

**COMMUNITY DEVELOPMENT
COMMITTEE**

**November 7, 2023
5:00 p.m.**

AGENDA



www.ci.bonney-lake.wa.us

Council Committees are primarily concerned with legislative/policy matters. They formulate and convey recommendations to the full council for action (BLMC 2.04.090).

The public is invited to attend Community Development Committee Meetings in person, via conference call or over the internet. The information for attending is provided below.

Community Development Committee Meetings attendance options:

In-Person: Bonney Lake Justice & Municipal Center, 9002 Main St E, Ste 200, Bonney Lake

By phone: 408-419-1715 (Meeting ID: 428 164 895)

By internet: Chrome- <https://bluejeans.com/428164895?src=calendarLink>

A. CALL TO ORDER – Councilmember Dan Swatman, Chair

B. ROLL CALL: Councilmember Dan Swatman, Councilmember Tom Watson, and Councilmember Kelly McClimans.

p.3 **C. APPROVAL OF MINUTES: October 3, 2023**

D. DEPARTMENT REPORTS/PRESENTATIONS:

E. DISCUSSION/ACTION ITEMS:

p.5 1. **AB23-142 – Resolution 3183** – Hearing Examiner Services

p.19 2. **AB23-143 – Resolution 3184** – Contract Amendment with Olbrechts & Associates

p.27 3. **AB23-145 – Resolution 3186** – Contract to McCann Construction Enterprises, Inc., for the Lift Station 20 Upgrade Project

p.39 4. **AB23-147 – Resolution 3188** – Contract to AKANA for Construction Management Services to Support the Lift Station 20 Upgrade Project

p.53 5. **AB23-150 – Resolution 3191** – Public Safety Building Generator

F. OPEN COMMITTEE DISCUSSION:

G. PUBLIC COMMENTS:

Public comments can be made in-person, by phone or virtually during this portion of the meeting. Comments are limited to 5 minutes. Those planning to comment via phone or virtually will need to sign up prior to the meeting in order to comment. When signing up, please provide your name, your screen name, and phone number (for callers) either by email to lambersonb@cobl.us or by phone at 253-447-4356. Virtual and call in registrations need to be received by 4:00 p.m. the day of the meeting. During the meeting, your name will be called when it is your turn. Your microphone will be

activated, and you will be able to comment. Those physically appearing at the Community Development Committee meeting to speak during citizen comments do not need to sign up but will be asked to state their name and address for the meeting record.

H. ADJOURNMENT

**COMMUNITY DEVELOPMENT
COMMITTEE**

**October 3, 2023
5:00 P.M.**



www.ci.bonney-lake.wa.us

DRAFT MINUTES

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

Audio starts at:
05:00:00

A. CALL TO ORDER – Councilmember Dan Swatman, Chair, called the meeting to order at 5:00 p.m.

B. ROLL CALL: Councilmember Dan Swatman, Councilmember Tom Watson

Councilmembers in attendance virtually, Councilmember Kelly McClimans.

Staff members in attendance at the physical location were City Administrator Public Services Director Ryan Johnstone, Administrative Services Director Chuck McEwen, Planning and Building Supervisor Jason Sullivan, , Customer Service Manager Stephanie Tonellato, and Administrative Assistant III Brandy Lamberson.

Audio starts at:
05:00:00

C. APPROVAL OF MINUTES:

Minutes from the September 19, 2023 Community Development Committee Meeting were approved.

D. DEPARTMENT REPORTS/PRESENTATIONS: NONE

E. DISCUSSION/ACTION ITEMS:

Audio starts at:
05:00:00

1. **AB23-128 – Public Hearing** – A public Hearing by the City Council of the City of Bonney Lake, Pierce County, Washington, Adopting of the 2024-2029 Six Year Transportation Improvement Program – Planning and Building Supervisor Jason Sullivan.

Planning and Building Supervisor Sullivan presented A public Hearing by the City Council of the City of Bonney Lake, Pierce County, Washington, Adopting of the 2024-2029 Six Year Transportation Improvement Program (TIP). Showed the Transportation Improvement Program for the transportation and trail plans. Presented specifics for road improvements, locations, and timeline for each category.

Audio starts at:
05:24:00

F. OPEN COMMITTEE DISCUSSION:

1. Field Update – Councilmember Dan Swatman

Councilmember Swatman asked about the new field use and reservations.

G. PUBLIC COMMENTS: None. *For efficient use of city resources, comments will be a short summary and not verbatim. Video recordings will be uploaded to the city's YouTube channel and an audio recording to the state digital archives if needing a complete review of comments.*

Audio starts at:
05:31:00

H. ADJOURNMENT

Councilmember Swatman adjourned the meeting at 5:31pm.

Brandy Lamberson

Brandy Lamberson, Community Development
Committee Clerk

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

Department/Staff Contact: Public Services Department Jason Sullivan – Planning & Building Supervisor	Meeting/Workshop Date: November 14, 2023	Agenda Bill Number: AB23-142
Agenda Item Type: Resolution	Ordinance/Resolution Number: 3183	Sponsor:

Agenda Subject: Hearing Examiner Services

Full Title/Motion: A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A Contract With Law Offices of Alex Sidles, PLLC To Provide Hearing Examiner Services And Appointing Alex Sidles As The Bonney Lake Hearing Examiner.

Administrative Recommendation: Approve

Background Summary: On May 9, 2023, the City Council adopted Resolution 3150 appointing Andrew Reeves as the Bonney Lake Hearing Examiner and approving a four-year contract for Mr. Reeves who at that time was a managing partner at Trebucket Legal Consulting (TLC). On October 10, 2023, Mr. Reeves was released from his contract; therefore, a the City is in need of a new Hearing Examiner. City staff proposes to enter into a contract with Alex Sidles with the Law Offices of Alex Sidles, PLLC and appoint him as the new City of Bonney Lake Hearing Examiner. The new contract will be for one-year as required by BLMC 2.18.020. After the one-year period, the contract can be extended for four additional years.

The City needs a hearing examiner to consider and act on quasi-judicial land use actions, appeals of administrative decisions, and hearings related to uninhabitable structures under the provision of Chapter 35.80 RCW on behalf of the City as further discussed in the Scope of Work.

Attachments: Resolution 3183 and Contract

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
Budget Explanation:			

COMMITTEE, BOARD & COMMISSION REVIEW											
Council Committee Review:	CDC Date: November 7, 2023	Approvals: Chair/Councilmember Dan Swatman Councilmember Tom Watson Councilmember Kelly McClimans	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <th style="padding: 2px;">Yes</th> <th style="padding: 2px;">No</th> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>	Yes	No						
Yes	No										
	Forward to:	Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No								
Commission/Board Review:											
Hearing Examiner Review:											

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone, P.E.</i>	Mayor: <i>Michael McCullough</i>	Date Reviewed by City Attorney:

RESOLUTION NO. 3183

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH LAW OFFICES OF ALEX SIDLES, PLLC TO PROVIDE HEARING EXAMINER SERVICES AND APPOINTING ALEX SIDLES AS THE BONNEY LAKE HEARING EXAMINER.

WHEREAS, Chapter 2.18 of the Bonney Lake Municipal Code establishes the Office of the Hearing Examiner; and

WHEREAS, the City requires the services of a Hearing Examiner to hear quasi-judicial land use matters, unfit dwelling hearings, and appeals of administrative decisions; and

WHEREAS, in accordance with BLMC 2.18.020, the initial contract is for a one-year term; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Mayor is authorized to sign the attached agreement with Law Offices of Alex Sidles, PLLC to provide hearing examiner services.

Section 2. As required BLMC 2.18.020, the City Council confirms the appointment of Alex Sidles as the Bonney Lake Hearing Examiner.

PASSED by the City Council this ____ day of _____, 20__.

Michael McCullough, Mayor

AUTHENTICATED:

Sadie A. Schaneman, CMC, City Clerk

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF BONNEY LAKE AND LAW OFFICES OF ALEX SIDLES, PLLC**

THIS PROFESSIONAL SERVICES AGREEMENT is entered into by and between the City of Bonney Lake, Washington, a municipal corporation (“**City**”) and Law Offices of Alex Sidles, PLLC organized under the laws of the State of Washington, located and doing business at 2400 NW 80th St., No. 146 Seattle, WA 98117-4449 (hereinafter the “**Consultant**”).

RECITALS:

WHEREAS, Chapter 2.18 of the Bonney Lake Municipal Code establishes the Office of the Hearing Examiner; and

WHEREAS, the City requires the services of a Hearing Examiner to hear quasi-judicial land use matters, unfit dwelling hearings, and appeals of administrative decisions; and

WHEREAS, in accordance with BLMC 2.18.020, the initial contract is for a one-year term; and

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the Parties agree as follows:

AGREEMENT:

1. Scope of Services to be Performed by Consultant.

The Consultant shall perform those services described on Exhibit “A,” which is attached hereto and incorporated herein by this reference as if set forth in full. In performing such services, the Consultant shall at all times comply 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. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance. The Consultant shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.

2. Compensation and Method of Payment.

The City shall pay the Consultant for services rendered according to the rates set forth in Exhibit “B”. The City shall pay the Consultant for services rendered within ten (10) days after City Council voucher approval. However, if the City objects to all or any portion of an invoice, it shall notify Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will immediately make every effort to settle the disputed portion.

3. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing on the date the last Party executes this Agreement and ending November 14, 2024 unless sooner terminated under the provisions of this Agreement or extended by mutual

agreement of the Parties. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. Ownership and Use of Documents.

A. *Ownership.* Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not.

B. *Records preservation.* Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and may be subject to disclosure by the City under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The City may be required, upon request, to disclose the Agreement, and the documents and records submitted to the City by Consultant, unless an exemption under the Public Records Act applies. If the City receives a public records request and asks Consultant to search its files for responsive records, Consultant agrees to make a prompt and thorough search through its files for responsive records and to promptly turn over any responsive records to the City's public records officer at no cost to the City.

5. Independent Consultant. The Parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

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

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

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

A. *Minimum Scope of Insurance.* Consultant shall obtain insurance of the types described below:

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

B. *Minimum Amounts of Insurance.* Consultant shall maintain the following insurance limits:

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

- ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- iii. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. *Other Insurance Provision.* The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

D. *Acceptability of Insurers.* Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.

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

F. *Notice of Cancellation.* The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. *Failure to Maintain Insurance.* Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

H. *No Limitation.* Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

8. Record Keeping and Reporting.

A. The Consultant 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 Consultant 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.

B. The foregoing records shall be maintained for a period of seven (7) years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.

9. City's Right of Inspection and Audit.

A. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

B. 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 the City during the performance of this Agreement. All work products, data, studies, worksheets, models, reports, and other materials in support of the performance of the service, work products, or outcomes fulfilling the contractual obligations are the products of the City.

10. Consultant to Maintain Records to Support Independent Contractor Status. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the Parties which is subject to RCW Title 51, Industrial Insurance.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection reasonably necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Termination.

A. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven (7) days' prior written notice. In the event of

termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports, or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City.

