bend Economic Development Commission, I see this complex as a means to help with community business and revenue through tournaments and activities that draw people from outside our community. This is consistent with the city's plan for economic growth through tourism and activities. The revenue opportunities for the food and beverage industry can be significant as visitors will find places to eat, fuel, and shop during tournaments.

Again I encourage you to approve the North Bend Athletic Facility project expeditiously to allow this project to get started.

Respectfully

Terril Perrine  
425-269-9432

Mike McCarty

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**From:** Kaehler, Gretchen (DAHP) <Gretchen.Kaehler@DAHP.wa.gov>  
**Sent:** Thursday, October 06, 2016 3:59 PM  
**To:** Mike McCarty  
**Cc:** Steve; 'laura.murphy@muckleshoot.nsn.us' (laura.murphy@muckleshoot.nsn.us); Ryoung; DTS@qwestoffice.net; dlewarch@suquamish.nsn.us  
**Subject:** re: Notice of SEPA DNS and NOPH for Snoqualmie Valley Athletic Center  
**Attachments:** 2016-10-07210\_Notice of SEPA DNS and NOPH for Snoqualmie Valley Athletic Center.pdf

Please see attached for this project. Please feel free to contact me if you have any questions.

Best,

Gretchen

Gretchen Kaehler  
Assistant State Archaeologist, Local Governments  
Department of Archaeology and Historic Preservation (DAHP)  
P: 360-586-3088  
C: 360-628-2755



Allyson Brooks Ph.D., Director  
State Historic Preservation Officer

October 6, 2016

Mr. Mike McCarty  
Senior Planner  
City of North Bend  
126 E. Fourth St.  
PO Box 896  
North Bend, WA98045

In future correspondence please refer to:  
Project Tracking Code: 2016-10-07210  
Property: Notice of SEPA DNS and NOPH for Snoqualmie Valley Athletic Center  
**Re: Archaeology - Survey Requested**

Dear Mr. McCarty:

Thank you for contacting the Washington State Historic Preservation Officer (SHPO) and Department of Archaeology and Historic Preservation (DAHP) and providing documentation regarding the above referenced project. As a result of our review, our professional opinion is that the project area has a high probability for containing archaeological resources. There are six (6) previously recorded archaeological sites within approximately 3,000 feet of the project. Further the project area is depicted on the DAHP Statewide Archaeological Predictive Model as having the highest probability for contain precontact archaeological resources. Please be aware that archaeological sites are protected from knowing disturbance on both public and private lands in Washington States. Both RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from our Department before excavating, removing, or altering Native American human remains or archaeological resources in Washington. Failure to obtain a permit is punishable by civil fines and other penalties under RCW 27.53.095, and by criminal prosecution under RCW 27.53.090.

Chapter 27.53.095 RCW allows the Department of Archaeology and Historic Preservation to issue civil penalties for the violation of this statute in an amount up to five thousand dollars, in addition to site restoration costs and investigative costs. Also, these remedies do not prevent concerned tribes from undertaking civil action in state or federal court, or law enforcement agencies from undertaking criminal investigation or prosecution. Chapter 27.44.050 RCW allows the affected Indian Tribe to undertake civil action apart from any criminal prosecution if burials are disturbed. Further, the scale of the proposed ground disturbing actions would destroy any archaeological resources present.

Identification of archaeological resources during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. We request a professional archaeological survey of the project area be conducted prior to ground disturbing activities. The completed survey should be submitted to DAHP and interested Tribes prior to beginning the projet. We also recommend consultation with the concerned Tribes' cultural committees and staff regarding cultural resource issues.



Thank you for the opportunity to comment on this project and we look forward to receiving the survey report. Should you have any questions, please feel free to contact me.