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be canceled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen (14) days written notice, or in the event that outstanding invoices are not paid within sixty (60) days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

13. Force Majeure. Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, Casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization, breaches in cybersecurity, and other causes beyond the reasonable control of the Party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "**Force Majeure**"), shall excuse the performance of such Party for a period equal to any such prevention, delay or stoppage. To the extent this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by a Force Majeure. Provided however, that the current COVID-19 pandemic shall not be considered a Force Majeure unless constraints on a Party's performance that result from the pandemic become substantially more onerous after the effective date of this Agreement. In order to claim Force Majeure, the Party claiming must provide notice to the other Party within fourteen (14) days of the event which constitutes Force Majeure or such claim shall be waived for any period in which notice was due.

14. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, sexual orientation, age, national origin, marital status, presence of any sensory, mental or physical disability, or other circumstance prohibited by federal, State or local law or ordinance, except for a bona fide occupational

qualification.

15. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City. Any assignment made without the prior approval of the City is void.

16. Conflict of Interest. The Consultant represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit "A." In the event that the Consultant is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the City.

17. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Consultant shall not disclose any such information to any third parties without (1) the prior written consent of the City or (2) legal process requiring disclosure, provided advance notice is provided to the City. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

18. Non-Appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

19. Employment of State Retirees. The City is a "DRS-covered employer" which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Consultant's employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Consultant is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Consultant shall determine whether any of its employees providing services to the City or any of the Consultant's owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Consultant. Consultant shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys' fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Consultant's failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement between the Parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the Parties. If there is a conflict between the terms and

conditions of this Agreement and the attached exhibit, then the terms and conditions of this Agreement shall prevail over the exhibit. Either Party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

21. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or communication shall be deemed given three (3) business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

Notices to the City of Bonney Lake shall be sent to the following address:

City Clerk
City of Bonney Lake
9002 Main Street E.
Bonney Lake WA 98391

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

Law Offices of Alex Sidles, PLLC
2400 NW 80th St., No. 146
Seattle, WA 98117-4449
alex@sidleslaw.com

22. 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 exclusively in Pierce County, Washington. The prevailing party in any such action shall be entitled to its reasonable attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

23. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

25. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the dates listed below.

CITY OF BONNEY LAKE

CONSULTANT

By: _____
Michael McCullough
Mayor
Date:

By: _____
Alex Sidles
Managing Attorney
Date:

ATTEST

Sadie A. Schaneman, CMC
City Clerk

APPROVED AS TO FORM

Jennifer S. Robertson
City Attorney

EXHIBIT A

1. General

Appointed Hearing Examiner

The Consultant is the appointed Hearing Examiner for the City of Bonney Lake. As such, the Consultant's work and duties shall be guided by Chapter 2.18 of the Bonney Lake Municipal Code.

Rules

The Consultant will utilize the adopted rules for hearing examiner hearings, which provides for the cross-examination of witnesses, and procedural matters related to the duties of the Consultant consistent with Chapter 2.18 BLMC and Chapter 14.60 BLMC. The Consultant may, but is not required to, make suggested revisions to the adopted hearing examiner rules which the City will consider with the input of the Hearing Examiner.

Hearings

Hearings may be held in-person or virtually as mutually agreed to by the City and the Consultant. The Consultant shall provide adequate technology and equipment required for successful audio and video connection capabilities.

Electronic Documents

The Consultant shall have adequate technology and equipment to receive large volumes of records in digital format. No paper copies of permit files, hearing records, staff reports, or submitted exhibits will be provided to the Consultant by the City.

Annual Report

The Consultant shall prepare an Annual Report, in writing, detailing the matters heard by the Consultant and recommendations on improvements to the hearing examiner process and/or municipal code. Such report shall include a summary of the examiner's decisions and costs since the last report. The report shall be provided by January 31st of each year.

2. Quasi-Judicial Land Use Action Decisions

The Consultant shall conduct open public hearings and render a decision in writing, supported by findings of fact on all quasi-judicial permit applications identified as Type 3A and 3B permits in BLMC 14.30.010 which includes but is not limited to shoreline conditional use permits,

shoreline variances, preliminary plats, zoning variances, conditional use permits, and critical area reasonable use exceptions.

3. Zoning Reclassification Recommendation

The Consultant shall conduct open record hearings for proposed zoning reclassification and issue a recommendation to the City Council in writing, supported by findings of fact, as to the proposal's compliance with Chapter 14.90 BLMC.

4. Administrative Decision Appeals

The Consultant shall conduct open record appeal hearings of administrative decisions and render a decision in writing, supported by findings of fact.

5. Unfit Building Hearings and Decisions

The Consultant shall serve as the public officer as defined in RCW 35.80.020 and have the powers granted to the office in RCW 35.80.030, except that the City shall provide all administrative functions such as preliminary investigations and the serving of notices. In this role the Consultant shall conduct required hearings, issue written decisions, supported by findings of fact, as to the habitability of structures/premises within the City, and determine if the structure/premise should be repaired, altered, demolished, or vacated consistent with the provisions of RCW 35.80.030 and BLMC 14.130.160.

6. Hearing Examiner Pro Tem.

In the event of a conflict or disqualification, scheduling difficulties, or in any situation in which the use of a Hearing Examiner Pro Tem is required, the Hearing Examiner must inform the Public Services Director of such need. The Hearing Examiner shall inform the Public Services Director at least one month in advance of any hearing in which the Hearing Examiner Pro Tem is required. The Public Services Director may decide not to approve the use of an Examiner Pro Tem suggested in this manner, and request that the hearing be rescheduled to a time that would allow the Hearing Examiner's attendance. Alternatively, the Public Services Director may decide to authorize the use of another Hearing Examiner by separate contract.

EXHIBIT B
Rates of Service

- Permit application hearings shall be billed at the following flat rates:

\$ 1,400	\$2,800	\$3,500
Single-Family Residential and Duplex Variances	Nonresidential Variances and Conditional Use Permits	Consolidated hearings on permit applications not including any appeals
Single-Family Residential and Duplex Conditional Use Permits	Multifamily Variances and Conditional Use Permits	Preliminary Plats
Zoning Reclassifications	Reasonable Use Exemption	Shoreline Variances and Shoreline Conditional Use Permits

- Appeals of Administrative Decisions shall be billed at a rate of \$195 per hour.
- Unfit Dwelling Hearings shall be billed at a rate of \$195 per hour.
- Permit Applications and other hearing not specifically provided for shall be billed at a rate of \$195 per hour.

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

Department/Staff Contact: Public Services Department Jason Sullivan – Planning & Building Supervisor	Meeting/Workshop Date: November 14, 2023	Agenda Bill Number: AB23-143
Agenda Item Type: Resolution	Ordinance/Resolution Number: 3184	Sponsor:

Agenda Subject: Contract Amendment with Olbrechts & Associates

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign An Amendment To The Contract With Olbrechts & Associates, Pllc Related To Hearing Examiner Services For Code Enforcement.

Administrative Recommendation: Approve

Background Summary: On July 25, 2023, the City Council passed Resolution 3174 authorizing contract with Olbrechts & Associates for hearing examiner services and appointing Phil Olbrechts as the Bonney Lake Appellant Hearing Examiner. The Appellant Hearing Examiner conducts appeal hearings related to decisions of the Bonney Lake Hearing Examiner declaring a structure uninhabitable under the provision of Chapter 35.80 RCW. To streamline the City’s Code Enforcement program, the City Staff is proposing that all code enforcement appeals related to Notice of Violations, Notice of Civil Penalties, and Stop Work Orders are handled by the Appellant Hearing Examiner instead of the Bonney Lake Hearing Examiner. As there are significant legal issues with such appeal hearings, the recommendation of the City Attorney is that such appeals should be heard by a Hearing Examiner employed by a separate legal firm.

Attachments: Resolution 3184 and Contract Amendment

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
\$	\$	\$0	\$0

Budget Explanation: Currently there are no required expenditures as the Appellant Hearing Examiner is only used on an as needed basis.

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	CDC	Approvals:	Yes No
	Date: November 7, 2023	Chair/Councilmember: Dan Swatman	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember: Tom Watson	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember: Kelly McClimans	<input type="checkbox"/> <input type="checkbox"/>
	Forward to:	Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone, P.E.</i>	Mayor: <i>Michael McCullough</i>	Date Reviewed by City Attorney:

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RESOLUTION NO. 3184

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN AMENDMENT TO THE CONTRACT WITH OLBRECHTS & ASSOCIATES, PLLC RELATED TO HEARING EXAMINER SERVICES FOR CODE ENFORCEMENT.

WHEREAS, the City of Bonney Lake passed Resolution 3174 authorizing the Mayor to sign a contract with Olbrechts & Associates to provide Hearing Examiner Services for the City of Bonney Lake

WHEREAS, Resolution 3174 also appointed Phil Olbrechts as the Appellant Hearing Examiner and Hearing Examiner Pro-Tem on July 25, 2023; and

WHEREAS, the contract amendment would be for Olbrechts & Associates to hear code enforcement appeals;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Mayor is authorized to sign the attached contract amendment with Olbrechts & Associates, PLLC to provide additional hearing examiner services related to code enforcement appeals.

PASSED by the City Council this 14th day of November 2023.

Michael McCullough, Mayor

AUTHENTICATED:

Sadie A. Schaneman, CMC, City Clerk

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**FIRST AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT BETWEEN
CITY OF BONNEY LAKE AND OLBRECHTS & ASSOCIATES, PLLC**

THIS FIRST AMENDMENT to the Professional Service Agreement (“**First Amendment**” or “**Amendment**”), dated as of the later of the signature dates below (the “**Effective Date**”), is by and between **CITY OF BONNEY LAKE**, a Washington municipal corporation, having its principal place of business at 9002 Main St. E., Bonney Lake, Washington 98391 (hereinafter “**City**”), and **Olbrechts & Associates**, a Washington limited liability company, having its principal place of business at 720 N. 10th St. A #297, Renton, WA 98057] (“**Consultant**”) (individually a “**Party**” and collectively the “**Parties**”).

RECITALS:

WHEREAS, the Parties entered into a Professional Service Agreement on July 25, 2023 (hereinafter “**Agreement**”) for purposes of allowing Olbrechts & Associates to Hearing Examiner Services for the City; and

WHEREAS, since that time the Parties have determined that an amendment is needed; and

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

AGREEMENT:

1. **New Scope of Work Exhibit A Section 3.** The following new section is hereby added to Exhibit A of the Agreement to read as follows:

3. Code Enforcement

The Consultant shall hear and render decisions on code enforcement related items discussed further in this section:

Notice of Violation Appeals

The Consultant shall conduct open record appeal hearings of notice of violations issued by the City and issue a written decision, supported by findings of fact, as to whether the violation occurred and/or is still occurring and determination to support or modify the corrective action ordered by the City consistent with the provisions of BLMC 14.130.120.

Civil Penalty Appeals

The Consultant shall conduct open record appeal hearings related to the imposition of civil penalties issued by the City and issue a written decision, supported by findings of fact, affirming, vacating, or modifying the assessment and/or amount of the civil penalties consistent with the provisions of BLMC 14.130.120.

Stop Work Order Appeals

The Consultant shall conduct expedited open record appeal hearings of stop work orders issued by the City and issue a written decision, supported by findings of fact, as to whether the violation occurred and/or is still occurring and determination to support or modify the corrective action ordered by the City consistent with the provisions of BLMC 14.130.120.