Sincerely,



Gretchen Kaehler  
Assistant State Archaeologist, Local Governments  
(360) 586-3088  
[gretchen.kaehler@dahp.wa.gov](mailto:gretchen.kaehler@dahp.wa.gov)

cc. Steven Mullen Moses, Cultural Resources, Snoqualmie Tribe  
Laura Murphy, Archaeologist, Muckleshoot Tribe  
Dennis Lewarch, THPO, Suquamish Tribe  
Richard Young, Cultural Resources Director, Tulalip Tribe  
Ceceile Hansen, Chair, Duwamish Tribe

October 2  
p. 1 of 2

Mike McCarty

**From:** Elizabeth Gildersleeve  
**Sent:** Wednesday, October 05, 2016 7:46 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

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**From:** [WUBBY2@aol.com](mailto:WUBBY2@aol.com) [WUBBY2@aol.com]  
**Sent:** Wednesday, October 05, 2016 2:05 PM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey; CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Subject:** North Bend Athletic Facility

Planning Commission and City Council Members,

I'm writing to you today to encourage you to expedite the approvals for the planned state-of-the-art North Bend athletic facility.

My wife and I are in full support of the building permit application submitted by Wende and John Miller to create the North Bend Athletic Facility (phases 1 & 2) that will support all of our student and youth athletes in the Snoqualmie Valley.

We urge you to quickly approve the phase 1 building permit, so that work can begin immediately on the planned facilities, which include turf fields (baseball, softball, football, lacrosse, soccer, batting cages, & fun), lights and parking area.

Our youngest son is a student athlete in the Mount Si HS baseball and football programs and as long time residents of North Bend, we are grateful to the Miller's for taking the initiative to create such a facility that can support the athletic programs during the renovation of the Mount Si High School, as well as the Snoqualmie Valley communities at large, now and in the future.

As someone who has been a parent, coach, and board member for youth and high school athletics, I keenly understand the issues facing young people in our community. Lack of access (field availability and weather) is one of the first reasons for youth to find a way to participate in less productive or sometimes destructive activities.

Without enough all purpose fields in our immediate area to support our own community many kids will have to travel to neighboring communities. The proposed multi-purpose turf fields solve many of the problems our youth and high school athletes face, especially given our population growth and weather patterns in the valley.

Having an outside agency that is willing to pay for this expense as opposed to tax payer/city/school district monies is a win-win for not only Wildcat Baseball/Softball and youth sports, but also the city of North Bend, and the entire Snoqualmie Valley.

As a valley resident I understand the economic value this facility can bring to our community, especially as we see our Snoqualmie valley continue to grow in population.

Please do not miss this opportunity to make a positive impact on our youth and our community. We encourage you to expedite the approvals for the planned state-of-the-art North Bend athletic facility.

Sincerely,

Wes Dover  
President, MSHS Wildcat Baseball Boosters  
206-898-6820 cell

Danine Dover  
206-898-6818 cell

**Mike McCarty**

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**From:** Theresa Mosier <burianek@msn.com>  
**Sent:** Monday, October 03, 2016 9:56 AM  
**To:** Mike McCarty  
**Cc:** Gina Estep  
**Subject:** Snoqualmie Valley Athletic Center Notice of Application Comments

In response to the Application for the Snoqualmie Valley Athletic Center I would like to make the following comments:

I encourage the planning commission and city council to consider banning the use of crumb rubber in the construction of these sport fields. There is increasing evidence that the use of crumb rubber to infill synthetic sports fields is dangerous to the health of players and the environment. Crumb rubber is made of ground up tires, and has many known carcinogens.

Please see the following news articles and government publications about the subject:

<http://www.espn.com/espnw/news-commentary/article/14206717/how-safe-fields-where-play>

<https://www.epa.gov/chemical-research/federal-research-recycled-tire-crumb-used-playing-fields>

<http://www.doh.wa.gov/CommunityandEnvironment/Schools/EnvironmentalHealth/SyntheticTurf/StudiesCrumbRubber>

<http://www.doh.wa.gov/CommunityandEnvironment/Schools/EnvironmentalHealth/SyntheticTurf>

Other local jurisdictions are taking action on this, installing bans to give time for more research.

<http://myedmondsnews.com/2015/12/banned-in-edmonds-no-crumb-rubber-on-public-playfields-for-18-months/>

I also encourage the city to look at the traffic and parking impact, especially the increase of cars turning onto SR202 from NW 14th or Boalch. Assuming 2 simultaneous soccer games, of 18 players per team, times 4 teams = 72 players. Even if every player/family had one vehicle, that is 72 vehicles turning onto 202 where traffic is 50 MPH. It is dangerous now and the increased volume will just increase the danger.

Thank you for your time and consideration.

Theresa Mosier  
13715 463rd Ave SE  
North Bend, WA 98045

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, October 03, 2016 10:09 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

Forwarding another public comment that appears to have made it to 6 of the commissioners.

---

**From:** [4jbrady@frontier.com](mailto:4jbrady@frontier.com) [4jbrady@frontier.com]  
**Sent:** Sunday, October 02, 2016 8:32 PM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey  
**Subject:** North Bend Athletic Facility

To North Bend Planning Commission,  
I understand that you are considering a proposal to build an Athletic Facility in North Bend. My kids have been in the Snoqualmie Valley School District for the past 16 years and have participated in sports at the Middle Schools and at Mount Si High School, as well as club baseball and soccer teams over the years. We have had a great experience as far as the organizations and coaches are concerned but the athletic facilities have always been lacking. The need for turf fields in the area would be a much needed improvement for all the sports involved. The additional indoor facilities are also needed in this area. Every tournament and camp would definitely have benefited from having these proposed facilities available. The Mount Si High School baseball and softball teams are the only ones in the Kingco league that do not have a turf field to play on. As such when it is too wet to play on the home field the Varsity games are typically moved to the other school so that they can get the games in on schedule. This is a big disadvantage to the Mount Si Teams. They also are limited on practice time when the fields are too wet to play on. Please pass this project so that the kids of the valley can have a top notch facility to play on!

Thank you,  
Jim Brady  
425-836-4412

Comment 5

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:30 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility Building Permit Approval

**Importance:** High

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**From:** Brendon VanCampen [bvancampen@lutron.com]  
**Sent:** Sunday, September 25, 2016 7:01 PM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey; CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Subject:** North Bend Athletic Facility Building Permit Approval

Dear North Bend Planning Commission & City Council Members:

My wife and I are writing to you in full support of the building permit application submitted by Wende and John Miller to create the North Bend Athletic Facility (phases 1 & 2) that will support all of our student athletes in the Snoqualmie Valley. We urge you to quickly approve the phase 1 building permit, so that work can begin immediately on the planned facilities, which include turf fields (baseball, softball, football, lacrosse, soccer, batting cages, & fun), lights and parking area. We are also in full support of the follow on phase 2 indoor facility when that permit is submitted for approval.

Our son is a junior-year student athlete in the Mount Si HS baseball and football programs and as 14-year residents in Snoqualmie, we are grateful to the Miller's for taking the initiative to create such a facility that can support the athletic programs during the renovation of the Mount Si High School and athletic complex, as well as the Snoqualmie Valley communities at large, now and in the future.

Thank you for your consideration and swift approval of this building permit.

Regards,

Brendon Van Campen  
[bvancampen@lutron.com](mailto:bvancampen@lutron.com)  
cell: 206-390-6492

Stephanie Van Campen  
[sgvancampen@comcast.net](mailto:sgvancampen@comcast.net)  
cell: 425-785-4338

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:30 PM  
**To:** Mike McCarty  
**Subject:** FW: Snoqualmie Valley Athletic Center

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**From:** [Danysh.Terry@dorsey.com](mailto:Danysh.Terry@dorsey.com) [Danysh.Terry@dorsey.com]  
**Sent:** Monday, September 26, 2016 1:55 PM  
**To:** Elizabeth Gildersleeve  
**Subject:** Snoqualmie Valley Athletic Center

Dear Planning Commissioner:

I wholeheartedly support approval of the Snoqualmie Valley Athletic Center as planned. I am a long-time resident (13 years) in the Snoqualmie Valley. The Valley needs many things, but certainly one is athletic fields and facilities for our growing communities. The SVAC will help fill a large gap, and is in a perfect location to do so.