- 2. **Reaffirmation; Intention to be Bound.** Except as expressly amended by this Amendment, each and every term, condition and agreement contained in the Agreement shall remain in full force and effect. The Parties reaffirm that the representations and warranties made by each Party in the Agreement are true and accurate as of the Effective Date. The Parties executing this First Amendment on behalf of themselves, their assigns, and successors, hereby acknowledge and reaffirm their intention to be bound by the terms and conditions of the Agreement. Nothing in this Amendment shall be deemed to supersede or otherwise modify any other term or provision of the Agreement except as expressly stated herein.
- 3. **Recitals; Capitalized Terms.** The recitals set forth above are a part of this Amendment. Unless otherwise defined herein, capitalized terms used in this Amendment have the meanings assigned to them in the Agreement or as set forth in the Amendment.

IN WITNESS WHEREOF, the Parties have caused their properly authorized representatives to execute this First Amendment on the dates set forth below.

CITY:

CONSULTANT:

BONNEY LAKE,
a Washington municipal corporation

Olbrechts & Associates, PLLC
a Washington limited liability company

By: _____

By: _____

Name: Michael McCullough

Name: Phil Olbrechts

Title: Mayor

Title: Managing Attorney

Date: _____

Date: _____

ATTEST:

Sadie Schaneman, City Clerk CMC

APPROVED AS TO FORM:

Jennifer S. Robertson, City Attorney

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

Department/Staff Contact: Public Services / Ken Gill	Meeting/Workshop Date: 14 November 2023	Agenda Bill Number: AB23-145
Agenda Item Type: Resolution	Ordinance/Resolution/Motion Number: 3186	Sponsor:

Agenda Subject: Lift Station 20 Upgrade Project

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Award Of The Lift Station 20 Upgrade Project To McCann Construction Enterprises, Inc.

Administrative Recommendation: Award contract to McCann Construction Enterprises, Inc.

Background Summary: Sewer Lift Station 20 serves the single family residences in Springhaven, Stone Creek and Mountain Creek plats. Sewer Lift station 20 was constructed in 2003 and the wetwell coating is at the end of its design life. This project will temporarily bypass the lift station and replace the wet well and valve vault coatings. Concrete repair will be performed on the interior of the the wet well. Groundwater infiltration into the wet well and valve vaults will be plugged with a exterior grout curtain and crack sealing. Staff budgeted funding in 2023 to replace wet well coatings and contracted with Parametrix to prepare plans and specifications for bidding. Four bids were opened on October 25, 2023 that ranged from \$541,669 (Ceccanti) to \$419,658 (McCann Construction Enterprises, Inc). Staff recommend McCann Construction Enterprises, Inc as the responsible low bidder after checking refererces and debarment verification with the Department of Revenue as deccribed in our procurement policy.

Attachments: Resolution 3186, Contract, Bid Tabulation, CIP Funds, Cover Sheet Bid Plans

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
\$340,000	323,890	\$461,625	(137,735)	<input type="checkbox"/> General <input checked="" type="checkbox"/> Utilities <input type="checkbox"/> Other
Budget Explanation: To fully fund the project, staff propose to use the funding (\$250,000) budgeted in 2023 for the Sewer Comprehensive Plan Update. BARS # 402.117.035.594.35.63.05				

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	Community Development Date: 7 November 2023	<i>Approvals:</i> Chair/Councilmember Dan Swatman Councilmember Tom Watson Councilmember J.Kelly McClimans	Yes <input type="checkbox"/> No <input type="checkbox"/>
Forward to:		Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone</i>	Mayor: <i>Michael McCullough</i>	Date Reviewed by City Attorney: (if applicable)

RESOLUTION NO. 3186

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE AWARD OF THE LIFT STATION 20 UPGRADE PROJECT TO MCCANN CONSTRUCTION ENTERPRISES, INC.

WHEREAS, in 2023 the City Council budgeted \$340,000 to perform maintenance at Sewer Lift Station 20 as described in the General Sewer Plan prepared by RH2 Engineering; and

WHEREAS, staff contracted with Parametrix to prepare plans and specifications for bid through Resolution 3027 in 2022 the amount of \$39,560 and \$323,890 is available for construction in the 2023/2024 budget; and

WHEREAS, the City has complied with all applicable bidding laws for this contract; and

WHEREAS, the City opened four bids on October 25, 2023 and the low bidder was determined to be McCann Construction Enterprises, Inc. in the corrected amount of \$419,659 which includes sales tax; and

WHEREAS, the City has budgeted \$250,000 in 2023 for updating the Sewer Comprehensive Plan and this project can be pushed forward 2 to 3 years as the Department of Ecology does not have a firm update cycle and these sewer utility funds can be used to perform maintenance needed at Sewer Lift Station 20; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorization of Contract. The Mayor is authorized to sign the attached contract with McCann Enterprises, Inc. for the Sewer Lift Station Upgrade project in the amount of \$419,659.

Section 2. Contingency Authorized. Ten percent (10%) of the contract award is authorized for Construction Contingency (\$41,966). The sum amount of the contract award amount and construction contingency is the total project construction budget (\$461,625).

Section 3. Implementation Authorized. The Mayor is hereby authorized to take the actions necessary to implement this contract.

Passed by the City Council this ____ day of _____, 20__.

Michael McCullough, Mayor

AUTHENTICATED:

Sadie A. Schaneman, CMC, City Clerk

CONTRACT

THIS CONTRACT, is made and entered into this 30 day of October, 2023 by and between the CITY OF BONNEY LAKE, a Washington municipal corporation, hereinafter referred to as the "Owner" and McCann Construction Enterprises, Inc., hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Owner desires to have certain work, services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, the Contractor represents that the Contractor is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, to perform the work, services and/or tasks set forth in this Agreement; and

WHEREAS the Owner has heretofore caused to be prepared certain plans and specifications described as the Lift Station 20 Upgrade Project and the Contractor did on the 25 day of October, 2023, file with the Owner a proposal to construct said work and agreed to accept as payment therefore the sum fully stated and set forth in the proposal; and

WHEREAS, the said Contract Documents fully and accurately described the terms and conditions upon which the Contractor proposes to furnish said equipment, labor, materials, and appurtenances and perform said work, together with the manner and time of furnishing same;

IT IS THEREFORE AGREED, first, the Contractor shall perform such work and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Contractor responsibilities throughout this Agreement and as detailed in the plans and specifications described as Lift Station 20 Upgrade Project. It is agreed that a copy of said General Conditions and other Contract Documents filed with the Owner, as aforesaid, do, in all particulars, become a part of this Agreement by and between the parties hereto in all matters and things therein set forth and described;

AND FURTHER, that the Owner and the Contractor hereby accept and agree to the terms and conditions of said Contract Documents as filed as completely as if said terms and conditions and plans were herein set out in full.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY OF BONNEY LAKE

CONTRACTOR

Matthew

Wagester

Digitally signed by
Matthew Wagester
Date: 2023.11.01 10:10:46
-07'00'

By:

Michael McCullough, Mayor

Title: Vice President

Date:

Date:

11-01-2023

Lift Station 20 Upgrade Project

BID TABULATION

Date: October 25, 2023

SCHEDULE OF PRICES				2		3		4		Apparent Low Bidder			
Bid No.	Units	Description	Qty	Engineers Estimate Unit Price	Engineers Estimate Total	Midway Underground Unit Price	Midway Underground Total	Northwest Cascade Unit Price	Northwest Cascade Total	CECCANTI Unit Price	CECCANTI Total	McCann Construction Unit Price	McCann Construction Total
1		Minor Change	1	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
2	LS	Mobilization	1	\$ 35,000.00	\$ 35,000.00	\$ 42,000.00	\$ 42,000.00	\$ 45,000.00	\$ 45,000.00	\$ 40,000.00	\$ 40,000.00	\$ 38,000.00	\$ 38,000.00
3	LS	Demolition and Salvage	1	\$ 12,500.00	\$ 12,500.00	\$ 33,950.00	\$ 33,950.00	\$ 15,500.00	\$ 15,500.00	\$ 20,000.00	\$ 20,000.00	\$ 25,000.00	\$ 25,000.00
4	LS	Bypass Pumping	1	\$ 73,300.00	\$ 73,300.00	\$ 87,850.00	\$ 87,850.00	\$ 126,000.00	\$ 126,000.00	\$ 60,000.00	\$ 60,000.00	\$ 35,000.00	\$ 35,000.00
5	SF	Clean Wet Well and Valve Vault Surfaces	930	\$ 15.00	\$ 13,950.00	\$ 5.40	\$ 5,022.00	\$ 6.20	\$ 5,766.00	\$ 2.50	\$ 2,325.00	\$ 6.00	\$ 5,580.00
6	SF	Remove and Dispose of Existing Wet Well And Valve Vault Coating	930	\$ 25.00	\$ 23,250.00	\$ 40.00	\$ 37,200.00	\$ 45.00	\$ 41,850.00	\$ 25.00	\$ 23,250.00	\$ 48.00	\$ 44,640.00
7	LF	Pressure Injection Grouting of Leakage Areas-Crack Seal	30	\$ 120.00	\$ 3,600.00	\$ 50.00	\$ 1,500.00	\$ 57.00	\$ 1,710.00	\$ 30.00	\$ 900.00	\$ 60.00	\$ 1,800.00
8	SF	Pressure Injection Grouting of Leakage Areas-Curtain Wall	300	\$ 20.00	\$ 6,000.00	\$ 5.00	\$ 1,500.00	\$ 5.75	\$ 1,725.00	\$ 8.00	\$ 2,400.00	\$ 6.00	\$ 1,800.00
9	SF	Concrete Repair-1/2 Inch Deep or Less	660	\$ 11.00	\$ 7,260.00	\$ 19.50	\$ 12,870.00	\$ 22.00	\$ 14,520.00	\$ 20.00	\$ 13,200.00	\$ 23.00	\$ 15,180.00
10	SF	Concrete Repair-Greater than 1/2 Inch Deep	40	\$ 90.00	\$ 3,600.00	\$ 100.00	\$ 4,000.00	\$ 145.00	\$ 5,800.00	\$ 35.00	\$ 1,400.00	\$ 119.00	\$ 4,760.00
11	SF	Metal Surface Preparation in Wet Well and Valve Vault	5	\$ 250.00	\$ 1,250.00	\$ 1,600.00	\$ 8,000.00	\$ 1,815.00	\$ 9,075.00	\$ 1,800.00	\$ 9,000.00	\$ 1,900.00	\$ 9,500.00
12	SF	Apply Concrete Coating in Wet Well and Valve Vault	930	\$ 60.00	\$ 55,800.00	\$ 36.00	\$ 33,480.00	\$ 41.00	\$ 38,130.00	\$ 40.00	\$ 37,200.00	\$ 43.00	\$ 39,990.00
13	SF	Apply Metal Concrete Coating in Wet Well and Valve Vault	5	\$ 150.00	\$ 750.00	\$ 1,250.00	\$ 6,250.00	\$ 1,420.00	\$ 7,100.00	\$ 1,400.00	\$ 7,000.00	\$ 1,400.00	\$ 7,000.00
14	LS	All Other Work Not Specified in Other Other Bid Items	1	\$ 100,000.00	\$ 100,000.00	\$ 118,840.00	\$ 118,840.00	\$ 115,000.00	\$ 115,000.00	\$ 250,000.00	\$ 250,000.00	\$ 126,500.00	\$ 126,500.00
15	LS	Startup, Testing, and As Builts	1	\$ 6,500.00	\$ 6,500.00	\$ 9,270.00	\$ 9,270.00	\$ 4,000.00	\$ 4,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,500.00	\$ 3,500.00
Construction Cost:				\$ 367,760.00	\$ 426,732.00	\$ 456,176.00	\$ 494,675.00	\$ 383,250.00					
WSST @ 9.5%.....				\$34,937.20	\$40,539.54	\$43,336.72	\$46,994.13	\$36,408.75					
Total Cost - Including WSST.....				\$ 402,697.20	\$ 467,271.54	\$ 499,512.72	\$ 541,669.13	\$ 419,658.75					