Thank you for the courtesy of your consideration,

**Terry Danysh**

.....  
**DORSEY & WHITNEY LLP**  
Columbia Center  
701 Fifth Avenue, Suite 6100  
Seattle, WA 98104-7043  
P: 206.903.8847 F: 206.903.8820  
.....

**CONFIDENTIAL COMMUNICATION**

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**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:31 PM  
**To:** Mike McCarty  
**Subject:** FW: New Athletic Facility  
**Attachments:** 5pack\_large (2).png

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**From:** Jarrett Mentink [jwmentink@comcast.net]  
**Sent:** Sunday, September 25, 2016 4:14 PM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Jim Luckey; Mary Miller  
**Cc:** CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Subject:** New Athletic Facility

Dear Planning Commission and City Council of North Bend,

I am confident you are being flooded with emails regarding the proposal for a new athletic sports complex — It is my hope that the vast majority of the correspondence is in support of the endeavor. Having moved to the area a few years ago, with my wife and two children (9 and 11), we adore the beauty, people, and schools in the area. The one glaring weakness when it comes to raising our kids is the lack of athletic facilities available. I am a professor in the Health & Human Performance Department at Seattle Pacific University and understand the need for children to exercise on a regular basis — obesity rates, childhood heart disease, and diabetes are on the rise — which lead to tragic outcomes and enormous costs (healthcare, lack of production in workforce, etc.) to the community down the road. Simply put, kids need places to play, and we don't have enough. I have no idea as to the financial challenges this proposal will bring to your table — but I am hoping you view it with a visionary mindset — so that the Snoqualmie/NorthBend children will have the facilities necessary to maintain a healthy lifestyle in our community. Thank you for your time, governance, and consideration of our youth — Sincerely,

Jarrett

Jarrett Mentink, PhD  
 Asst. Professor, Health & Human Performance  
[jmentink@spu.edu](mailto:jmentink@spu.edu)  
 206-854-2623  
[www.kidsintheclouds.com](http://www.kidsintheclouds.com)

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:31 PM  
**To:** Mike McCarty  
**Subject:** FW: Snoqualmie Valley Athletic Center

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**From:** Angela Mentink [AMentink@rootsportsnw.com]  
**Sent:** Sunday, September 25, 2016 1:13 PM  
**To:** CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Cc:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey  
**Subject:** Snoqualmie Valley Athletic Center

I understand that it can be a difficult job to allow for development and at the same time balance the needs of the community, but I believe the proposal put before you for the development of the Snoqualmie Valley Athletic Center does that. This area has become a mecca for families who want to raise their children in a safe and secure community—which is great but it requires and demands things in this community for those families. We were of that mindset and relocated three years ago to the Snoqualmie area. Since arriving we have consistently been made aware of how woefully underequipped the area is for the youth programs it has been asked to provide. Regardless of the weather, there is not enough playfields for games and practices—when you add the inclement weather—it falls agonizingly short. Time and time again, baseball practices were cancelled not because of rain, but because of the condition of the fields. You would be happy practice at 5pm but of course you can't because in the northwest winter it gets dark at 4:45 and there are not any lights. I can't begin to catalog all of the basketball practices that were cancelled because the school gyms were booked for another event. There is a massive need for this facility and I do hope you fill it posthaste. Again, I understand your duty is to serve this community, allowing the development of this facility certainly helps fulfill that duty.

Angie Mentink



Angie Mentink | Anchor/Reporter  
[AMentink@ROOTSPORTSnw.com](mailto:AMentink@ROOTSPORTSnw.com)  
o 425.562.3357 | f 425.641.9811  
3626 156th Avenue SE | Bellevue, WA 98006

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:31 PM  
**To:** Mike McCarty  
**Subject:** FW: support for sports fields in North Bend!

---

**From:** Brent and Joan Lutz [bjrjlutz@hotmail.com]  
**Sent:** Saturday, September 24, 2016 8:06 PM  
**To:** CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback; Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey  
**Subject:** support for sports fields in North Bend!

To whom it may concern;

We are long time Valley residents and are so excited for the proposed sports fields in North Bend. Our community is definitely in need of more turf fields for multiple sports and activities, and this complex would fill a void we have been experiencing for years. As parents of a senior baseball player at Mount Si High School we know that time is of the essence and would love to see this project expedited. Of course this complex would be beneficial to many sports throughout the Valley and we are thrilled for all of the kids who will get to use this awesome facility for years to come!

Thank you in advance for your consideration of my email.

Sincerely,

*Joan Lutz*

Joan Lutz  
[bjrjlutz@hotmail.com](mailto:bjrjlutz@hotmail.com)  
425.396.5189

**Mike McCarty**

---

**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:31 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

---

**From:** Casondra Brewster [mamacasz66@gmail.com]  
**Sent:** Saturday, September 24, 2016 10:54 AM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey; CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Subject:** North Bend Athletic Facility

*Dear Planning Commission and City Council Members of the city of North Bend:*

*I'm writing to you today to encourage you to expedite the approvals for the planned state-of-the-art North Bend athletic facility. Although the autumnal rains are upon us, baseball season is right around the corner and our Mount Si High School Wildcat Varsity Baseball and Softball teams' fields were demolished this past summer with the new high school construction. Therefore, this new facility will be their new home for the next four years.*

*Athletes are typically more successful students and have a higher percentage of college graduations. Without the space to play, these students face hardships (having to bus out of the valley to even practice, which means less time to concentrate on their skills both academic and athletic, as well as negative economic impact to the program and its players and coaches), which the new athletic facility will remedy. Any work that you may do to approve this construction in time for the March 1, 2017 baseball season start would be an investment in a scholar athlete's future.*

*As well, this facility will not just serve the baseball/softball teams, but will also serve the entire North Bend community, including athletes in soccer, basketball, volleyball, lacrosse, and more. Having an outside agency that is willing to pay for this expense as opposed to tax payer/city/school district monies is a win-win for not only Wildcat Baseball/Softball, but also the city of North Bend, and the entire Snoqualmie Valley. Also, given the increase in population in our valley, such a facility is greatly needed. The space in which it occupies is a perfect connector between North Bend and our sister city, Snoqualmie.*

*This citizen would love for the North Bend Athletic Facility to break ground in October, with the approval by all those concerned within the leadership of North Bend. I hope I can count on you to move forward positively with this planned development.*

*Sincerely,*

--

Casondra Brewster  
129 Thrasher Ave. NE  
North Bend, WA

## Mike McCarty

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:31 PM  
**To:** Mike McCarty  
**Subject:** FW: Snoqualmie Valley Athletic Complex

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From: Barbara Scott [thescotts12@comcast.net]  
Sent: Friday, September 23, 2016 6:01 PM  
To: Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey; CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
Subject: Snoqualmie Valley Athletic Complex

City of North Bend Planning Commission and City Council members,

I am a long time resident of North Bend and mother of a Mount Si High School Junior and 2014 graduate.

I am writing to ask that you vote YES on October 18 on the Snoqualmie Valley Athletic Complex Development Agreement. By moving this project along without delay our Mount Si High School baseball and softball teams will have use of these fields THIS spring. If these fields aren't available, the players will have to be bused by the SVSD daily to and from other area fields for practice and home games.

We have a great opportunity to keep our students and their families local instead of them having to drive all over kingdom come to attend practices and home games. Local practices and home games will also give our student athletes more evening time for school responsibilities. Local practices and home games will keep commerce (grocery, errand, meal shopping) that goes along with after-school activities local to our own community.