STREET CIP

Program	2023	2024
Sidewalk	250,000	250,000
Safe Routes to School 190 th Ave E Phase 1 Sidewalk	600,000	2,000,000*
Street reconstruction	100,000	400,000
Chip seal	275,000	280,000
Roadway overlay maintenance	451,000	136,000
Church Lake Guardrail (decision card)	14,000	
Mobility Plan Update	160,000	
S. Prairie C Curb	200,000	
Angeline Dr & Veteran's Memorial Intersection	250,000	250,000
Church Lake Rd at West Tapps		250,000
ADA improvements	250,000	250,000

*Safe Route grant

PARK CIP

Program	2023	2024
AYP Improvements	280,000	
Master Plan (Parks, Trails & Open Space)	450,000	

*Decision cards for Field 4 and Midtown/Victor Falls

GENERAL GOVT CIP

Program	2023	2024
PSB Chiller (ARPA funding)	175,000	

*Decision cards for duct cleaning, painting, roof repair, demo and elevator door replacement

WATER CIP

Program	2023	2024
Lakeridge 810 Zone Reservoir	425,000	7,200,000
SCADA improvements	50,000	59,808
Tacoma Point removal	200,000	
Cedar View Water Main replacement	300,000	1,750,000
Grainger Springs pumphouse upgrades	1,920,000	
Hydroxide Tanks-Grainger Springs		455,000
Victor Falls Metering Improvements		131,577
Unilateral Flushing Program		59,808

*Decision cards for laptops, control valve program, confined space supplies, cross connection database, meter replacement, SCADA fixes, modular move, plotter

SEWER CIP

Program	2023	2024
Sewer Plan update	250,000	
Cedarview Dry Line install	300,000	1,750,000
Upgrade Sewer Trunk Line at SR410	200,000	750,000
WWTP Biosolids upgrade	55,000	330,000
WWTP upgrades	140,000	146,000
LS17	580,000	3,560,000
LS 17 Bubbler System		100,000
I/II Reduction	300,000	2,164,811
LS20 Wetwell Restoration	340,000	
SCADA Upgrade Contract	172,000	
Force Main design for Mountain Crk		200,000

*Decision cards for portable generator; bioxide; bubbler assessment

STORMWATER CIP

Program	2023	2024
NPDES	25,000	25,000
Swale retrofit program	300,000	338,400
Conveyance improvements at 211 th	73,080	
Lake Tapps Sub-basin retrofit	145,040	
200 th Ave Ct E Culvert	97,440	
Kelly Lake Rd and 214 th		67,200
Inlet Island		254,475
Fennel Crk Stream Gauge		23,690

*Decision cards for NPDES Action Plan; Ptarmigan Ridge overflow

ER&R Fund

<u>Asset #</u>	<u>Dept</u>	<u>Item</u>	<u>2023</u>	<u>2024</u>
RS213	Water	F250 4x4, Supercab, Cab Guard, Toolbox, Go Light	33,923	
EQ146	Stormwater	Olympic Tilt Trailer 12K	21,285	
RS646	Stormwater	Commercial Super Slope Mower, mower with battery, rops and seat belt, canopy, light kit, rotary beacon	80,157	
EQ399	Street/Storm	72" Skid Steer Brush Cutter	17,460	
RS693	Streets	John Deere 6110M 2022 Mower 4WD Cab	131, 805	
EQ393	Streets	22' Foot Rear Cradle Boom	36,406	
EQ397	Streets	50" HD Boom Flail	14,377	
EQ398	Streets	Rear Cradle Boom Mower	7,354	
EQ527	Multiple	Electric Forklift	79,518	
EQ395	Multiple	Material Handling Arm – Loader	10,593	
PD1201	Police	Ford Interceptor Hybrid, AWD, Pursuit Rated, SUV	77,644	
PD1203	Police	Ford Interceptor Hybrid, AWD, Pursuit Rated, SUV	77,644	
PD1303	Police	Ford F150 AWD Police Responder\	81,760	
PD1407	Police	Ford Interceptor Hybrid, AWD, Pursuit Rated, SUV	77,644	
PD1703	Police	Ford F150 AWD Police Responder	81,760	
PD1004	Police	Boat Trailer	12,000	
EQ329	Streets	Pavement Grinder/Cold Planer		41,738
RS573	Multiple	Compactor/Drum Roller		81,943
PD1305	Police	Ford F150 AWD Police Responder		85,180
PD1514	Police	Ford F150 AWD Police Resp.		85,180
PD1601	Police	Ford Interceptor Hybrid, AWD, Pursuit Rated, SUV		81,526
PD1701	Police	Ford F150 AWD Police Responder		85,180

*Please note that replacement vehicles have some money set aside in ER&R Fund. Not all are covered at 100% however which causes the individual fund to pick up the balance.

Rollover from 2021-2022 Budget to 2023–2024 Budget. These items were not available for purchase at the original time of request due to Covid 19. They have also increased in price since the original budget of 2022.

<u>Asset #</u>	<u>Dept</u>	<u>Item</u>	<u>2022</u>
RS218	Sewer	Ford F550, 4WD, C&C, Ext Cab, Traction Tires, Snowplow Prep Package, LiteReader Message Board	118,759
RS216	Street/Storm	F600, Ext Cab, 4x4, dump, pull tarp, lighting	100,140
EQ616	Street/Storm	SnowDogg V-Plow	13,875
EQ617	Street/Storm	Sander / Salt Spreader	12,288
RS388	Multiple	T880 Chassis dump body, hydraulic package, chipper canopy, camera system	361,876
EQ688	Multiple	Plow, hitch & stationary	38,988
EQ689	Multiple	Sander, Auger, Sander Stand & Prewet System	66,931

APPROVED
 BY _____
 CITY OF BONNEY LAKE
 CITY ENGINEER, PE
 DATE _____
 Plans meet current
 Development Policies and
 Public Works Design Standards.



Know what's below.
 Call before you dig.

CITY OF BONNEY LAKE

LIFT STATION 20 UPGRADE

BONNEY LAKE, WASHINGTON

PROJECT LOCATION



LOCATION MAP
 SITE ADDRESS:
 21200 81ST ST E
 BONNEY LAKE, WA

DRAWING INDEX		
DWG NO.	SHEET NO.	DRAWING TITLE
1	G1	COVER SHEET, VICINITY MAP, AND DRAWING INDEX
2	G2	LEGEND, ABBREVIATIONS AND NOTES
3	C1	SITE PLAN AND PARTIAL BYPASS PUMPING PLAN
4	G2	PARTIAL BYPASS PUMPING PLAN
5	M1	WET WELL IMPROVEMENTS AND DETAILS

REVISIONS	DATE	BY	DESIGNED
			M. MOLLNOW
			DRAWN M. MOLLNOW
			CHECKED J. WRIGHT
			APPROVED

ONE INCH AT FULL SCALE
 IF NOT SCALE ACCORDINGLY
 FILE NAME
 PS1611112-G01
 JOB No. 1611-112
 DATE
 JUNE 2023

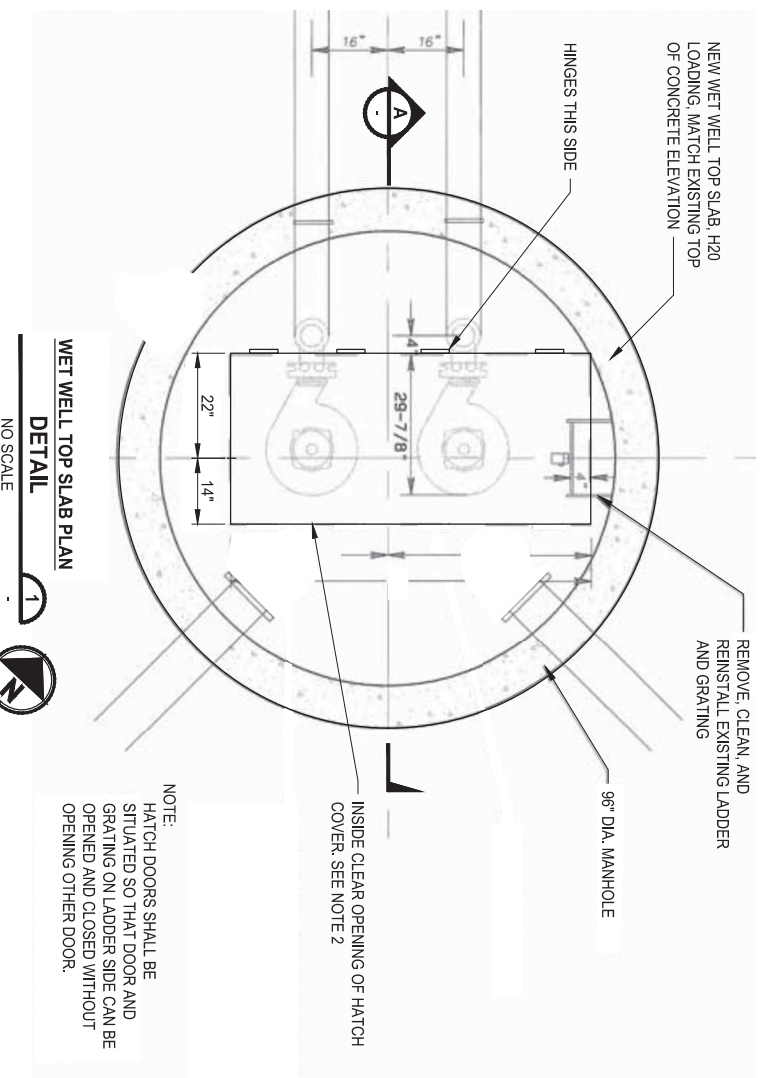


Parametrix
 ENGINEERING - PLANNING - ENVIRONMENTAL SCIENCES
 109 30TH AVENUE SE, SUITE 100 | FUYALLUW, WA 98971
 P 253.404.6600
 WWW.PARAMETRIX.COM