These are exciting times for our growing community. It's so good to see our school district, a private developer, and local athletic groups coming together to mastermind a plan to keep our kids and families IN the community. Please push this project along so we have these fields THIS spring. Vote YES Oct 18 for the Snoqualmie Valley Athletic Complex Development Agreement.

Thank you for your time,  
Barbara Scott, North Bend  
Sent from my iPhone

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:32 PM  
**To:** Mike McCarty  
**Subject:** FW: Snoqualmie Valley Athletic Center

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**From:** Jim Anderson [Jim.Anderson@usi.com]  
**Sent:** Friday, September 23, 2016 1:52 PM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey  
**Cc:** Jim Anderson  
**Subject:** Snoqualmie Valley Athletic Center

Dear Planning Commission,

A new sports facility to compliment the growth of the valley, great news! Three perspectives to share with you:

1. As a founding board member of the Snoqualmie Valley YMCA I keenly understand the issues facing young people in our community. Lack of access is the first reason for youth to find a way to participate in less productive or sometimes destructive activities. Without enough fields in our immediate area to support our own community many kids will have to travel to neighboring communities and unfortunately many can't for various reasons.
2. As a parent who has raised two active children it is obvious our facilities are stretched and their current "worn" status shows the high utilization.
3. As a valley resident I understand the economic value this facility can bring to our community. Most important is the close proximity to North Bend.

Don't miss this opportunity to make a positive impact on our youth and our community. There is no reason to delay action! Jim, if you or any of your peers want to discuss, I will find time.

Thank you for your consideration! Act now to help our youth!

Best regards,

**JIM ANDERSON**  
**206-949-2179 CELL**

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:32 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

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**From:** Terril Perrine [tperrine@avionpartners.com]  
**Sent:** Friday, September 23, 2016 12:56 PM  
**To:** CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback; Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey; Ken Hearing  
**Cc:** Wes Dover  
**Subject:** North Bend Athletic Facility

Mayor Ken, NB City Council and Planning Commission

I would like to bring to your attention the need for your support to approve the Miller Family plan for the North Bend Athletic Facility. As you are aware the Snoqualmie Valley is now classified as a 4A High School and the baseball program at the high school is considered one of the top in the state. Last year varsity was the Kingco 4A champions and we were ranked the number two school in the entire state. Our high school program has helped young players advance to college as student athletes and even to move on to play professional sports.

With the approval of the school upgrade, the entire baseball and softball fields have been torn down and are not expected to be operational for 3 or 4 years from now. Thus we are a powerhouse high school with no place to practice or play games.

The school and community have been working closely with the Miller's North Bend Athletic Facility and their plan to create a complex for the High School to use for next season. The challenge is they need to start this project now to meet the schedule for 2017. Additionally, as the past Chairman of the North Bend Economic Development Commission, I see this complex as a means to help with community business and revenue through tournaments and activities that draw people from outside our community. This is consistent with the city's plan for economic growth through tourism and activities. The revenue opportunities for the food and beverage industry can be significant as visitors will find places to eat, fuel, and shop during tournaments.

Again I encourage you to approve the North Bend Athletic Facility project expeditiously to allow this project to get started.

Respectfully

Terril Perrine  
425-269-9432

## Mike McCarty

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:32 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

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**From:** Jeff Rovegno [jeffrov@microsoft.com]  
**Sent:** Friday, September 23, 2016 10:14 AM  
**To:** CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback; Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey  
**Subject:** North Bend Athletic Facility

Hello

I just wanted to take a moment to express my support for the proposed North Bend Athletic Facility. This facility is much needed in our valley and will be a significant benefit to our youth. Additionally, Mt Si High School is in dire need for a quality "all-season" facility.

I appreciate your support of this proposal and expedient approval.

Thanks for all your hard work!