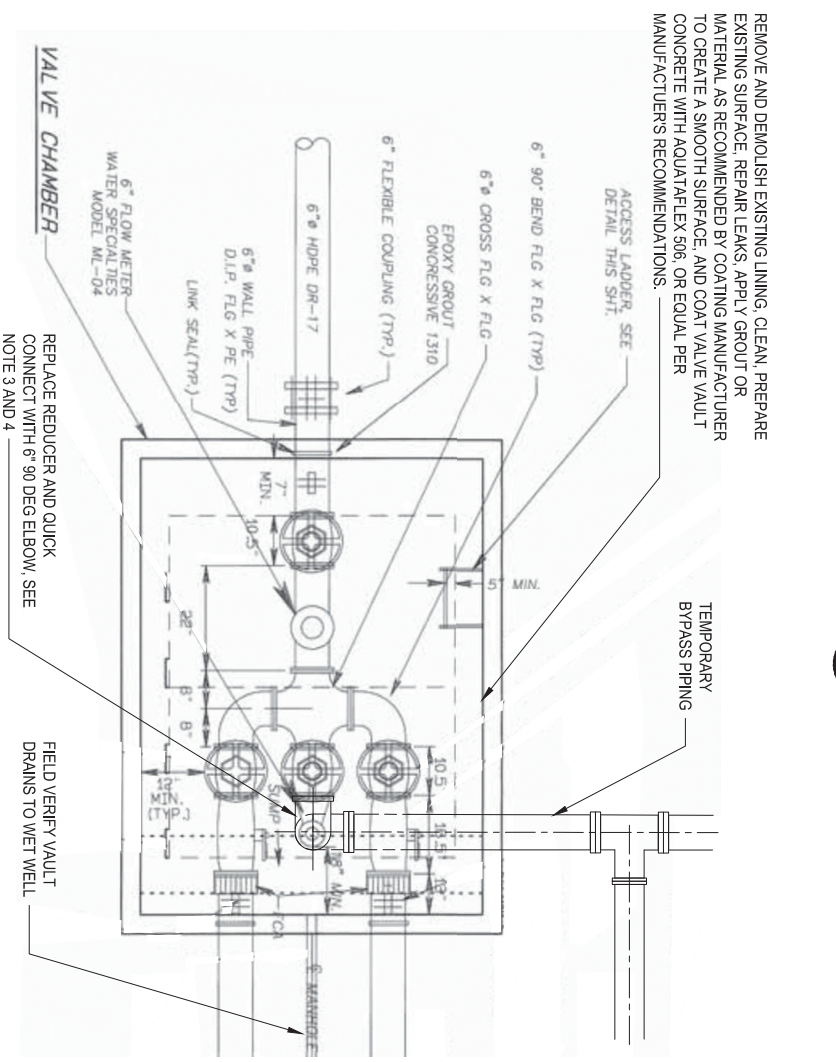
PROJECT NAME
 CITY OF BONNEY LAKE
 LIFT STATION 20 UPGRADE
 BONNEY LAKE, WA

COVER SHEET, VICINITY MAP,
 AND DRAWING INDEX

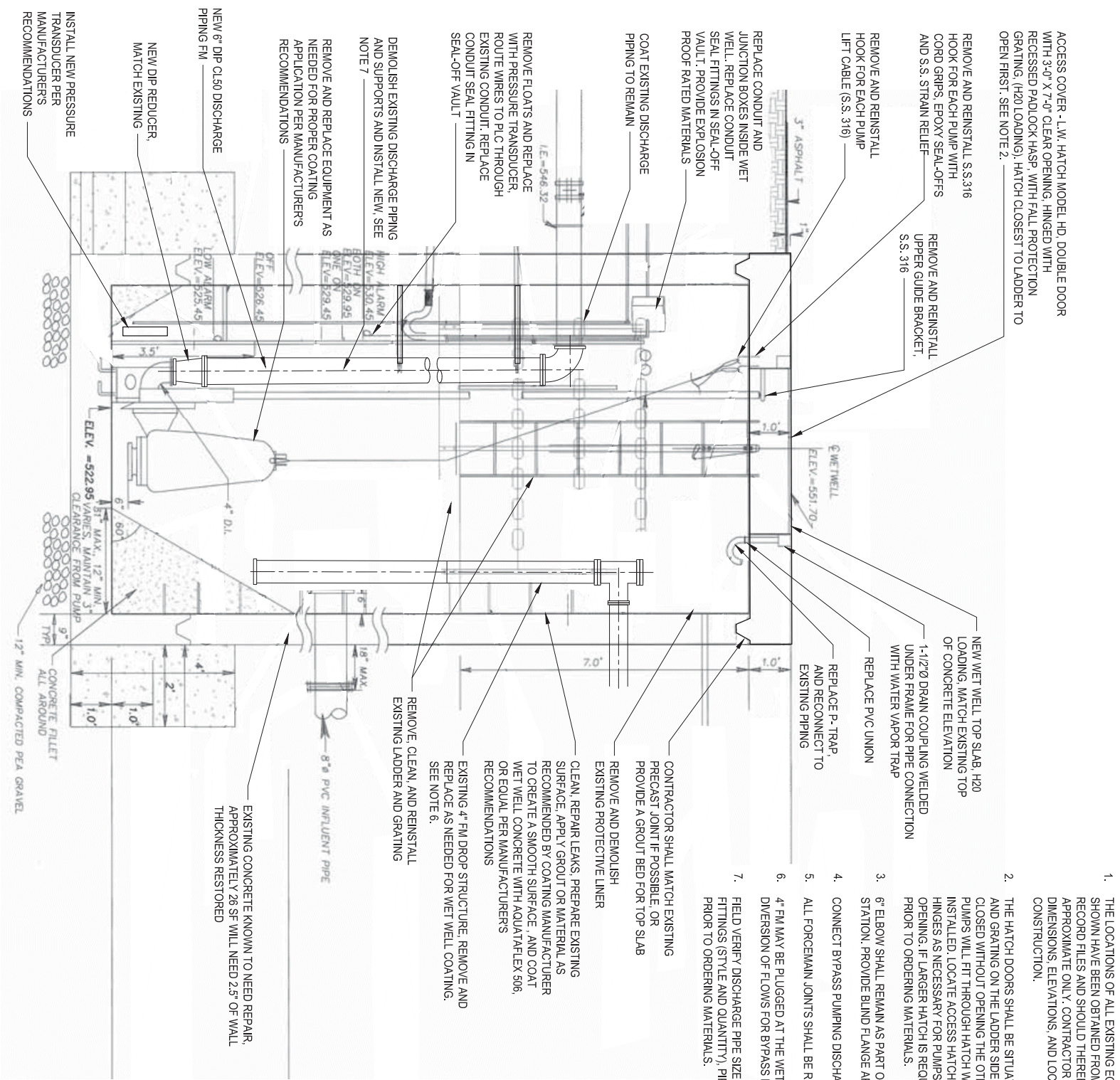
DRAWING NO.
 1 OF 5
G1



WET WELL TOP SLAB PLAN DETAIL
NO SCALE



VALVE VAULT PLAN DETAIL
NO SCALE



WET WELL SECTION
NO SCALE

- NOTES:**
1. THE LOCATIONS OF ALL EXISTING EQUIPMENT AND MATERIALS SHOWN HAVE BEEN OBTAINED FROM CITY OF BONNEY LAKE RECORD FILES AND SHOULD THEREFORE BE CONSIDERED APPROXIMATE ONLY. CONTRACTOR SHALL VERIFY DIMENSIONS, ELEVATIONS, AND LOCATIONS PRIOR TO CONSTRUCTION.
 2. THE HATCH DOORS SHALL BE SITUATED SO THAT THE DOOR AND GRATING ON THE LADDER SIDE CAN BE OPENED AND CLOSED WITHOUT OPENING THE OTHER DOOR. FIELD VERIFY PUMPS WILL FIT THROUGH HATCH WITH SAFETY GRATING INSTALLED. LOCATE ACCESS HATCHES AND SAFETY GRATING HINGES AS NECESSARY FOR PUMPS TO BE PULLED THROUGH OPENING. IF LARGER HATCH IS REQUIRED NOTIFY ENGINEER PRIOR TO ORDERING MATERIALS.
 3. 6\"/>
 4. 4\"/>
 5. ALL FOREMAN JOINTS SHALL BE RESTRAINED.
 6. 4\"/>
 7. FIELD VERIFY DISCHARGE PIPE SIZE, DIMENSIONS, JOINT TYPE, FITTINGS (STYLE AND QUANTITY), PIPE SUPPORT LOCATIONS, PRIOR TO ORDERING MATERIALS.

REVISIONS	DATE	BY	DESIGNED
			T. TADANO
			M. MOLLNAR
			J. WRIGHT

ONE INCH AT FULL SCALE IF NOT SCALE ACCORDINGLY
FILE NAME PS1611112-M01
JOB NO. 16-1611-112
DATE JUNE 2023



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ENGINEERING • PLANNING • ENVIRONMENTAL SCIENCES
3109 30TH AVENUE SE, SUITE 100 | BOVAYLUM, WA 98371
P 253.604.6600
WWW.PARAMETRIX.COM

PROJECT NAME
**CITY OF BONNEY LAKE
LIFT STATION 20 UPGRADE
BONNEY LAKE, WA**

**WET WELL
IMPROVEMENTS AND
DETAILS**

DRAWING NO.
5 OF 5
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City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Public Services / Ken Gill	Meeting/Workshop Date: 14 November 2023	Agenda Bill Number: AB23-147
Agenda Item Type: Resolution	Ordinance/Resolution/Motion Number: 3188	Sponsor:

Agenda Subject: Lift Station 20 Upgrade Project

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Award Of A Professional Services Contract To AKANA For Construction Management Services To Support The Lift Station 20 Upgrade Project.

Administrative Recommendation: Award professional services contract to AKANA.

Background Summary: Sewer Lift station 20 was constructed in 2003 and the wetwell coating is at the end of its design life. This project scope includes: (1) temporarily bypass the lift station, (2) replacement the wet well/valve vault coatings, (3) concrete repair of the the wet well and (4) installation of a grout curtain and crack sealing to reduce groundwater infiltration. All of these tasks require inspection, pay estimate preparation and review of submittals. AKANA is a full-service construction management firm led by Jeff Faunce. Jeff has extensive experience recoating sewer wet wells on similar previous projects for the City of Fife and Sumner. Jeff graduated from Washington State University and is a registered professional engineer in Washington, Oregon and Idaho.

Attachments: Resolution 3188, Scope of Work

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
\$340,000	(\$137,735)	\$110,000	(\$247,735)	<input type="checkbox"/> General <input checked="" type="checkbox"/> Utilities <input type="checkbox"/> Other
Budget Explanation: To fully fund the project, staff propose to use the funding (\$250,000) budgeted in 2023 for the Sewer Comprehensive Plan Update. BARS # 402.117.035.594.35.63.05				

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	Community Development <i>Approvals:</i>		Yes No
	Date: 7 November 2023	Chair/Councilmember Dan Swatman	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember Tom Watson	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember J.Kelly McClimans	<input type="checkbox"/> <input type="checkbox"/>
	Forward to:	Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone</i>	Mayor: <i>Michael McCullough</i>	Date Reviewed by City Attorney: (if applicable)

RESOLUTION NO. 3188

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES CONTRACT TO AKANA FOR CONSTRUCTION MANGEMENT SERVICES TO SUPPORT THE LIFT STATION 20 UPGRADE PROJECT

WHEREAS, the City opened four bids on October 25, 2023 and the low bidder was determined to be McCann Construction Enterprises, Inc. in the corrected amount of \$419,659 which includes sales tax; and

WHEREAS, RESOLUTION 3186 awarded the construction contract to McCann Construction Enterprises, Inc.; and

WHEREAS, recoating a sewer wet well requires construction management services with a firm familiar with this specialized type of work; and

WHEREAS, AKANA is a construction management firm that has provided construction management services for similar type work and has provided a scope and fee for \$100,000; and

WHEREAS, the City has budgeted \$250,000 in 2023 for updating the Sewer Comprehensive Plan and this project can be pushed forward 2 to 3 years as the Department of Ecology does not have a firm update cycle and these sewer utility funds can be used to perform maintenance needed at Sewer Lift Station 20; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorization of Contract. The Mayor is authorized to sign the attached professional services contract with AKANA for construction management services to support staff with the Sewer Lift Station Upgrade project in the amount of \$100,000.

Section 2. Contingency Authorized. Ten percent (10%) of the scope and budget is authorized for construction management contingency (\$10,000). The sum amount of the professional services contract and construction management contingency is the total project construction budget (\$110,000).

Section 3. Implementation Authorized. The Mayor is hereby authorized to take the actions necessary to implement this contract.

Passed by the City Council this _____ day of _____, 20__.

Michael McCullough, Mayor

AUTHENTICATED:

Sadie A. Schaneman, CMC, City Clerk

EXHIBIT A SCOPE OF SERVICES

Construction Management Services City of Bonney Lake –

LIFT STATION 20 UPGRADE PROJECT

Akana (CONSULTANT) will provide professional Construction Management (CM) Services for the City of Bonney Lake (CITY). These services will include CM, contract administration, field observation, documentation, and reporting as required during the "LIFT STATION 20 UPGRADE PROJECT". All services will be provided in accordance with the Washington State Department of Transportation's (WSDOT) Local Agency Guidelines and Construction Manual. CONSULTANT will be providing Jeff Faunce, CA Sue Timm and inspectors Josh Harris and Alan Lobdell on a part-time basis to the project to perform the duties listed below.

Project Description The project work consists of the renovation of Lift Station 20 connection to the existing sanitary sewer force main during bypass, bypass piping by subsurface connection to existing manhole in street and daylight the pipe upon exit of street to tie to manifold at valve vault. Removal and scarification of existing coating and wet well. grout injection as required to seal wet well and coating of wet well and new piping and modifications associated with the Work all in accordance to the project Contract Plans, Contract Provisions and Standard Specifications. Work Breakdown Structure by Tasks

100 Pre-Construction Services:

101 CONSULTANT will review bid documents to become familiar with the project.

102 CONSULTANT will take pre-construction photographs and burn them to a disc to include in hard-copy files.

103 CONSULTANT will conduct a site visit to become acquainted with the project site.

104 CONSULTANT will prepare hard-copy and electronic files for project documentation.

105 CONSULTANT will prepare Project Templates for:

- A. Design Changes
- B. Change Orders and Change Order Justifications
- C. Case Log and Case Log Files
- D. Pay Estimates, including Ledger
- E. Forecasted Cost to Complete
- F. Coordination Meeting Agendas, Minutes and Sign-In Sheets

106 CONSULTANT will prepare Project Logs for tracking:

- A. Design Changes
- B. Change Orders (CO)
- C. Requests for Information (RFI) D. Submittals
- E. Materials on Hand (will correlate with Pay Estimates)
- F. Employment Documentation

107 CONSULTANT will prepare for, and conduct, a Pre-Construction meeting. Duties will include:

- A. Preparing an agenda draft and sending it to the CITY for review/comments.**
- B. Developing an attendees list with input from CITY.**
- C. Conducting the meeting.**
- D. Preparing Meeting Minutes, sending them to CITY for review/comments, revising them per comments and distributing them to attendees and affected stakeholders.**

108 CONSULTANT will review the Contractor's initial Schedule against allowable Working Days. CONSULTANT will also review schedule sequencing and activity duration to check that they are reasonable. Any discrepancies, conflicts or unreasonable work durations will be brought to the attention of the Contractor and the CITY will be notified.

109 CONSULTANT will prepare a monthly CONSULTANT progress invoices for CITY review and payment. Under the provisions of this contract a total of (5) invoices shall be prepared and presented to the CITY.

200 Construction Management Administration:

201 CONSULTANT will prepare a Progress Pay Estimates for work performed by Contractor. Under the provisions of this contract up to a total (5) invoices shall be prepared. These will be completed once CONSULTANT and Contractor have reached agreement on estimate quantities.

202 CONSULTANT will prepare up to (20) Weekly Statement of Working Day reports.

203 CITY will monitor Contractor and Sub-Contractor's employment documentation for adherence to contract requirements.

204 CONSULTANT will review and respond to Requests for Information (RFIs) submitted by the Contractor. Responses will include technical interpretations of the drawings, specifications, and Contract Documents. The CONSULTANT will update the RFI Log as RFIs are submitted and resolved.

205 CONSULTANT will monitor issues that may eventually have impacts to the project budget or schedule. These issues will be documented Information included in the Log will be:

- A. An assigned number that will be used to track each issue separately.**
- B. The date the issue became known.**
- C. A description of the issue.**

- D. An estimate of the lowest cost necessary to resolve the issue. If resolution creates an overall decrease to the budget, this amount would be negative.**
- E. An estimate of the highest cost necessary to resolve the issue.**
- F. An estimate of the issue's impact on Working Days.**
- G. A summary of project documents that relate to the issue.**
- H. Comments relating to the issue.**

206 CONSULTANT will prepare Change Orders and will include the CITY in the process of Change Order negotiation and preparation. Items tracked using the Issue Log may eventually become Change Orders. CONSULTANT Change Order work will include:

- A. Scheduling and conducting negotiation meetings. The CONSULTANT will create and distribute meeting agendas and minutes.**
- B. Preparation of independent Engineer's Estimates.**
- C. Compilation of Change Order back-up. This will include, but is not limited to:**
 - i. Engineer's Estimates**
 - ii. E-mail correspondence**
 - iii. Extra Work Orders from Contractor**
 - iv. Design Change Documents**
 - v. Meeting Minutes**
- D. Preparation of Change Order Justifications. (1 change order included in cost)**

Justifications will include:

 - i. A description of the change.**
 - ii. An evaluation of what is required by the Contract.**
 - iii. An explanation as to why a Change Order is necessary.**
 - iv. Descriptions of considered alternatives to a Change Order.**
 - v. The reasons for entitlement; why the work cannot be paid for under the existing contract.**
 - vi. The names of those that approved the Change Order.**
 - vii. An evaluation of impact to Working Days.**
 - viii. Change Order back-up.**
- E. Writing the Change Orders and providing them to CITY for edits and/or concurrence.**

F. Obtaining the necessary signatures for execution once concurrence has been given by the CITY.

G. Maintaining the Change Order Log

300 Construction Services - Field:

Working Days 100 Contractor. 50 working days contracted with Akana. It is anticipated that during Wet well rehabilitation that the contractor NACE inspector will supply the reports and Akana will review only. This anticipated work is to be 50 working days and during any additional FA work Akana has budgeted a management fund of approximately 10 K for force account for CA and inspection time.

CONSULTANT will provide part time Inspection consisting of a senior inspector to assist and observe day-to-day conduct of construction. This will include acting as the project hub for communications, monitoring Contractor adherence to Contract Documents and documentation of Contractor's work progress for payment.

301 CONSULTANT will request and review the Contractor's breakdowns of lump-sum items for accuracy and payment purposes. Breakdowns will be used to evaluate construction progress of these items for pay estimates.

302 CONSULTANT will prepare Field Note Records that detail Contractor's completed work for inclusion in monthly Pay Estimates. Field Note Records will internally be checked for accuracy prior to being entered into Pay Estimates.

303 Prior to monthly Pay Estimate completion, the CONSULTANT will coordinate with each of the Contractors to reach agreement on the Pay Estimate quantities.

304 CONSULTANT will review the materials delivered to the project site to ensure they are the approved construction materials. This will be done by checking them against the approved Submittals and noting materials delivered on Inspector Daily Reports (IDR).

305 The CONSULTANT Inspector(s) will prepare up to 50 Inspector's Daily Reports. If there is more than one Inspector, each will prepare an individual report. IDRs will include:

A. Weather information.

B. Contractor and Subcontractors working that date, as well as the on-site representative for each.

C. A work activity summary.

D. Bid items worked on.

E. Equipment and employees utilized and hours used/worked.

F. A diary to be used as a narrative of the day's events.

G. Photos.

H. Materials used.

306 CONSULTANT will take photos of construction progress and will maintain them electronically in an orderly fashion. Upon completion of the project, these photos will be burned to discs that will be included in the hard-copy files.

400 Materials

CONSULTANT shall perform a preliminary review of submittals and coordinate getting Technical engineering reviews when appropriate. Materials that do not require testing will be rejected, approved or conditionally approved per the requirements of the CITY and the Contract provisions. Materials that require testing will be rejected, approved, or conditionally approved per results of field evaluation materials testing. None is anticipated on this project.

401 CONSULTANT will update the Submittal list as submittals are rejected, approved, or conditionally approved as well as when test results are obtained.

402 CONSULTANT will inspect materials and conduct testing in accordance with the CITY's direction and reasonable field evaluation.

403 CONSULTANT will inspect the Concrete for adherence to Contract requirements. All work is anticipated to be commercial concrete so no testing is expected

404 CONSULTANT will inspect installation of Hot Mix Asphalt (HMA) for adherence to Contract requirements. No testing is anticipated due to minor quantity.

500 Project Completion:

Assist the CITY with the close-out of the project. Items of work include the following:

501 CONSULTANT will coordinate with the CITY, and the Contractor to resolve outstanding project issues. This includes up to (2) Project Closeout Meetings. The CONSULTANT will prepare and distribute the agendas and minutes.

502 CONSULTANT will prepare a Letter of Substantial Completion for issuance by the CITY. This letter will include punch list items for both Physical Completion and Final Completion.

503 CONSULTANT will coordinate with the Contractor to obtain all outstanding project documentation.

504 CONSULTANT will prepare a Punch List of work items for the Contractor. This list will be created with input from the CITY. Creation of the list will include 1 initial project walkthrough and up to 2 follow-up walkthroughs to ensure Punch List work is complete. The list may still be revised after it has been issued to the Contractor.

505 CONSULTANT will prepare a Letter of Physical Completion for issuance by the CITY. This letter will denote that the Contractor's work is completed.

506 CONSULTANT will take photos of completed project and will maintain them electronically in an orderly fashion. Upon completion of the project, these photos will be burned to discs that will be included in the hard-copy files.

507 CITY's Engineering Firm will backdraft the As-Builts to create a Record Drawings for CITY records upon issuance of Physical Completion and the CONSULTANT will perform a review of the drawings for accuracy.

Specific repair requirements and inspection to the LIFT STATION 20 are as follows:

This task provides "hold point" inspections of the coating activity at the pump station included in the Wetwell Coating by a National Association of Corrosion Engineers (NACE) certified painting inspector from the contractor. Hold point inspections occur at critical junctures in the coating process to verify that the specified requirements for surface preparation, coating application, and environmental conditions are being met by the Contractor. The NACE inspector will coordinate his site visits with the Contractor and Project Representative to determine when an inspection is necessary and should occur. Each week, the Contractor will provide the Coatings Inspector with the following week's anticipated inspection requirements. Within 24 hours of that coordination, Akana will verify those expectations meet with the City of Bonney Lake acceptance, and are within the scope and estimated project budget as defined by the Project Engineer.