Jeff Rovegno

**Jeff Rovegno | Sr. Construction Services Manager, Puget Sound**  
[jeffrov@microsoft.com](mailto:jeffrov@microsoft.com) | mobile 425-829-9774 | <http://refweb>

### Real Estate & Facilities

Building Intelligent Solutions

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Monday, September 26, 2016 8:32 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

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**From:** Ralph Ashmore [rhashmore@earthlink.net]  
**Sent:** Friday, September 23, 2016 6:14 AM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey  
**Cc:** CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Subject:** North Bend Athletic Facility

City of North Bend Planning Commission,

I am writing to express my support for the proposed North Bend Athletic Facility. As a former Vice President of the Falls Little League I know firsthand how much the Snoqualmie Valley needs additional and update baseball facilities. My son is also a soccer player and his team will soon being moving their practice times to late in the evenings on school nights so they can be on a decent field. This facility is a much need asset for our community and would be used to its capacity year round.

It is my understand that time is of the essence for the developers who are trying to hit a March deadline to deliver the fields to the high school baseball and softball teams. Therefore, any delays from the City of North Bend would be detrimental. I strongly encourage your vote to approve the Development Agreement on October 18<sup>th</sup>.

Ralph Ashmore  
35229 SE Fish Hatchery Rd  
Fall City WA 98024  
[rhashmore@earthlink.net](mailto:rhashmore@earthlink.net)  
206-949-4866

**Mike McCarty**

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**From:** Elizabeth Gildersleeve  
**Sent:** Saturday, October 08, 2016 10:46 PM  
**To:** Mike McCarty  
**Subject:** FW: North Bend Athletic Facility

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**From:** Rullie Harris [rullieh@gmail.com]  
**Sent:** Friday, October 07, 2016 3:28 PM  
**To:** Elizabeth Gildersleeve; Richard Ryon; Scott Heller; [gfrancher@northbendwa.gov](mailto:gfrancher@northbendwa.gov); Mary Miller; Jim Luckey; CouncilMember Elwood; CouncilMember Gothelf; CouncilMember Rosen; CouncilMember Pettersen; CouncilMember Kostanich; CouncilMember Volken; CouncilMember Loudenback  
**Subject:** North Bend Athletic Facility

I am writing in strong, and unequivocal, support for the planned athletic complex in North Bend. Our community desperately needs additional athletic facilities, such as this new project. Over the last 10 years or so, my grandson has played for the Si View Community Rec Basketball, Wildcat Select Basketball, Sno Falls Little League and All Stars, and Wildcat Junior Football. I know, first hand, how difficult it is to schedule practices and games, because of limited fields and courts. Also, having worked for the Snoqualmie Valley YMCA for 5 years, I know how limited we are in offering space to local sports groups. Please, please do everything you can to make this facility a reality. Thank you for your time and consideration of my views.

*(received after NOA deadline*

**Mike McCarty**

**From:** Elizabeth Gildersleeve  
**Sent:** Saturday, October 08, 2016 10:46 PM  
**To:** Mike McCarty  
**Subject:** FW: Proposed Sports Complex

*but ahead of hearing on  
Dev. Agreement)*

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**From:** Hossfeld, Tammy (RGP - Seattle) [Tammy.Hossfeld@rgp.com]  
**Sent:** Friday, October 07, 2016 2:25 PM  
**To:** Elizabeth Gildersleeve  
**Subject:** Proposed Sports Complex

Hello;

I wanted to take the opportunity today to write to you in support of the proposed athletic complex that John and Wende Miller have undertaken. The Valley is in desperate need of facilities such as this. We are currently forced to use some subpar facilities and scheduling is a challenge due to limited fields. There is also currently no turf fields (with lights) that can be used for baseball and we are forced to travel for such necessities.

It is my hope that the Planning Commission will also see the value a first class facility such as this can provide to the community.

Thank you for your time.

Tammy

**TAMMY HOSSFELD | CS MGR**  
W: +1 206 346 2456 | M: +1 425 941 8000 | VoIP: 1472456

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