In the event additional work is provided for "monitoring" inspections of work completed under a Force Account for Coating Work arrangement. The Force Account for Coating Work on this project includes could include chemical grout injection for sealing leakage into the wetwells, and concrete repair necessary to restore the wetwell structure. Monitoring inspections will, in coordination with the Contractor, identify areas requiring Force Account for Coating Work, and verify the Contractor's progress in completing this work in a timely and efficient manner.

Definitions:

- 1. Project Team-All the parties listed below (The Contractor, Subcontractor, Coatings Inspector, City, Project Engineer, Project CM)**
- 2. Contractor**
- 3. Subcontractor-**
- 4. Coatings Inspector-The Contractor supplied NACE-certified inspector.**
- 5. City-City of Bonney Lake.**
- 6. Project Engineer-Parametrix**
- 7. Project CM-Akana**

Responsibilities of the Coatings Inspector:

- 1. Verify that the Contractor is following the project specifications and manufacturer's recommendations in completing the work.**
- 2. All daily reports are to be submitted to the Project Engineer no later than 10:00 AM the day following the inspection.**

Monitoring Force Account for Coating Work (Chemical Grout Injection)

- a. Following the removal of the existing coating, the Coatings Inspector and the Subcontractor are to inspect the wetwell and vault areas for areas showing groundwater leakage.**
- b. Procedures for correcting groundwater leakage are covered in the specification, Chemical Injection Grouting. All groundwater leakage areas shall be sealed prior to the application of any patching material or other coating to that area.**
- c. Patching and repairing of the concrete surfaces in conjunction with the grout injection work should be encouraged, as this could lower the amount of time necessary to complete the Coating Work. The Subcontractor is performing both types of work.**

- d. Monitor the execution of the grout injection work, to verify that the subcontractor is proceeding with the work in an efficient and cost-effective manner. Determine when the level of seepage through the concrete structure has been reduced to a level allowing the application of the wetwell coating system. If low-level seepage persists in areas of the structure, determine if a concrete sealer is required in place of the specified filler/surfacer.
 - e. Complete Daily Reports discussing the progress and efficiency of the grout injection work, including photos and other descriptive data, and distribute to the Project Team.
 - f. The wetwell shall be given a final inspection by the Contractors Coatings Inspector to verify that the concrete surfaces have been sealed adequately for the coating work to proceed.
3. Monitoring for Coating Work (Concrete Repair)
- a. Following the removal of the existing coating, the Coatings Inspector and the Subcontractor are to inspect the wetwell and vault areas for areas requiring concrete repair (defined as the filling of depressions of 1/2-inch or deeper).
 - b. The Coatings Inspector shall measure and record the areas requiring Concrete Repair in field notes, accompanied with pictures, and distribute this information to the Project Team.
 - c. Procedures for concrete repair are covered in the specification, Concrete Repair. All concrete repair is to be in accordance with the International Concrete Repair Institute (ICRI) Guideline 310.IR. The specified concrete mortar shall be used to repair concrete surfaces.
 - d. All concrete repair shall be completed before the application of the filler/surfacer to the remaining areas of the wetwell.
 - e. As discussed previously, it may be possible for the Contractor to perform chemical grout injection and concrete repair concurrently, to shorten the time required to complete the Force Account for Coating Work.
 - f. Complete Daily Reports discussing the progress and efficiency of the concrete repair work, including photos and other descriptive data, and distribute the Project Team.
4. Hold Point Inspections (Coating work)
- a. Contractor Nace inspector shall Complete daily reports to include the items listed below:
 - A summary description of the work underway and work completed
 - Surface preparation procedures and results
 - Coating application environmental conditions (temperature, humidity, dew point, etc.)
 - Coating application equipment, personnel, procedures, and application rates.
 - Coating wet and dry mil thicknesses, quality of finish, workmanship
 - Results of any QA/QC tests performed (e.g., surface profile, vapor emission rate, holiday test results, cure test results, etc.)
 - Describe any corrective action required by the Contractor.
 - b. Coordinate with the Project Engineer and the Contractor to determine the approximate timeframes and durations for the hold point inspections. Examples-

Following the removal of the existing coating, and high pressure washing of the exposed concrete, check for areas of groundwater infiltration that will need to be grouted prior to coating.

- Check for proper surface preparation of concrete and metal surfaces to confirm that manufacturer's recommendations for surface roughness (profile) have been achieved prior to authorizing coating to proceed.

Check that any underlying coating has cured adequately, and that the manufacturer's recommended window for top coating has not been exceeded.

- Check that specified coating thickness has been achieved.
 - Perform holiday tests on the finished coating.
5. Coordinate with the Project Engineer on issues that arise during construction, and interface with the Contractor to implement the selected course of action.

Deliverables:

1. Contractor Daily reports, including *QNPC* test results (surface profile, environmental conditions, coating thickness, etc). After review and submittal to the Project Engineer, the Project Engineer will forward daily reports to the City, the Contractor, and the rest of the project team.
2. Akana Daily reports shall include verification of the above and inspection of the bypass system, care in removal and installation of components and other work activities not included in the injection repair and coating of the wet well.

CLIENT Name: Bonney Lake
 PROJECT Description: _____
 Proposal/Job Number: _____ Date: 10/15/2023

Bonney lake

July 29 2022 Rates	Principal	Safety	Const admin	Const Inspector			qa/qc/cqap	Asst. Cxa	Designer	CAD		Admin. Assist.		Total	CZE Total Labor	CZE OH @ 1.4021	CZE Fixed Fee @ 30%	Contingency Management	CZE Sub-Markup	CZE ODCs	CZE ODCs Markup	Total Expenses	Total Labor + Expenses
Classification:														Hours	Fees	140.21%	30%	Fees	5%	Fees	5%		Fees
Task 100 -akana rates and estimate																							
akana rates and estimate	100			400										0	\$9,500	\$13,320	\$2,850		\$0		\$0	\$16,170	\$25,670
			200										14	214	\$9,500	\$13,319	\$2,850		\$0		\$0	\$16,169	\$25,669
contingency for fA		2												2	\$94	\$131	\$28	\$9,770	\$0		\$0	\$9,929	\$10,023
Task 100 - Subtotal	100	2	200	400	0	0	0	0	0	0	0	14	0	616	\$37,093	\$52,008	\$11,128	\$9,770	\$0	\$0	\$0	\$72,906	\$110,000
														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Design assistance/reviews														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
change order prep(rob included above)														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task 200 - Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Task 300 - Construction Services Field																							
field CM services	0	0												0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task 300 - Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Task 400 - materials																							
materials Testing													0	0	\$0	\$0	\$0		\$0	\$0	\$0	\$0	\$0
Special Inspection - CTL														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task 400 - Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Task 500 - Project Completion																							
closeout														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task														0	\$0	\$0	\$0		\$0		\$0	\$0	\$0
Task 500 - Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
All Phases Total	100	2	200	400	0	0	0	0	0	0	0	14	0	616	\$37,093	\$52,008	\$11,128	\$9,770	\$0	\$0	\$0	\$72,906	\$110,000

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

Department/Staff Contact: Public Services / Andrew Fonda	Meeting/Workshop Date: 14 November 2023	Agenda Bill Number: 23-150
Agenda Item Type: Resolution	Ordinance/Resolution/Motion Number: 3191	Sponsor:

Agenda Subject: Public Safety Building Generator

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Purchase Of An Emergency Power Generator And Transfer Switch From Cummins Power Systems For The Public Safety Building Generator Improvements Project.

Administrative Recommendation: Approve

Background Summary: The emergency power generator at the Public Safety Building is 30 years old, undersized for the Public Safety Building, and in need of replacement. Authorization of \$225,000 of ARPA funds was approved per AB22-34 on March 8, 2022, to replace the emergency power generator. After further discussion and research, it became apparent that additional site improvements were going to be required to complete this project. Authorization of \$185,000 of ARPA funds was approved per AB22-99 on September 13, 2022. Since these additional improvements are beyond the scope of City staff to design and construct, City staff also requested authorization of \$115,000 of ARPA funds per AB23-67 for a professional services agreement with RH2 Engineering to size a new generator with enough capacity for full emergency backup power and to design a complete emergency backup power system with all necessary equipment and electrical component upgrades required to operate the entire Public Safety Building under emergency power. RH2 Engineering has sized the new generator and transfer switch and Cummins Power Systems has provided the City with a quote of \$177,035.00 (not including sales tax of \$16,818.33) for the generator and transfer switch and staff is requesting authorization to place the equipment order with Cummins Power Systems.

Attachments:

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
\$525,000	\$410,000	\$193,853	\$216,147	<input type="checkbox"/> General <input type="checkbox"/> Utilities <input checked="" type="checkbox"/> Other
Budget Explanation: ARPA Funds BARS # 320.002.000.594.21.64.00				

COMMITTEE, BOARD & COMMISSION REVIEW											
Council Committee Review:	Community Development Date: 7 November 2023	<i>Approvals:</i> Chair/Councilmember Dan Swatman Councilmember Tom Watson Councilmember Kelly McClimans	<table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 0 10px;">Yes</td> <td style="padding: 0 10px;">No</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Yes	No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yes	No										
<input type="checkbox"/>	<input type="checkbox"/>										
<input type="checkbox"/>	<input type="checkbox"/>										
<input type="checkbox"/>	<input type="checkbox"/>										
	Forward to:	Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No								
Commission/Board Review:											
Hearing Examiner Review:											

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS

Director:

Mayor:
Michael McCullough

**Date Reviewed
by City Attorney:**
(if applicable)

RESOLUTION NO. 3191

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE PURCHASE OF AN EMERGENCY POWER GENERATOR AND TRANSFER SWITCH FROM CUMMINS POWER SYSTEMS FOR THE PUBLIC SAFETY BUILDING GENERATOR IMPROVEMENTS PROJECT.

WHEREAS, the City of Bonney Lake’s Public Safety Building is the command center during emergency response situations; and

WHEREAS, the City desires to have full emergency backup power at the Public Safety Building; and

WHEREAS, the existing backup generator is 30 years old and does not have the capacity for full emergency backup power as the existing generator will not operate the entire HVAC system including the chiller; and

WHEREAS, RH2 Engineering has sized a new generator and transfer switch with enough capacity for full emergency backup power; and

WHEREAS, Cummins Power Systems has provided the City a quote for the new generator and transfer switch in the amount of \$177,035.00 plus tax; and

WHEREAS, City staff is requesting authorization to purchase the new generator and transfer switch from Cummins Power Systems for the Public Safety Building Generator Improvements Project;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON HEREBY RESOLVES AS FOLLOWS:

That the City Council of the City of Bonney Lake does hereby authorize the Mayor to authorize the purchase of a new generator and transfer switch from Cummins Power Systems for the Public Safety Building Generator Improvements Project in the amount of \$177,035.00 plus tax.

Passed by the City Council this 14th day of November, 2023.

Michael McCullough, Mayor

AUTHENTICATED:

Sadie Schaneman, CMC, City Clerk

October 27, 2023

Prepared by

Zach Schulte
 (206) 794-9801
 zach.t.schulte@cummins.com

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	<p>DFEJ Commercial Diesel Generator Set, 450kW Standby 60Hz</p> <p>U.S. EPA, Stationary Emergency Application 450DFEJ, Diesel Genset, 60Hz, 450kW-Standby Rating Duty Rating - Standby Power (ESP) Emission Certification, EPA, Tier 2, NSPS CI Stationary Emergency Listing - UL 2200 Cert - Seismic, IBC2000, IBC2003, IBC2006, IBC2009, IBC2011 Voltage - 120/208, 3 Phase, Wye, 4 Wire Alternator - 60Hz, 12 Lead, Extended Range, 125/105C Steel Sound Attenuated Level 2 Enclosure, with Exhaust System Enclosure Color - Green, Steel Wind Rating - 150 MPH, Steel Housing Fuel Tank - Sub Base, 850 Gallon, UL142 Compliant Compliance - Fuel Tank, Michigan Listing, ULC - S601 - 07 Alarm - High Fuel Level, External with OFPV Override Fuel Water Separator Spill/Fill Box - Fuel with OFPV Vent Extension - Fuel Tank, 5 Inch Diameter Control Mounting - Left Facing PowerCommand 2.3 Controller LCD Control Display AmpSentry™ UL Listed Protective Relay Relays - Genset Status, User Configured Alarm - Audible, Engine Shutdown Signals - Auxiliary, 8 Inputs/8 Outputs Relay - Alarm Shutdown Control Display Language - English Circuit Breaker or Entrance Box or Terminal Box - Right Only Circuit Breaker or Entrance Box or Terminal Box, Left-None Terminal Box - Low Voltage, Right Circuit Breaker or Entrance Box or Terminal Box, Left-None Bottom Entry, Right Indication - Ground Fault Engine Air Cleaner - Normal Duty External Battery Charger - 12 Amp, Regulated Engine Cooling - Radiator, 50C Ambient Shutdown - Low Coolant Level Coolant Heater - 208/240/480 Volts AC, Below 40F Ambient Temperature Test Record - Strip Chart Test - Extended, Standby Load, 4 Hour Test Record - Safety Shutdowns Genset Warranty - 2 Years Base Literature - English Packing - None, Base Mounted Housing</p>	1
2	<p>CXRF, CXR Series Transfer Switch with PowerCommand Control 1600A</p> <p>CXR1600, Transfer Switch, PowerCommand, 1600 Amp Listing - UL 1008 IBC Seismic Certification</p>	1

	Application - Utility to Genset Cabinet - Type 4x Stainless Cable Lugs - Mechanical, 1/0 - 750 MCM UL1008 3 - Cycle Withstand Ratings Transfer Mode - Delayed Transition Poles - 4 (Switched Neutral) Frequency - 60 Hz System - 3 Phase, 4-Wire (Solid or Switched Neutral) Voltage - 208 Volts AC PC80 Control Integrated High Accuracy Power Quality Metering Premium Customer I/O S1 SPD, 240KA, For WYE Systems S2 SPD, 240KA, For WYE Systems Transfer Switch Warranty - 2 Year Comprehensive Packing - Wooden Crate	
3	Annunciator-panel mount with enclosure (RS485)	1
4	Delivery to site, off-loading by others	1
5	Generator starting batteries, Group 8D	2
6	Start up and 2 hour load bank test, 5 loss of power tests, replace oil and fuel filters after start up is complete. Perform (1) 2 hour trainings session for the City of Bonney Lake staff on a separate scheduled day.	1
7	Spare parts: 3 sets of oil, fuel and air filters, 2 sets of belts, 1 quart of touch up paint.	1

TOTAL: \$ 177,035.00

Quote value does not include any tax.

EXCEPTIONS AND CLARIFICATIONS:

Specification 16.90 pages 1 through 15 and section 16.92 pages 1 through 4 reviewed for this proposal. No electrical drawings provided or reviewed. All other specifications are excluded.

- All fuel is provided by others.
- Source Quality Control: Factory witness testing is available. Advanced notice will need to be provided if customer decides to participate in witness testing. If witness testing is required, it will be quoted as additional.

COVID 19 SUPPLEMENTAL STATEMENT

AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.

INTERNATIONAL BUILDING CODE (IBC) CERTIFICATION

The products in this quotation identified as meeting the requirements of the 2009 IBC have been certified by their respective manufactures via a combination of analytical testing and shaker table testing. Not all products have been shaker table tested.

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT (OSHPD)

OSHPD seismic requirements are continuing to evolve. Please contact Cummins for the most current requirements for meeting OSHPD applications.

SELECTIVE COORDINATION FOR NATIONAL ELECTRIC CODE (NEC) ARTICLE 700 AND 701 LOADS

Cummins generators are equipped with the manufacturer's recommended circuit breaker. Information regarding this device can be supplied upon request. This quotation is not valid if any changes to this circuit breaker(s) is required to coordinate with other devices in the electrical distribution system. If changes are required, the customer must provide a copy of the coordination study listing the manufacturers part number of the disconnect device to be supplied with the generator and a revised quotation will be issued.

TRANSFER SWITCH WITHSTAND AND CLOSE RATINGS

Transfer switch(es), if included in this quotation, require a withstand and closing rating (WCR) capable of meeting the available upstream fault current (kAIC). The WCR may be based on a specific breaker rating or a time-based rating, and it is the responsibility of a qualified facility designer or engineer to verify compatibility. In the event that the proposed transfer switch(es) are not compatible, the transfer switch(es) will need to be re-quoted to ensure compatibility. A full listing of the WCR can be provided upon request and will be included as part of the submittal package.

CUMMINS STANDARD EXCLUSIONS

Exhaust System

All off-engine piping, hangers, flanges, gaskets, bolts, insulation, other materials and labor to install.

Fuel System

All fuel piping and materials not limited to; supply, return, venting, valves, coolers, filters, pumps, fittings, primary fuel regulator, storage tank & senders, external to genset package. All fuel for testing and initial fill. Fuel tank vent extensions and flame arrestors unless specifically listed in the Bill of Materials.

Cooling System

Intake louvers, exhaust louvers, air dampers, sheet metal ducting, flex adapters, sound attenuators/baffles. All off engine piping, flexible connections, labor and coolant for remote cooling systems.

Electrical

All off-engine wiring, field terminations of wiring, and lugs other than those detailed in our submittal. Mounting bolts and anchors. Vibration isolators (if included) may be shipped loose for installation at the jobsite by others. Seismic engineering calculations.

Electrical Testing

Not limited to International Electrical Testing Association (NETA), infrared scanning, harmonic content or other independent agency testing of switchgear, switchboards, protective relays, circuit breaker, electrical coordination studies, arc flash studies and reactive load site testing.

Environmental Testing

Environmental Protection Agency (EPA), local air quality district or other Authority Having Jurisdiction (AHJ), including acoustical.

Programming

All protective relay settings, breaker settings, PLC programming or other user configurable device programming.

Documentation

Electronic submittals and operation and maintenance manuals will be provided. Printed copies are available upon request, additional charges may apply.

Miscellaneous

Site specific labeling. Exhaust backpressure, airflow restriction or vibration analysis

Design

Cummins is not responsible for system design or engineering and does not guarantee system performance standards. Cummins will supply documentation and reasonable assistance to others responsible for system engineering, design and performance.

Taxes and Permit

Any applicable sales tax, permits, fees, licenses.

Bonds

Any bid bond, payment or performance bond or other type of bond.

All items listed above are excluded and will only be supplied by Cummins if agreed upon, in writing, by a sales representative for Cummins.

LEAD TIME:

Submittal

Typical submittal lead time is 3 - 4 weeks after receipt of purchase order.

Equipment

Current lead-time is 62 - 66 weeks after submittal approval and release for production.

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.

Submitted by:

Zach Schulte, Territory Manager

zach.t.schulte@cummins.com

(206) 794-9801

SUBMITTALS. An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

Authorized Signature

Date

Company Name

Printed Name & Title

Purchase Order No

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TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions for Sale of Power Generation Equipment, together with the quote ("Quote"), sales order ("Sales Order"), and/or credit application ("Credit Application") on the front side or attached hereto, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of equipment to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, specifications, agreement (whether upstream or otherwise), or any other terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE. Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless mutually agreed upon by the parties in writing. A Sales Order for Equipment is accepted on a hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received from Customer. A Quote is limited to the plans and specifications section specifically referenced in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated and mutually agreed to in writing by the parties. Unless otherwise agreed by Cummins in writing, this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ("Quote Validation Period"). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. SHIPPING; DELIVERY; DELAYS. Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined in Cummins' sole discretion, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. In the event Customer fails to take any or all shipments of Equipment ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall have the right, in its sole discretion to either (i) charge a minimum storage fee in the amount of one and one-half percent (1.5%) per month of the total quoted amount; or (ii) consider the Equipment abandoned and, subject to local laws, may (a) make the Equipment available for auction or sale to other customers or the public, or (b) otherwise use, destroy, or recycle the Equipment at Customer's sole cost and expense. The foregoing remedies shall be without prejudice to Cummins' right to pursue other remedies available under the law, including without limitation, recovery of costs and/or losses incurred due to the storage, auction, sale, destruction, recycling, or otherwise of the Equipment. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use commercially reasonable efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. *AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO MEET THE DELIVERY, SERVICE OR COMPLETION*

OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE EQUIPMENT OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

3. PAYMENT TERMS; CREDIT; RETAINAGE. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) postpone delivery of any undelivered Equipment in Cummins' possession and/or suspend its services until payment for unpaid invoices is received.

4. TAXES; EXEMPTIONS. Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

5. TITLE; RISK OF LOSS. Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

6. INSPECTION AND ACCEPTANCE. Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's reasonable satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

7. LIEN; SECURITY AGREEMENT. Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

05.01.2023

8. CANCELLATION; CHARGES. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office sixty (60) or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

9. TERMINATION. Cummins may, at any time, terminate this Agreement for convenience upon sixty (60) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Equipment or services supplied under

this Agreement, in accordance with the payment terms detailed in Section 3. If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

10. MANUALS. Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

11. TRAINING; START UP SERVICES; INSTALLATION. Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

12. MANUFACTURER'S WARRANTY. Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

13. WARRANTY PROCEDURE. Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

14. LIMITATIONS ON WARRANTIES.

THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

15. INDEMNITY. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

16. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY OR NEGLIGENCE), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

17. DEFAULT; REMEDIES. Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins. Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

18. CUSTOMER REPRESENTATIONS; RELIANCE. Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

19. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

20. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by, interpreted, and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the federal and state courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim

arising in connection with this Agreement or any related matter, and hereby waive any right to claim such forum would be inappropriate, including concepts of forum non conveniens.

21. INSURANCE. Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

22. ASSIGNMENT. This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

23. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

24. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment due to economic and market conditions at the time of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

25. MISCELLANEOUS. Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is writing and signed by an authorized representative of the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for, and Customer has agreed to purchase of the Equipment pursuant to these Terms and Conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such Terms and Conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event Cummins incurs additional charges hereunder due to the acts or omissions of Customer, the additional charges will be passed on to the Customer, as applicable. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof. The Parties' rights, remedies, and obligations under this Agreement which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 16. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement.

26. COMPLIANCE. Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment.

Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

27. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.